



## H.E. DAVID KEANU SAI, PH.D.

Head, Royal Commission of Inquiry  
P.O. Box 4146  
Hilo, HI 96720  
Tel: +1 (808) 383-6100  
E-mail: [interior@hawaiiankingdom.org](mailto:interior@hawaiiankingdom.org)  
Website: <http://hawaiiankingdom.org/royal-commission>

---

February 7, 2024

To: Members of the State of Hawai‘i Senate and House of Representatives  
Members of the County Councils

*Via electronic mail*

Re: Transforming the State of Hawai‘i into a Military Government and the War Crime of Usurpation of Sovereignty during Military Occupation

Dear Senators, Representatives, Councilmen, and Councilwomen:

The purpose of this letter is to apprise you of the severity of the current situation and its impact on the State of Hawai‘i and its legislative bodies enacting American municipal laws in violation of international humanitarian law and the law of occupation. The continuous enacting of State of Hawai‘i laws, to include County ordinances, constitutes the *war crime of usurpation of sovereignty during military occupation*. 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,<sup>1</sup> there are four elements of the *war crime of usurpation of sovereignty during military 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.<sup>2</sup>

---

<sup>1</sup> 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)).

<sup>2</sup> *Id.*

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.”<sup>3</sup>

The war crimes tribunals in Nuremburg and Tokyo that followed the end of hostilities during the Second World War, “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 criminal responsibility.”<sup>4</sup> 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.”<sup>5</sup> The doctrine of command responsibility arises when the superior, by omission, fails to control or punish those under his/her command.

It has been 25 years since the arbitral proceedings at the Permanent Court of Arbitration (“PCA”) were initiated on November 8, 1999, in *Larsen v. Hawaiian Kingdom*. The first allegation of the *war crime of usurpation of sovereignty during military occupation*,<sup>6</sup> was made the subject of this arbitral dispute, whereby the claimant alleged that the Hawaiian Kingdom, by its Council of Regency, was legally liable “for allowing the unlawful imposition of American municipal laws”<sup>7</sup> over him within Hawaiian territory, which led to the war crimes of unfair trial and unlawful confinement by the District Court of the Third Circuit in Kea‘au.

Before the arbitral tribunal was established on June 9, 2000, the PCA Secretary General recognized the continued existence of the Hawaiian Kingdom as a non-Contracting State pursuant to Article 47 of the 1907 Hague Convention, I, for the Pacific Settlement of International Disputes (“PCA Convention”) as a matter of institutional jurisdiction. Article 47 states, “[t]he jurisdiction of the Permanent Court, may within the conditions laid down in the regulations, be extended to disputes between non-Contracting [States] or between Contracting [States] and non-Contracting [States], if the parties are agreed on recourse to this Tribunal.”<sup>8</sup> This brought the dispute under the auspices of the PCA. The PCA Secretary General also recognized the Council of Regency as its government. The Council of Regency was not claiming to be the government of a new State but rather it claimed

---

<sup>3</sup> *Id.*, 167-168.

<sup>4</sup> Andrew D. Mitchell, “Failure to Halt, Prevent or Punish: The Doctrine of Command Responsibility for War Crimes,” 22 *Sydney Law Review* 381 (2000).

<sup>5</sup> M. Cherif Bassiouni and Peter Manikas, *The Law of the International Criminal Tribunal for the Former Yugoslavia* 345, 348-350 (1996).

<sup>6</sup> Memorial of Lance Paul Larsen (May 22, 2000), *Larsen v. Hawaiian Kingdom*, Permanent Court of Arbitration, para. 62-64, [https://www.alohaquest.com/arbitration/pdf/Memorial\\_Larsen.pdf](https://www.alohaquest.com/arbitration/pdf/Memorial_Larsen.pdf).

<sup>7</sup> Permanent Court of Arbitration Case Repository, *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01, <https://pca-cpa.org/en/cases/35/>.

<sup>8</sup> 36 Stat. 2199, 2224 (1907). The PCA Convention uses the terms non-Contracting Powers and Contracting Powers, which are synonymous with non-Contracting States and Contracting States.

the legal personality of the continued existence of the Hawaiian Kingdom since the nineteenth century.

One of the four sources of international law is customary international law, which is a general practice by an international actor and accompanied by *opinio juris*. *Opinio juris* takes place when acts or omissions by States occur following a belief that these States are obligated as a matter of law to take action or refrain from acting in a particular way. The PCA is an international actor along with States. According to the International Court of Justice, for a rule of customary international law to exist, there needs to be “two conditions [that] must be fulfilled”<sup>9</sup> where there is a “‘settled practice’ together with *opinio juris*,”<sup>10</sup> where the practice is accepted as law by States. This acceptance can be achieved by the silence or omission of the concerned States regarding the practice. In the *Nicaragua* case, the International Court of Justice explained:

[F]or a new customary rule to be formed, not only must the acts concerned “amount to a settled practice,” but they must be accompanied by *opinio juris sive necessitatis*. Either the States taking such action or other States in a position to react to it, must behave so that their conduct is evidence of a belief that the practice is rendered obligatory by the existence of a rule of law requiring it. The need for such belief [...] the subjective element, is implicit in the very notion of *opinio juris sive necessitatis*.<sup>11</sup>

The relevant rule of customary international law, which is applicable to the Hawaiian Kingdom, is the presumption of continuity of the State despite the military overthrow of its government on January 17, 1893.

This practice or action taken by the PCA Secretary General was uncontested by all 122 Contracting States to the PCA Convention, which included the United States. This serves as evidence of their acceptance of the continuity of Hawaiian Statehood. The acceptance by the 122 States of the PCA’s recognition of continuity, as opposed to discontinuity of the Hawaiian State, established a normative character of *opinio juris* supporting the existence of the rule of customary international law sanctioning the presumption of continuity of a State, despite the military overthrow of its government. The behavior of these States is such “that their conduct is evidence of a belief that the practice is rendered obligatory by the existence of a rule of law requiring it,”<sup>12</sup> as regards the international legal rule of the presumption of State continuity despite the persistence of a status of military occupation. The significance of the *Larsen* case, under international law, cannot be underestimated.

In a letter dated November 10, 2020, to State of Hawai‘i Governor David Ige, the National Lawyers Guild (“NLG”) stated that it “calls upon the State of Hawai‘i and its County governments, as the proxy of the United States, which is in effective control of Hawaiian territory, to immediately

---

<sup>9</sup> *North Sea Continental Shelf*, Judgment, I.C.J. Reports 1969, p. 3, at p. 44, para. 77.

<sup>10</sup> *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, Judgment, I.C.J. Reports 2012, p. 99, at pp. 122-123, para. 55; see also, for example, *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, I.C.J. Reports 1985, p. 13, at pp. 29-30, para. 27; and *North Sea Continental Shelf*, p. 44, para. 77.

<sup>11</sup> *Military and Paramilitary Activities (Nicaragua/United States of America)*, Judgment, I.C.J. Reports 1986, p. 14, at pp. 108-109, para. 207.

<sup>12</sup> *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, ICJ Reports 1986, p. 97, para. 183.

comply with international humanitarian law while the United States continues its prolonged occupation of the Hawaiian Kingdom since 1893” by administering the laws of the Hawaiian Kingdom.<sup>13</sup> “International humanitarian law recognizes that proxies of an occupying State, which are in effective control of the territory of the occupied State, are obligated to administer the laws of the occupied State. The State of Hawai‘i and its County governments, and not the Federal government, meet this requirement of effective control of Hawaiian territory under Article 42 of the 1907 Hague Regulations, and need to immediately comply with the law of occupation.”<sup>14</sup> The NLG 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.<sup>15</sup>

In a letter dated June 2, 2020, to the State of Hawai‘i Attorney General Clare E. Connors from myself as Head of the Royal Commission of Inquiry, I informed her of the factual circumstances of the American occupation and “how the State of Hawai‘i has a duty, under international humanitarian law, to transform itself into a Military government by virtue of Article V, section 5 of the Constitution of the State of Hawai‘i. United States practice for Military government is covered in United States Army and Navy FM 27-5, and occupation of an occupied State is covered in FM 27-10. The Adjutant General, MG Kenneth Hara, should be aware of these regulations and the function of a Military government.”<sup>16</sup> Governor Ige, Lieutenant Governor Josh Green, and Major General Kenneth Hara, *inter alia*, were carbon copied to this communication. Governor Ige was the superior over his subordinates in the State of Hawai‘i and it was his duty to control or

---

<sup>13</sup> National Lawyers Guild letter to State of Hawai‘i Governor David Ige (Nov. 10, 2020) (online at <https://nlginternational.org/newsite/wp-content/uploads/2020/11/Letter-from-the-NLG-to-State-of-HI-Governor-.pdf>).

<sup>14</sup> *Id.*, 1.

<sup>15</sup> *Id.*, 3.

<sup>16</sup> Royal Commission of Inquiry letter to State of Hawai‘i Attorney General Clare E. Connors (June 2, 2020) (online at [https://hawaiiankingdom.org/pdf/RCI\\_Ltr\\_to\\_State\\_of\\_HI\\_AG\\_\(6.2.20\).pdf](https://hawaiiankingdom.org/pdf/RCI_Ltr_to_State_of_HI_AG_(6.2.20).pdf)).

punish those under his command for the commission of war crimes. The doctrine of command responsibility would arise if he failed to control or punish those under his command and control.

At the United Nations World Summit in 2005, the *Responsibility to Protect* was unanimously adopted.<sup>17</sup> 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 the three pillars of a State’s responsibility to protect their populations from war crimes and crimes against humanity.<sup>18</sup> And in 2021, the General Assembly passed a resolution on “[t]he responsibility to protect and the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity.”<sup>19</sup> The third pillar, which may call into action State intervention, can become controversial.<sup>20</sup>

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.”<sup>21</sup> 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.”<sup>22</sup>

Determined to hold to account individuals who have committed war crimes and human rights violations throughout the Hawaiian Islands, being the territory of the Hawaiian Kingdom, the Council of Regency, by proclamation on April 17, 2019,<sup>23</sup> established a Royal Commission of Inquiry (“RCI”) 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.” I serve as Head of the RCI and Professor Federico Lenzerini from the University of Siena, Italy, as its Deputy Head.

---

<sup>17</sup> 2005 World Summit Outcome A/60/L.1.

<sup>18</sup> G.A. Resolution 63/308 The responsibility to protect, A/63/308.

<sup>19</sup> 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.

<sup>20</sup> Marjorie Cohn, “The Responsibility to Protect – the Cases of Libya and Ivory Coast,” *Truthout* (May 16, 2011) (online at <https://truthout.org/articles/the-responsibility-to-protect-the-cases-of-libya-and-ivory-coast/>).

<sup>21</sup> Jean-Marie Henckaerts and Louise Doswald-Beck (eds.), *Customary International Humanitarian Law*, vol. I: Rules, 607 (2009).

<sup>22</sup> *Id.*, 608.

<sup>23</sup> “Proclamation: Establishment of the Royal Commission of Inquiry (April 17, 2019),” David Keanu Sai (ed.) *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 8-9 (2020) (online at [https://hawaiiankingdom.org/pdf/Proc\\_Royal\\_Commission\\_of\\_Inquiry.pdf](https://hawaiiankingdom.org/pdf/Proc_Royal_Commission_of_Inquiry.pdf)).

Speaking to 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*,<sup>24</sup> 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. 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 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.<sup>25</sup>

---

<sup>24</sup> 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)).

<sup>25</sup> 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)).



I am not only an official of the government of the Hawaiian Kingdom, the occupied State, where I served as lead Agent for the Hawaiian Kingdom at the PCA, 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.<sup>26</sup> 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.<sup>27</sup>

The failure of the leadership of the State of Hawai‘i to transform itself into a military government is what prompted the Council of Regency to file a complaint for declaratory and injunctive relief with the United States District Court for the District of Hawai‘i on May 20, 2021, against Governor Ige and others.<sup>28</sup> The Council of Regency sought an order from the Court (1) declaring that all laws of the United States and the State of Hawai‘i, and the maintenance of the United States’ military installations are unauthorized and contrary to the constitution and treaties of the United States; and (2) declaring that the Supremacy Clause prohibits the State of Hawai‘i from interfering with the United States’ explicit recognition of the Council of Regency as the government of the Hawaiian Kingdom through actions taken by the United States at the Permanent Court of Arbitration, in *Larsen v. Hawaiian Kingdom*; and (3) enjoining the defendants from implementing or enforcing all laws of the United States and the State of Hawai‘i, and enjoining the maintenance of the United States’ military installations across the territory of the Hawaiian Kingdom.

The International Criminal Tribunal for the Former Yugoslavia, in the *Celebici* case, established three elements for indirect command responsibility: (1) the accused was involved in a superior-subordinate relationship; (2) the superior knew or had reason to know that the criminal act was about to be committed; and (3) the superior had failed to take necessary and reasonable measures to prevent the criminal act or punish its perpetrator.<sup>29</sup> Regarding the second element of awareness, the chamber found that the necessary *mens rea* exists when the superior (1) had actual knowledge, established through direct or circumstantial evidence, that his subordinates were about to commit or had committed a crime, or (2) possessed information that at the least would put him on notice of the risk of such offenses by indicating the need for additional investigation to determine whether crimes had been or were about to be committed.<sup>30</sup>

The deliberate failure of the Court to transform itself into an Article II Occupation Court and the admissions by the Court and the defendants in their filings acknowledging the commission of the *war crime of usurpation of sovereignty during military occupation* by imposing American laws satisfied the *mens rea* and *actus reus* for the war crime. The Royal Commission of Inquiry drafted

---

<sup>26</sup> 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)).

<sup>27</sup> Documentary, *The Acting Hawaiian Council of Regency: Exposing the American Occupation of the Hawaiian Kingdom* (Aug. 13, 2019) (online at <https://www.youtube.com/watch?v=CF6CaLAMh98>).

<sup>28</sup> *Hawaiian Kingdom v. Biden et al.*, civil no. 1:21:cv-00243-LEK-RT.

<sup>29</sup> *Prosecutor v. Delalic*, Judgment no. IT-96-21-T ICTY (Nov. 16, 1998) at para. 346.

<sup>30</sup> *Id.*, para. 383; see also para. 393.

war criminal reports against the defendants, to include Governor Ige, war criminal report no. 22-0005,<sup>31</sup> Mayor Mitchell Roth and former Councilwoman Maile David, war criminal report no. 22-0003,<sup>32</sup> former Mayor Michael Victorino and Councilwoman Alice Lee, war criminal report no. 22-0004,<sup>33</sup> Mayor Derek Kawakami and Councilman Arryl Kaneshiro, war criminal report no. 22-0002,<sup>34</sup> and the Justices of the Supreme Court, war criminal report no. 22-0009.<sup>35</sup> After these reports were filed with the Court, the Council of Regency withdrew its complaint on December 9, 2022, because it could not get relief from the defendants because they were alleged war criminals. District Judge Leslie E. Kobayashi approved the withdrawal on December 13, 2022.<sup>36</sup>

On April 17, 2023, I had a meeting with MG Kenneth Hara at the Grand Naniloa Hotel in Hilo. After providing him the information and resources of the American occupation and his duty to transform the State of Hawai'i into a military government, I recommended that he task his Staff Judge Advocate, Lieutenant Colonel Lloyd Phelps, to do his due diligence regarding the continued existence of the Hawaiian Kingdom and whether the duty exists under international law and Army regulations.<sup>37</sup> On July 27, 2023, I was apprised that MG Hara stated that the Hawaiian Kingdom continues to exist despite the prolonged American occupation. I took this statement to mean that his due diligence was over, which prompted me to send him a letter dated August 1, 2023, acknowledging his statement.<sup>38</sup> My letter concluded with:

Since the occupying State does not have the sovereignty of the Hawaiian Kingdom, the Council of Regency, which has the authority to exercise Hawaiian sovereignty, can bring the laws and administrative policies of the Hawaiian Kingdom in 1893 up to date so that the military government can fully exercise its authority under the law of occupation. The purpose of the military government is to protect the population of the occupied State despite 130 years of violating these rights. On behalf of the Council of Regency, I can assure you that the Council of Regency commits itself to working with you to bring compliance with the law of occupation, for both the occupying and occupied States, that will eventually bring the prolonged occupation of the Hawaiian Kingdom to an end.

I sent another communication to MG Hara dated August 21, 2023,<sup>39</sup> acknowledging the dire situation in Lahaina, but also stated:

---

<sup>31</sup> Royal Commission of Inquiry, War Criminal Report no. 22-0005 (Nov. 18, 2022) (online at [https://hawaiiankingdom.org/pdf/RCI\\_War\\_Criminal\\_Report\\_no.\\_22-0005.pdf](https://hawaiiankingdom.org/pdf/RCI_War_Criminal_Report_no._22-0005.pdf)).

<sup>32</sup> Royal Commission of Inquiry, War Criminal Report no. 22-0003 (Nov. 17, 2022) (online at [https://hawaiiankingdom.org/pdf/RCI\\_War\\_Criminal\\_Report\\_no.\\_22-0003.pdf](https://hawaiiankingdom.org/pdf/RCI_War_Criminal_Report_no._22-0003.pdf)).

<sup>33</sup> Royal Commission of Inquiry, War Criminal Report no. 22-0004 (Nov. 17, 2022) (online at [https://hawaiiankingdom.org/pdf/RCI\\_War\\_Criminal\\_Report\\_no.\\_22-0004.pdf](https://hawaiiankingdom.org/pdf/RCI_War_Criminal_Report_no._22-0004.pdf)).

<sup>34</sup> Royal Commission of Inquiry, War Criminal Report no. 22-0002 (Nov. 17, 2022) (online at [https://hawaiiankingdom.org/pdf/RCI\\_War\\_Criminal\\_Report\\_no.\\_22-0002.pdf](https://hawaiiankingdom.org/pdf/RCI_War_Criminal_Report_no._22-0002.pdf)).

<sup>35</sup> Royal Commission of Inquiry, War Criminal Report no. 22-0009 (Dec. 28, 2022) (online at [https://hawaiiankingdom.org/pdf/RCI\\_War\\_Criminal\\_Report\\_no.\\_22-0009.pdf](https://hawaiiankingdom.org/pdf/RCI_War_Criminal_Report_no._22-0009.pdf)).

<sup>36</sup> Hawaiian Kingdom's Notice of Voluntary Dismissal of Amended Complaint and Order (Dec. 13, 2022) (online at [https://hawaiiankingdom.org/pdf/\[ECF\\_267\]\\_HK\\_Notice\\_of\\_VD\\_\(Filed\\_2022-12-13\).pdf](https://hawaiiankingdom.org/pdf/[ECF_267]_HK_Notice_of_VD_(Filed_2022-12-13).pdf)).

<sup>37</sup> The letters of communication I had with MG Hara can be accessed online at [https://hawaiiankingdom.org/pdf/HK\\_Comm\\_with\\_MG\\_Hara.pdf](https://hawaiiankingdom.org/pdf/HK_Comm_with_MG_Hara.pdf).

<sup>38</sup> Council of Regency letter to Major General Kenneth Hara (August 1, 2023) (online at [https://hawaiiankingdom.org/pdf/Regency\\_Ltr\\_to\\_SOH\\_TAG\\_\(8.1.23\).pdf](https://hawaiiankingdom.org/pdf/Regency_Ltr_to_SOH_TAG_(8.1.23).pdf)).

<sup>39</sup> Council of Regency letter to Major General Kenneth Hara (August 21, 2023) (online at [https://hawaiiankingdom.org/pdf/Regency\\_Ltr\\_to\\_SOH\\_TAG\\_\(8.21.23\).pdf](https://hawaiiankingdom.org/pdf/Regency_Ltr_to_SOH_TAG_(8.21.23).pdf)).



As the occupant in effective control of 10,931 square miles of Hawaiian territory, the State of Hawai‘i, being the civilian government of the Hawaiian Kingdom that was unlawfully seized in 1893, is obligated to transform itself into a military government in order “to protect the sovereign rights of the legitimate government of the Occupied State, and [...] to protect the inhabitants of the Occupied State from being exploited.” The military government has centralized control, with you as its military governor, and by virtue of your position you have “supreme legislative, executive, and judicial authority, limited only the laws and customs of war and by directives from higher authority.”

The reasoning for the centralized control of authority is so that the military government can effectively respond to situations that are fluid in nature. Under the law of occupation, this authority by the occupant is to be shared with the Council of Regency, being the government of the Occupied State. As the last word concerning any acts relating to the administration of the occupied territory is with the occupying power, “occupation law would allow for a vertical, but not a horizontal, sharing of authority [in the sense that] this power sharing should not affect the ultimate authority of the occupier over the occupied territory.”

By virtue of this shared authority, the Council of Regency, in its meeting on August 14, 2023, approved an “Operational Plan for Transitioning the State of Hawai‘i into a Military Government,” to assist you in your duties as the theater commander of the occupant. International humanitarian law distinguishes between the “Occupying State” and the “occupant.” The law of occupation falls upon the latter and not the former, because the former’s seat of government exists outside of Hawaiian territory, while the latter’s military government exists within Hawaiian territory.

[...]

Considering the devastation and tragedy of the Lahaina wildfire, your duty is only amplified and made much more urgent. It has been reported that the west Maui community, to their detriment, are frustrated with the lack of centralized control by departments and agencies of the federal government, the State of Hawai‘i, and the County of Maui. The law of occupation will not change the support of these departments and agencies, but rather only change the dynamics of leadership under the centralized control by yourself as the military governor. The operational plan provides a comprehensive process of transition with essential tasks and implied tasks to be carried out.

The establishment of a military government would also put an end to land developers approaching victims of the fire who lost their homes to purchase their property. While land titles were incapable of being conveyed after January 17, 1893, for want of a lawful government and its notaries public, titles are capable of being remedied under Hawaiian Kingdom law and economic relief by title insurance policies. It is unfortunate that the tragedy of Lahaina has become an urgency for the State of Hawai‘i to begin to comply with the law of occupation and establish a military government. To not do so is a war crime of omission.

Given the severity of the situation in Maui and the time factor for aid to the victims, the Council of Regency respectfully calls upon you to schedule a meeting to go over its proposed operational plan and its execution.

This request went unanswered until I saw MG Hara at a mutual friend's home of Archie Kalepa in Lahaina the evening of January 19, 2024. Mr. Kalepa called me to ask if I could join him in the Lahaina March the following day. At Mr. Kalepa's home, MG Hara told me that he will be retiring this year, which I took as a dereliction of the performance of his duty to establish a military government under customary international law and Army regulations. I have been told that MG Hara stated that he was concerned with the potentiality of committing treason under American law. There is no basis for this concern, and it does not relieve him of his duty while in the territory of a foreign State. There is no *de jure* American government in these islands that would come under the American treason law. The Hawaiian Kingdom has a treason law under its Penal Code, but it is suspended because of the law of occupation.

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.”<sup>40</sup> 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*.

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. 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 has 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.<sup>41</sup>

“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.”<sup>42</sup> 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 of 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.

U.S. Army Regulation 600-20 provides, “Commanders are legally responsible for war crimes they personally commit, order committed, or know or should have known about and take no action to prevent, stop, or punish.”<sup>43</sup> The “knew or should have known” standard is also found in 6-27—*The*

---

<sup>40</sup> Department of Defense Directive no. 5100.01, enclosure 6, para. 4(b)(6) (Dec 21, 2010).

<sup>41</sup> Department of the Army, Field Manual 27-5, *Civil Affairs Military Government* 4 (1947).

<sup>42</sup> *Id.*, para. 4(b).

<sup>43</sup> U.S. Department of Army, Reg. 600-20, *Army Command Policy* para. 4-24 (2020).

*Commander's Handbook on the Law of Land Warfare*.<sup>44</sup> Dereliction of the performance of a duty also arises when a commander took “no action to prevent, stop, or punish.” According to the United States 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.<sup>45</sup>

However, an officer “is not derelict in the performance of duties if the failure to perform those duties is caused by ineptitude rather than by willfulness, negligence, or culpable inefficiency, and may not be charged under this article, or otherwise punished.”<sup>46</sup> On the contrary, MG Hara did do his due diligence and concluded that the Hawaiian Kingdom is an occupied State. Thus, the duty was triggered as of July 27. Therefore, MG Hara cannot claim ineptitude.

In a recent article by Major Michael D. Winn *No. 1 Command Responsibility for Subordinates' War Crimes—A Twenty-First Century Primer* that was published in Issue 2 of the *Army Lawyer* (2022), he states, “[w]hen commanders learn of a reportable incident, they must direct an investigation into the incident [...]. As with the duty to report, the duty to investigate should be complied with strictly.”<sup>47</sup> War crimes were reported by me in my letter to Attorney General Clare E. Connors that included MG Hara as a recipient of the letter, and on April 17. Furthermore, “[c]ommanders are expected to have the courage to stop LOAC [Law of Armed Conflict] violations as soon as they learn they may be occurring. Even if it means placing oneself in harm's way [...].”<sup>48</sup>

---

<sup>44</sup> U.S. Department of Army, Field Manual 6-27—*The Commander's Handbook on the Law of Land Warfare* para. 8-31 (2019).

<sup>45</sup> Manual for Courts-Martial United States, para. 18(a)(3)(c)(3) (2023).

<sup>46</sup> *Id.*, para. 18(a)(3)(c)(3)(c).

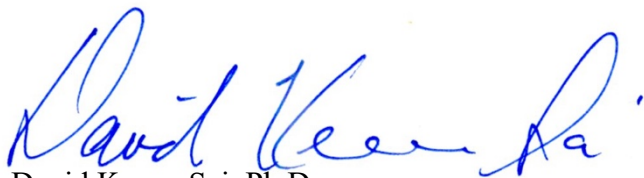
<sup>47</sup> Major Michael D. Winn, “No. 1 Command Responsibility for Subordinates' War Crimes—A Twenty-First Century Primer” Issue 2 *Army Lawyer* 39-47, 43 (2022) (online at <https://tjaglcs.army.mil/documents/35956/528698/TAL+2022+Issue+2.pdf/a29a0405-c5d6-7cc3-f392-d5939fecb79f?t=1673445897886>).

<sup>48</sup> *Id.*, 44.

The Council of Regency has notified MG Hara that on February 17, 2024, he shall proclaim the establishment of a military government in accordance with the Council of Regency's Operational Plan of August 14, 2024, transitioning the State of Hawai'i into a Military Government.<sup>49</sup> Although his concern for committing treason is misplaced, I recommended, in that letter of communication, that he have LTC Phelps draft a letter for him to send to the Staff Judge Advocate for U.S. Army Garrison Hawai'i. This letter should state the situation he finds himself regarding DoDD no. 5100.01 and Army regulations, and that he will proceed to issue a proclamation for military government on February 17, unless the Staff Judge Advocate tells him not to, because he would be committing treason under American laws. This letter should be sent with enough time for the drafting of the letter by LTC Phelps and ample time for Staff Judge Advocate to respond.

If MG Hara shall refuse to perform his duty, he will force the Royal Commission of Inquiry to draft a war criminal report on the war crime of omission and dereliction of duty for failing to establish a military government in order to prevent war crimes from being committed through the unlawful imposition of American laws—*usurpation of sovereignty during military occupation*, in accordance with DoDD no. 5100.01 and Army regulations.

In closing, if you shall not cease the enactment of American municipal laws and continue to commit the *war crime of usurpation of sovereignty during military occupation* with impunity, you will be the subject of a war criminal report, which will provide the factual information, to include this letter of communication, that satisfies the aforementioned four elements of criminal culpability. I urge you not to take this lightly. War crimes have no statute of limitations.



David Keanu Sai, Ph.D.  
Head, *Royal Commission of Inquiry*

cc: Professor Federico Lenzerini, Deputy Head, Royal Commission of Inquiry  
([federico.lenzerini@unisi.it](mailto:federico.lenzerini@unisi.it))  
Major General Kenneth Hara, Adjutant General ([kenneth.s.hara@hawaii.gov](mailto:kenneth.s.hara@hawaii.gov))  
Lieutenant Colonel Lloyd Phelps, Staff Judge Advocate ([lloyd.c.phelps4.mil@army.mil](mailto:lloyd.c.phelps4.mil@army.mil))

---

<sup>49</sup> Council of Regency, *Operational Plan 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](https://hawaiiankingdom.org/pdf/HK_Operational_Plan_of_Transition.pdf)).