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June 12, 2020

Clare E. Connors
State of Hawai‘i Attorney General
Department of the Attorney General
425 Queen Street
Honolulu, HI 96813

Re: Hawaiian Royal Commission of Inquiry’s Preliminary Reports on the Elements of War Crimes and *Mens Rea*, and the Authority of the Council of Regency

Dear Attorney General Connors:

Enclosed please find a letter of correspondence, without enclosures, sent by USPS and by email to the United Nations Secretariat, members of the United Nations, the International Committee of the Red Cross, and the National Lawyers Guild.

Sincerely,

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

- cc: David Ige, Governor
- Josh Green, Lieutenant Governor
- Ron Kouchi, President of the Senate
- Scott Saiki, Speaker of the House of Representatives
- Kenneth Hara, Adjutant General
- Kirk Caldwell, City & County of Honolulu Mayor

Harry Kim, Hawai'i County Mayor
Michael Victorino, Maui County Mayor
Derek Kawakami, Kaua'i County Mayor
Brian Schatz, United States Senator
Mazie Hirono, United States Senator
Ed Case, United States Representative
Tulsi Gabbard, United States Representative

enclosure



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12 June 2020

Subject: Hawaiian Royal Commission of Inquiry’s Preliminary Reports on the Elements of War Crimes and *Mens Rea*, and the Authority of the Council of Regency

Greetings:

You are receiving this letter of correspondence, and the attached Preliminary Reports on the elements of war crimes and *mens rea* and the authority of the Council of Regency, pursuant to the mandate of the Hawaiian Royal Commission of Inquiry (“Royal Commission”).¹ Its mandate, *inter alia*, provides:

The results of the investigation will be presented to the Council of Regency, the Contracting Powers of the 1907 Hague Convention, IV, respecting the Laws and Customs of War on Land, the Contracting Powers of the 1949 Geneva Convention, IV, relative to the Protection of Civilian Persons in Time of War, the Contracting Powers of the 2002 Rome Statute, the United Nations, the International Committee of the Red Cross, and the National Lawyers Guild in the form of a report.

My name is Dr. David Keanu Sai and I am the head of the Royal Commission. The Royal Commission was established, by proclamation of the Council of Regency, on 17 April 2019. Its mandate is to investigate war crimes and human rights violations committed within the territorial jurisdiction of the Hawaiian Kingdom since the unlawful overthrow of the Hawaiian government in 1893, and the subsequent belligerent occupation by the United States that has since ensued.

¹ David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations in the Hawaiian Kingdom* 8-9 (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)); see also Proclamation establishing the Royal Commission of Inquiry (17 April 2019) (online at: https://hawaiiankingdom.org/pdf/Proc_Royal_Commission_of_Inquiry.pdf).

The Council of Regency is the *interim* government of the Hawaiian Kingdom, colloquially known today as Hawai‘i, established by proclamation on 28 February 1997.² It is vested with the rights and powers afforded to a government of an occupied State in accordance with international humanitarian law.³

The lawful authority of the Council of Regency has also been the subject of a recent legal opinion by Professor Federico Lenzerini, a professor of international law from the University of Siena, Italy, which is incorporated in the Royal Commission’s second preliminary report.⁴ The American treatise, *Restatement (Third) of the Foreign Relations Law of the United States*, which is a reiteration of Article 38(1) of the Statute of the International Court of Justice, recognizes that “writings of scholars”⁵ as a source of international law in determining, in this case, whether the Council of Regency has been established in conformity with the rules of international humanitarian law.

In his opinion, Professor Lenzerini concluded, under the rules of international law and Hawaiian constitutional law that:

1. the Council of Regency possesses the constitutional authority to temporarily exercise the Royal powers of the Hawaiian Kingdom;⁶
2. the Council of Regency has the authority to represent the Hawaiian Kingdom as a State, which has been under a belligerent occupation by the United States of America since 17 January 1893, both at the domestic and international level;⁷ and
3. the Council of Regency is exactly in the same position of a government of a State under military occupation, and is vested with the rights and powers recognized to governments of occupied States pursuant to international humanitarian law.⁸

He further concludes:

Under international humanitarian law, the proclamations of the Council of Regency are not divested of effects as regards the civilian population of the Hawaiian Islands. In fact, considering these proclamations as included in the concept of “legislation”...they might even, if the concrete circumstances of the

² *Proclamation of the Restoration of the Monarchical Government* (28 Feb. 1997) (online at: https://hawaiiankingdom.org/pdf/Proc_Restoration_of_Monarchical_Government.pdf).

³ A recent documentary covers the Council of Regency and its strategy to engage the prolonged occupation of the Hawaiian Kingdom (online at: <https://www.youtube.com/watch?v=CF6CaLAMh98>).

⁴ Federico Lenzerini, *Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom*, in the Royal Commission of Inquiry’s Preliminary Report—The Authority of the Council of Regency of the Hawaiian Kingdom (2020) (online at: https://hawaiiankingdom.org/pdf/RCI_Preliminary_Report_Regency_Authority.pdf).

⁵ *Restatement (Third) of the Foreign Relations Law of the United States* §103(2)(c) (1987).

⁶ *Lenzerini Legal Opinion*, para. 9.

⁷ *Id.*

⁸ *Id.*, para. 10.

case so allow, apply retroactively at the end of the occupation, on the condition that the legislative acts in point do not “disregard the rights and expectations of the occupied population.” It is therefore necessary that the occupied government refrains “from using the national law as a vehicle to undermine public order and civil life in the occupied area.”⁹

At the international level, the Council of Regency represented the Hawaiian Kingdom in arbitral proceedings at the Permanent Court of Arbitration, in *Larsen v. Hawaiian Kingdom*, from 1999-2001, where I served as the Hawaiian Kingdom’s Agent and head of its legal team.¹⁰ The other Ministers of the Council of Regency served as Deputy Agents. The Permanent Court of Arbitration acknowledged the Council of Regency as the government of the Hawaiian Kingdom.

At the center of these proceedings was the unlawful imposition of United States municipal laws, by the State of Hawai‘i, within the territory of the Hawaiian Kingdom that led to the war crimes of *unfair trial*, *unlawful confinement* and *pillaging* of the claimant, Mr. Larsen. The *American Journal of International Law* reported:

At the center of the PCA proceeding was...that the Hawaiian Council of Regency (representing the Hawaiian Kingdom) is legally responsible under international law for the protection of Hawaiian subjects, including the claimant. In other words, the Hawaiian Kingdom was legally obligated to protect Larsen from the United States’ “unlawful imposition [over him] of [its] municipal laws” through its political subdivision, the State of Hawaii. As a result of this responsibility, Larsen submitted, the Hawaiian Council of Regency should be liable for any international law violations that the United States committed against him.¹¹

Imposition of United States legislative and administrative measures constitutes the war crime of *usurpation of sovereignty* under customary international law. This includes the legislative and administrative measures of the State of Hawai‘i and its Counties. Professor William Schabas, renowned expert in international criminal law, authored a legal opinion for the Royal Commission that identified *usurpation of sovereignty*, among other international crimes, as a war crime that has and continues to be committed in Hawai‘i.¹² His legal opinion was also incorporated in a book published by the Royal Commission as

⁹ *Id.*, para. 12; see also *Proclamations of the Council of Regency* (online at: <https://hawaiiankingdom.org/proclamations.shtml>).

¹⁰ Permanent Court of Arbitration, *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01 (online at: <https://pca-cpa.org/en/cases/35/>).

¹¹ David J. Bederman and Kurt R. Hilbert, “Arbitration—UNCITRAL Rules—justiciability and indispensable third parties—legal status of Hawaii,” 95 *Am. J. Int’l L.* 927, 928 (2001).

¹² William Schabas, *Legal Opinion on war crimes related to the United States occupation of the Hawaiian Kingdom since 17 January 1893* (2020) (online at: https://hawaiiankingdom.org/pdf/Opinion_War-Crimes_Schabas_RCI.pdf).

chapter 4—*War Crimes Related to the United States Belligerent Occupation of the Hawaiian Kingdom*.¹³ This publication is downloadable as an eBook at no charge.¹⁴

After returning in December 2000 from oral hearings held at the Peace Palace,¹⁵ The Hague, the Council of Regency focused its attention on the devastating effects of denationalization—*Americanization* where the national consciousness of the Hawaiian Kingdom was obliterated by the United States.¹⁶ Denationalization was formally initiated in 1906 by the Board of Education and carried into effect within the public and private schools throughout the Hawaiian Islands. Within three generations, Hawaiian Kingdom national consciousness had been effectively replaced with American national consciousness and the national language of Hawaiian replaced with English. As part of this inculcation, children were intentionally led to incorrectly believe that the Hawaiian Islands had become a part of the United States, and they were now American citizens.

The awareness of the prolonged occupation has reached the National Education Association (NEA), an organization of school teachers and administrators across the United States, by a resolution introduced in 2017 by the Hawai‘i State Teachers Association at the NEA’s annual convention in Boston.¹⁷ This resulted in three articles that were published by the NEA on its website in 2018.¹⁸ Furthermore, the National Lawyers Guild, “the oldest and largest progressive bar association in the United States, calls upon the United States to immediately begin to comply with international humanitarian law in its prolonged and illegal occupation of the Hawaiian Kingdom since 1893.”¹⁹

¹³ 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 in the Hawaiian Kingdom* 151-169 (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)).

¹⁴ David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations 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)).

¹⁵ Oral Hearings, Permanent Court of Arbitration, *Larsen v. Hawaiian Kingdom* (7, 8, 11 Dec. 2000) (online at: <https://www.youtube.com/watch?v=tmpXy2okJlg&t=230s>).

¹⁶ David Keanu Sai, “Royal Commission of Inquiry”, in David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations in the Hawaiian Kingdom* 28, 114-115 (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)).

¹⁷ Hawaiian Kingdom Blog, *American National Teachers Union Recognizes the Illegal Occupation of the Hawaiian Kingdom* (11 July 2017) (online at: <https://hawaiiankingdom.org/blog/american-national-teachers-union-recognizes-the-illegal-occupation-of-the-hawaiian-kingdom/>).

¹⁸ See Keanu Sai, *The Illegal Overthrow of the Hawaiian Kingdom Government* (2 Apr. 2018) (online at: <http://neatoday.org/2018/04/02/the-illegal-overthrow-of-the-hawaiian-kingdom-government/>); *The American Occupation of the Hawaiian Kingdom* (1 Oct. 2018) (online at: <http://neatoday.org/2018/10/01/the-u-s-occupation-of-the-hawaiian-kingdom/>); and *The Impact of the U.S. Occupation on the Hawaiian People* (13 Oct. 2018) (online at: <http://neatoday.org/2018/10/13/us-occupation-of-hawaii/>).

¹⁹ National Lawyers Guild, Press Release, *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->

One of the profound consequences of the prolonged occupation renders all judgments and orders of judicial or administrative courts of the United States in Hawai‘i, to include the State of Hawai‘i, void. According to the “voidness doctrine,” any judgment of a court without having subject matter jurisdiction over the case before it is entirely null and void.²⁰ “When a suit is brought and determined in a court which has no jurisdiction in the matter,” says Henry Black, “then it is said to be *coram non judice*, and the judgment is void.”²¹

In its first preliminary report, the Royal Commission addressed the volitional element of war crimes, which is a perpetrator’s awareness of the factual circumstances that established an occupation.²² Under international criminal law, criminal culpability is met when the perpetrator is aware of the factual circumstances that established the United States occupation of the Hawaiian Kingdom. In its preliminary report, the Royal Commission concluded:

The element of awareness is not an outcome of a moral or legal conclusion on the part of the accused because there is “no requirement for a legal evaluation by the perpetrator as to the existence of an armed conflict or its character as international,” nor is there a “requirement for awareness by the perpetrator of the facts that established the character of the conflict as international.” As the International Criminal Court’s Pre-Trial Chamber stated, “it is not necessary for the perpetrator to have made the necessary value judgment to conclude that the victim did in fact have protected status under any of the 1949 Geneva Conventions.” While there is, however, “only a requirement for the awareness of the factual circumstances,” the Royal Commission will satisfy this element of awareness where there exists clear and unequivocal evidence of awareness on the part of the accused of the United States occupation of the Hawaiian Kingdom, *e.g.* court records, correspondences, course curriculum, sworn declarations, etc. Also, the fact of being part of the political organization of the United States, to include the State of Hawai‘i and its Counties, because in that case the knowledge of the existing “political” situation could be reasonably presumed especially in light of the 1993 Congressional joint resolution apologizing for the illegal overthrow of the Hawaiian Kingdom government on 17 January 1893.²³

[illegal-occupation-of-the-hawaiian-islands/#:~:text=The%20National%20Lawyers%20Guild%20\(NLG,the%20Hawaiian%20Kingdom%20since%201893\).\)](#)

²⁰ *The Marshalsea*, 10 Co. Rep. 68b, 77 Eng. Rep. 1027 (K.B. 1613).

²¹ Black’s Law, 6th ed., 337 (1990).

²² Royal Commission of Inquiry’s Preliminary Report—*The Material Elements of War Crimes and Ascertaining the Mens Rea* (2020) (online at: https://hawaiiankingdom.org/pdf/RCI_Preliminary_Report_Mens_Rea.pdf).

²³ *Id.*, 6.

The Royal Commission’s second preliminary report, as aforementioned, covers the subject of the authority of the Council of Regency, which is the legal basis for the Royal Commission. Before Professor Lenzerini could assess the authority of the Council of Regency within the rules of international humanitarian law, he first needed to confirm that the Hawaiian Kingdom continues to exist as a subject of international law that has been under belligerent occupation by the United States since 17 January 1893. After confirming the continued existence of the Hawaiian Kingdom, he proceeded to assess the authority of the Council of Regency, which, as aforementioned, he confirmed.

Professor Lenzerini also provided comment on the relationship between the Council of Regency and the occupying State, through its proxy the State of Hawai‘i and its Counties. He opined that a “relationship between the Regency and the administration of the occupying State should have the form of a cooperative relationship aimed at guaranteeing the realization of the rights and interests of the civilian population and the correct administration of the occupied territory.”²⁴ In principle, the Royal Commission is of the opinion that war crimes and human rights violations cannot continue to be committed with impunity and the perpetrators should be held accountable, but it does recognize that the Council of Regency must have a “cooperative relationship aimed at guaranteeing the realization of the rights and interests of the civilian population and the correct administration of the occupied territory.”²⁵

The Royal Commission sees as its priority the transformation of the State of Hawai‘i into a Military government in order to administer the laws of the occupied State, and, thereby, bringing the State of Hawai‘i and its Counties into compliance with international humanitarian law. This is the only way that the commission of war crimes and human rights violations will cease. I am enclosing a copy of a letter of correspondence dated 2 June 2020, without enclosures, from the Royal Commission to the State of Hawai‘i Attorney General Clare E. Connors on this subject.

The failure of the United States to comply with international humanitarian law, for over a century, has created a humanitarian crisis, in the context of which, in some cases, war crimes have reached the level of violations of rules of *jus cogens*. At the same time, the obligations which have been breached have *erga omnes* character—meaning that they exist toward all States. The international community’s failure to address the violations

²⁴ *Lenzerini Legal Opinion*, para. 20.

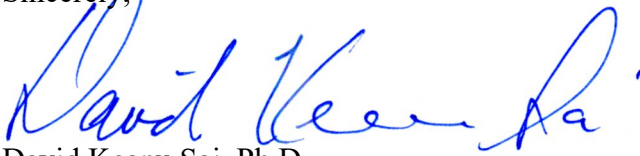
²⁵ To see how the law of occupation plays a crucial role with the pandemic in the Hawaiian Islands and the protection of the “civilian population and the correct administration of the occupied territory,” read the latest article on the Hawaiian Kingdom Blog titled *Can Hawai‘i Successfully Live with COVID-19 Without a Vaccine? The Answer is Yes But Under the International Law of Occupation* (19 May 2020) (online at: <https://hawaiiankingdom.org/blog/can-hawaii-successfully-live-with-covid-19-without-a-vaccine-the-answer-is-yes-but-under-the-international-law-of-occupation/>).

committed in the Hawaiian territory in the last 127 years, as a matter of *obligatio erga omnes*, appears to have been caused by the United States deceptive portrayal of Hawai‘i as an incorporated territory. In case of serious breaches of obligations under peremptory norms of general international law, like in the case at hand, States have an obligation not to “recognize as lawful a situation created by a serious breach...nor render aid or assistance in maintaining that situation,”²⁶ and States “shall cooperate to bring to an end through lawful means any serious breach [by a State of an obligation arising under a peremptory norm of general international law].”²⁷

In closing, I wish to recall General Assembly resolution 67/1, where members of the United Nations committed themselves to “ensuring that impunity is not tolerated for genocide, war crimes, crimes against humanity and for violations of international humanitarian law and gross violations of human rights law, and that such violations are properly investigated and appropriately sanctioned, including by bringing the perpetrators of any crimes to justice, through national mechanisms or, where appropriate, regional or international mechanisms, in accordance with international law.”²⁸ In this respect, member States should bear in mind that their nationals in the Hawaiian Kingdom are Protected Persons and that the Royal Commission acknowledges their rights under international humanitarian law.

Additional reports will be forthcoming.

Sincerely,



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

enclosures

²⁶ *Articles of Responsibility of States for Internationally Wrongful Acts*, Yearbook of the International Law Commission, 2001, vol. II, Article 41(2) (Part Two). Text reproduced as it appears in the annex to General Assembly resolution 56/83 of 12 Dec. 2001, and corrected by document A/56/49(Vol. I)/Corr.4.

²⁷ *Id.*, Article 41(1).

²⁸ General Assembly resolution 67/1, para. 22 (24 Sep. 2012).