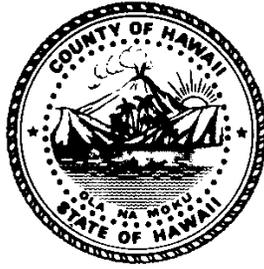


JEN RUGGLES
Council Member
District 5 – Puna Mauka,
Pahoa Mauka, Kalapana



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HAWAI'I COUNTY COUNCIL

September 26, 2018

Mr. Art Ushijima, CEO
Queen's Health Systems
1301 Punchbowl Street
Honolulu, HI 96813

Re: War crimes committed against aboriginal Hawaiians by Queen's Health Systems

Dear Mr. Ushijima:

I am an elected representative of the Hawai'i County Council serving District 5—Western Puna, in the State of Hawai'i. To my dismay as a public official, I have become aware of Hawai'i's status as a nation-state under international law that has been under an illegal occupation by the United States since, by its own admission in the 1893 Presidential address to Congress and in its 1993 apology resolution its illegal overthrow of the Hawaiian Kingdom government on January 17, 1893. I did my due diligence to become educated on this subject and I have reached out to experts in this field to learn what this means for me as a council member and agent of the United States.

I am writing you to make you aware of what I learned about the profound legal implications, what this means for Queen's Health Systems and the public that we serve. I am especially concerned on how this impacts my constituents. First, I will bring you up to date on six recent relevant legal events, then inform you how they relate to Queen's Health Systems. These will include a current international fact finding proceedings at the Permanent Court of Arbitration at the Hague, Netherlands, stemming from the *Larsen v Hawaiian Kingdom* arbitration, a memorandum sent to Hawai'i State Judges just this year from the United Nations Human Rights Council's Office of the High Commissioner, international law regarding annexation and protected persons, a lawsuit recently filed in the United States District Court for the District of Columbia titled *Sai v Trump*, and the actions I have taken in my official capacity as a council member.

I've learned that after a presidential investigation was completed on October 18, 1893, President Grover Cleveland notified the U.S. Congress two months later stating that by:

an act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress, the Government of a feeble but friendly and confiding people has been overthrown. A substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people requires we should endeavor to repair.¹

By initiating a state of war between itself and the Hawaiian Kingdom, under international law, the United States was bound by the international laws of occupation, which were later codified under the 1907 Hague Convention, IV ("HCIV"), and the 1949 Geneva Convention, IV ("GCIV").² The United States Senate ratified both the HCIV and the GCIV making their terms part of U.S. law. Violations of these conventions are *war crimes* as that term is defined by 18 U.S.C. §2441. Article 154 of the GCIV clearly states that the convention is supplemental to the HCIV. According to *Amnesty International*, *war crimes* are "crimes that violate the laws and customs of war defined by the Geneva and Hague Conventions."

Larsen v. Hawaiian Kingdom at the Permanent Court of Arbitration

The imposition of United States laws is a violation of Article 43 of the HCIV and Article 64 of the GCIV, which mandate the United States—the occupying State—to administer the laws of the Hawaiian Kingdom—the occupied State. The U.S. failure to administer Hawaiian Kingdom law led to an unfair trial and unlawful confinement of an aboriginal Hawaiian subject, named Lance Larsen, by the State of Hawai'i. This led to a dispute between Larsen and the Hawaiian Kingdom government, which was restored in 1995, in which Larsen alleged that the Hawaiian government is liable for allowing the unlawful imposition of American laws over Hawaiian territory that led to his rights being violated by the United States through the State of Hawai'i.

The dispute was accepted by the Permanent Court of Arbitration ("PCA"), The Hague, Netherlands, on November 8, 1999 as *Lance Paul Larsen v. Hawaiian Kingdom* and assigned as PCA Case no. 1999-01. The Secretariat of the PCA acknowledged both the continuity of the Hawaiian Kingdom as a State under international law, and the existence of a restored Hawaiian government, by its Council of Regency, as its organ.³ In the *American Journal of International Law*, Bederman and Hilbert reported,

At the center of the PCA proceedings was...that the Hawaiian Kingdom continues to exist and 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

¹ President Cleveland's Message to Congress (Dec. 18, 1893), available at: [http://hawaiiankingdom.org/pdf/Cleveland's_Message_\(12.18.1893\).pdf](http://hawaiiankingdom.org/pdf/Cleveland's_Message_(12.18.1893).pdf).

² For information regarding the state of war between the Hawaiian Kingdom and the United States see David Keanu Sai, *The Larsen v. Hawaiian Kingdom Case at the Permanent Court of Arbitration and Why There Is An Ongoing Illegal State of War with the United States of America Since 16 January 1893* (16 Oct. 2017), hereafter "Illegal State of War," available at: http://hawaiiankingdom.org/pdf/Illegal_War_Brief_English.pdf.

³ *Id.*, p. 2-3.

Hawaiian Council of Regency should be liable for any international law violations that the United States had committed against him.⁴

After pleadings were filed and oral hearings held at the PCA, the Tribunal concluded that the United States was a necessary party whose presence was required for Mr. Larsen to maintain his suit against the Hawaiian government. Without the participation of the United States, the Tribunal could not conclude that the occupying State violated Mr. Larsen's rights because it wasn't present to answer to the allegations. The United States' absence, which it declined an invitation to join in the arbitration, caused the Tribunal to recommend that Larsen and the Hawaiian government could form an international fact-finding commission of inquiry under PCA jurisdiction.⁵ International commissions of inquiry serve a purpose similar to grand juries. In the Larsen case, the commission of inquiry will be looking into what entities and persons are responsible for the war crimes committed against Mr. Larsen.

United Nations Independent Expert—Dr. Alfred M. deZayas

On February 25, 2018, a United Nations Independent Expert, Dr. Alfred M. deZayas, of the Office of the High Commissioner for Human Rights in Geneva, Switzerland, sent a communication to the members of the State of Hawai'i Judiciary calling upon the United States and the State of Hawai'i to comply with the HCIV and GCIV. He wrote:

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).

Independent Experts, who are also known as Special Rapporteurs, receive information on allegations of human rights violations and communicate with governments to address the violations. The function of this particular Independent Expert is to hold the United States and the State of Hawai'i accountable for the violations of the HCIV and the GCIV. The Independent Expert's communication to the State of Hawai'i is an accurate statement of law and describes the legal obligations of the United States, including the State of Hawai'i, to comply with the provisions of the HCIV and the GCIV as a Contracting Power.

Fraudulent Annexation Does Not Preclude the Application of the Hague and Geneva Conventions

A mistaken belief that the annexation of Hawai'i in 1898 by a joint resolution of Congress makes the HCIV and GCIV inapplicable is corrected by a reading of Article 47 of the GCIV. It is titled "Inviolability of Rights," and states:

⁴ David Bederman & Kurt Hilbert, "Arbitration—UNCITRAL Rules—justiciability and indispensable third parties—legal status of Hawaii," 95 *American Journal of International Law* (2001), p. 928.

⁵ *Illegal State of War*, p. 3-4.

Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.

Although the term ‘annexation’ appears in the article, neither the GCIV nor customary international law recognizes annexation as lawful if it takes place in the absence of a treaty of peace. According to the International Committee of the Red Cross (“ICRC”) Commentary on the GCVI, “It will be well to note that the reference to annexation in this Article cannot be considered as implying recognition of this manner of acquiring sovereignty.”⁶ The “Occupying Power cannot therefore annex the occupied territory, even if it occupies the whole of the territory concerned. A decision on that point can only be reached in the peace treaty. That is a universally recognized rule which is endorsed by jurists and confirmed by numerous rulings of international and national courts.”⁷ There is no peace treaty between the Hawaiian Kingdom and the United States. As to the ICRC’s commentary on the GCIV, the United States Supreme Court in *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006), acknowledged that the ICRC commentary is authoritative as to the interpretation of the articles of the Geneva Conventions.

Protected Persons

Under Article 4 of the GCIV, protected persons are defined as civilians who find themselves in the hands of a party to the conflict of which they are not nationals. By this definition protected persons are nationals of the Hawaiian Kingdom and all nationals of foreign States who find themselves under the control of the United States in Hawai‘i. It did not, at the time of its codification, include United States citizens. However, its definition was expanded to include nationals of the occupying State by the Appeals Chamber of the International Criminal Court for the Former Yugoslavia decision in the *Tadic* case in its 1999 judgment.⁸ The Appeals Chamber’s rationale was that “protected person” status does not exclude those having the nationality of the occupying State, but rather the “allegiance” the person has as to the territory upon which they are situated.

Since 1999, international criminal law acknowledges citizens of the United States who are within the territory of the Hawaiian Kingdom are protected persons. This is due to the allegiance they owe to the Hawaiian Kingdom by reason of their presence in it even when their country, the US, is at war with the Hawaiian Kingdom. Under Chapter VI of the Hawaiian Penal Code, which states “Allegiance is the obedience and fidelity due to the kingdom from those under its protection. ... An alien, whether his native country be at war or at peace with this kingdom, owes allegiance to this kingdom during his residence therein.” While the Hawaiian Kingdom is unable to protect those under its protection as a result of occupation, international law mandates the United States, as the occupying State, to serve as the temporary protector of their rights.

⁶ International Committee of Red Cross, Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1958), hereafter “ICRC Commentary,” p. 276, available at https://www.loc.gov/rr/frd/Military_Law/pdf/GC_1949-IV.pdf.

⁷ *Id.*, p. 275.

⁸ ICTY, *Tadic case*, Case No. IT-94-1-A, Judgment, Appeals Chamber, 15 July 1999, para. 168 and 169, available at <http://www.icty.org/x/cases/tadic/acjug/en/tad-aj990715e.pdf>.

Petition for Writ of Mandamus—*Sai v. Trump*

On July 18, 2018, I, along with all legislators for the State of Hawai‘i and County Councils, was notified that the Hawaiian Kingdom government, acting through its Council of Regency, had filed a petition for writ of mandamus with the United States District Court for the District of Columbia against United States President Donald Trump, and others, including the State of Hawai‘i's Governor, David Ige. The notice stated:

This petition concerns the illegal and prolonged occupation of the Hawaiian Islands and the failure of the United States to administer the laws of the Hawaiian Kingdom as mandated under Article 43 of the 1907 Hague Convention, IV, Respecting the Laws and Customs of War on Land (36 Stat. 2199) and under Article 64 of the 1949 Geneva Convention, IV, Relative to the Protection of Civilian Persons in Time of War (6 U.S.T. 3516). The United States has ratified both treaties. The case has been assigned to Judge Tanya S. Chutkan under civil case no. 1:18-cv-01500.

On August 29, 2018, Assistant United States Attorney for the District of Columbia Rhoda L. Campbell notified, by email, the petitioner, Dr. David Keanu Sai, that she would be “requesting a 30-day extension of time, to and through, October 10, 2018, to Answer or otherwise respond to your complaint. Please inform me of your position.” Dr. Sai responded, “Notwithstanding the emergency nature of the petition for writ of mandamus, I am agreeable to your request.”⁹

Concern Over Incurring Criminal Liability for War Crimes

As a public official of the State of Hawai‘i, I am an “agent” of the United States as defined under Article 29 of the GCIV. As such, I have incurred responsibility to “take the greatest pains to ensure that the State services in contact with the protected persons are in actual fact capable of applying the provisions of the Convention.”¹⁰ I am also bound “to respect and ‘ensure respect for’ the Convention in all circumstances.”¹¹

My first order of business as an agent was to inquire of Hawai‘i County Corporation Counsel, the legal counsel for the County of Hawaii, Mr. Joe Kamelamela, as to whether I have and am incurring criminal liability for legislating United States law in violation of Article 43 of the HCIV and Article 64 of the GCIV. To do this I retained an attorney and a letter was sent to Mr. Kamelamela on August 21, 2018.¹² The following day Mr. Kamelamela wrote me an unacceptable opinion simply stating that I “will not incur any criminal liability under state, federal and international law.”¹³

⁹ See UPDATE Emergency Petition for Writ of Mandamus—U.S. Attorney Will Seek 30 day Extension, Hawaiian Kingdom Blog, available at <http://hawaiiankingdom.org/blog/update-emergency-petition-for-writ-of-mandamus-u-s-attorney-will-seek-30-day-extension/>.

¹⁰ ICRC Commentary, *Id.*, p. 210.

¹¹ *Id.*

¹² Council member Jennifer Ruggles Inquiry Regarding Allegations of War Crimes and Criminal Liability (Aug. 21, 2018), available at: <https://jenruggles.com/wp-content/uploads/Stephen-Laudigs-Letter-to-Corporation-Counsel-8-21-18.pdf>.

¹³ Corporation Counsel Joe Kamelamela’s Response to Council member Ruggles Inquiry (Aug. 22, 2018), available at: <https://jenruggles.com/wp-content/uploads/Kamelamela-Response-Letter-2018-08-22.pdf>.

Going Public as a Whistle Blower

The Corporation Counsel's failure to provide either an explanation, rationale, or basis for his one sentence conclusion, prompted my attorney to send him a follow up letter dated August 28, 2018.¹⁴ When Corporation Counsel gave me his unqualified opinion that I will not be incurring criminal liability, he did not dispute either Hawai'i's occupation or the commission of war crimes against protected persons. He, in effect, conceded that the Hawaiian Islands is under an American occupation. The evidence my attorney provided Corporation Counsel included Dr. deZayas's letter to the State of Hawai'i judiciary of February 25, 2018. Corporation Counsel Kamelamela left me no choice but to be a whistle blower and to inform the public that the United States government and the State of Hawai'i have, and continue to be, engaged in illicit activity by violating provisions of the HCIV and the GCIV.

According to the ICRC, "the Hague Regulations [HCIV] is not applicable only to the inhabitants of the occupied territory; it also protects the separate existence of the State, its institutions, and its laws. This provision does not become in any way less valid because of the existence of the new [GCIV], which merely amplifies it so far as the question of the protection of civilians is concerned."¹⁵ "The expression 'laws in force in the country' in Article 43," explains Sassoli, "refers not only to laws in the strict sense of the word, but also to the constitution, decrees, ordinances, court precedents, as well as administrative regulations and executive orders."¹⁶ I understand this phrase to mean the entire legal order of the Hawaiian Kingdom.

Oath of Office

When I took my oath of office I swore to uphold and defend the constitutions of the United States and the State of Hawai'i. My oath did not obligate me to enact legislation which would violate the federal constitution. It obligated me to uphold the federal constitution. Article VI, paragraph 2 of the U.S. Constitution, commonly referred to as the *Supremacy Clause* establishes that the federal constitution takes precedence over the State of Hawai'i constitution and laws. It states:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The HCVI and the GCIV are treaties made under the authority of the United States. Corporation Counsel Kamelamela did not dispute the evidence I provided him, through my attorney, of Hawai'i's occupation and the application of the HCIV and the GCIV and the protection afforded protected persons under the GCIV. Therefore, as I swore to uphold the federal constitution, I am bound to uphold the HCIV and the GCIV and ensure respect for the conventions in all circumstances.

¹⁴ Council member Jennifer Ruggles Response to Corporation Counsel Kamelamela's opinion (Aug. 28, 2018), available at: https://jenruggles.com/wp-content/uploads/Laudig_Ltr_to_Corp_Counsel_8.28.2018-.pdf.

¹⁵ ICRC Commentary, Article 47, p. 273

¹⁶ Marco Sassoli, *Article 43 of the Hague Regulations and Peace Operations in the Twenty-first Century*, Background Paper prepared for Informal High-Level Expert Meeting on Current Challenges to International Humanitarian Law, Cambridge, June 25-27, 2004, p. 6.

Queen's Hospital Established in 1859

Section 1 of the 1859 *Act to Provide Hospitals for the Relief of Hawaiians in the city of Honolulu and other Localities*, authorized the Minister of the Interior to “grant a perpetual charter to any of the inhabitants of the city of Honolulu applying for the same, being subjects or denizens of the kingdom, and to their successors, for the establishment of a hospital in said city, or the vicinity thereof, for the sick and destitute Hawaiians.” Under this act, a corporation called the “Queen’s Hospital” was formed on June 20, 1859. Article one of the Charter provides for establishment of a permanent hospital for the “treatment of indigent sick and disabled Hawaiians, as well as such foreigners and others who may choose to avail themselves of the same.” It was understood that the term ‘Hawaiians’ meant aboriginal Hawaiians, both pure and part. Under the Charter the Hawaiian Monarch served as President of a Board of Trustees comprised of ten persons to be appointed by the government and ten persons to be elected by corporation shareholders. The government appropriated funding for the maintenance of the hospital.

Native Hawaiian Health Care at Queen’s Hospital Free of Charge

In 1900, George W. Smith, a Trustee of Queen’s Hospital, stated, “Queen’s Hospital is, from the nature of its charter, a quasi-private institution. When it was chartered it was provided that all Hawaiians of native birth, should be treated free of charge. Foreigners were to be treated by payment of fees.”¹⁷ In a 1904 opinion on public monies being appropriated to Queen’s Hospital for public purposes, Justice J.J. Perry of the Supreme Court of the Territory of Hawai‘i, stated, “Whether the word ‘Hawaiians’ in Sec. 1 [of the Act of 1859] was intended to mean aborigines or citizens of Hawaii, need not be considered. It may be assumed that the former was intended.”¹⁸ This view is consistent with the times.

After giving a brief history of Queen’s Hospital, Henry Whitney stated, “Native Hawaiians are admitted free of charge, while foreigners pay from seventy-five cents to two dollars a day, according to accommodations and attendance.”¹⁹ Even those who objected to Queen’s Hospital not charging native Hawaiians for care acknowledged that “Kamehameha IV and Queen Emma used their best endeavors, and these were crowned with success to establish a free hospital for Hawaiians.”²⁰

No other country or government in the world at the time had such a system of government subsidized health care for a majority of its population which was free of charge. The Soviet government followed this practice in 1920. After the Second World War, in 1948, the British government followed suit. The Nordic countries Sweden followed in 1955, Iceland in 1956, Norway in 1956, Denmark in 1961, and Finland in 1964.

The United States has never subsidized health care free of charge.

¹⁷ Pacific Commercial Advertiser, *Queen’s Hospital Financial Status*, July 30, 1900, p. 2, available at <https://chroniclingamerica.loc.gov/lccn/sn85047084/1900-07-30/ed-1/seq-2/>.

¹⁸ *In re The Queen’s Hospital*, 15 Hawaiian Reports, 663, 666 (1904).

¹⁹ Henry Martyn Whitney, *The Tourists’ Guide through the Hawaiian Islands Descriptive of Their Scenes and Scenery* (1895), p. 21, available at https://books.google.com/books/about/The_Tourist_s_Guide_Through_the_Hawaiian.html?id=-M0PAAAAAYAAJ.

²⁰ *The Hawaiian Star*, *Free Hospitals* (Oct. 15, 1901), p. 4, available at <https://chroniclingamerica.loc.gov/lccn/sn82015415/1901-10-15/ed-1/seq-4/>.

Unlawful Transformation of the Queen's Hospital

After pressure to sever the Hawaiian government's interest in Queen's Hospital and to no longer admit native Hawaiians free of charge, the Board of Trustees, with the approval of the Governor of the Territory, Walter F. Frear, amended the charter. In its original Charter of 1859 the phrase "for the treatment of indigent sick and disabled Hawaiians" was replaced in 1909 with "for the treatment of sick and disabled persons." The change was made secretly. The only news coverage it received at the time was in one newspaper, the *Evening Bulletin*, which made no mention of the change of servicing aboriginal Hawaiians free of charge. Under the title of "IS APPROVED TRUSTEES REDUCED," the Bulletin wrote,

By the new amendment to their character, the application for which was approved by Governor Frear this morning, the number of trustees of Queen's Hospital will be reduced from twenty to seven members. The responsibility of the government trusteeship will also cease with the new articles of incorporation.

By 1939, Victor Stewart Kaleoaloha Houston, a former Congressional delegate for the Territory of Hawai'i, "was presenting lectures at various Hawaiian Civic Clubs castigating Queen's Hospital for ignoring Native Hawaiians' medical needs and reneging on the promises of the original charter. In newspapers the main themes of Houston's one man assault on Queen's was set out for the public by these questions: what ever happened to free medical care for Hawaiians and what is Queen's doing with the Queen Emma Trust monies?"²¹

Gradually aboriginal Hawaiians were denied health care unless they paid, and as time went on, this provision of the Queen's Hospital charter was nearly forgotten. In 1967, the name of Queen's Hospital was changed to the Queen's Medical Center. In 1985, the Queen's Health Systems with a Board of Trustees was established as parent company of Queen's Medical Center along with Molokai General Hospital, North Hawai'i Community Hospital, Queen Emma Land Company, Queen's Development Corporation, and Queen's Insurance Exchange. Under Queen's Health Systems there are four hospitals—The Queen's Medical Center, The Queen's Medical Center – West O'ahu, Molokai General Hospital, and North Hawai'i Community Hospital—and seven health care centers in Hawai'i Kai, Hilo, two in Honolulu, Kapolei, Kaua'i and Kona. I will refer to the corporation by its original name, the Queen's Hospital.

Hawaiians of aboriginal blood are Protected Persons

Hawaiian subjects of aboriginal blood, whether pure or part, are protected persons whose rights during the American occupation are protected under the GCIV. It is also my duty as a whistle blower and agent for the United States to ensure that their rights are respected. According to the Office of Hawaiian Affairs, "Today, Native Hawaiians are perhaps the single racial group with the highest health risk in the State of Hawai'i. This risk stems from high economic and cultural stress, lifestyle and risk behaviors, and late or lack of access to

²¹ Jeffrey J. Kamakahi, *A Socio-Historical Analysis of the Crown-based Health Ensembles (CBHEs) in Hawaii: A Sartrean Approach*, Doctoral Dissertation in Sociology, University of Hawai'i at Manoa (May 1991), p. 104, available at: https://scholarspace.manoa.hawaii.edu/bitstream/10125/10294/1/uhm_phd_9129680_r.pdf.

health care.”²² The ‘lack of access to health care’ is what troubles me knowing that the Queen’s Hospital was specifically established, under Hawaiian Kingdom law, to provide for their health care, free of charge.

According to the ICRC, Article 47 of the GCIV means that “changes made in the internal organization of the State must not lead to protected persons being deprived of the rights and safeguards provided them. Consequently it must be possible for the Convention to be applied to them in its entirety, even if the Occupying Power has introduced changes in the institutions or government of the occupied territory.”²³ Furthermore, under the provisions of Article [50] of the GCIV regarding preferential measures for children’s medical care, in this case with the Queen’s Hospital, the occupying State “who occupied the whole or part of a territory where such measures are in force, cannot on any pretext abrogate them or place obstacles in the way of their application. This rule applies not only to preferential measures prescribed in the Convention but to any other measures of the same nature taken by the occupied State.”²⁴

The changes to the charter since 1909 violate the HCIV and the GCIV as described above.

War Crimes Committed Against Aboriginal Hawaiians by Queen’s Hospital

In your capacity as the Chief Executive Officer of the Queen’s Hospital, I call upon you and the Board of Trustees to comply with the 1859 Charter and to admit aboriginal Hawaiians, as that term was understood under Kingdom law, for medical care free of charge. Failure to do so appear to constitute war crimes under Article 47 and [50] of the GCIV. The International Criminal Tribunal for the Former Yugoslavia indicated that war crimes are violations that are committed willfully, i.e., either intentionally or recklessly.²⁵

According to the International Criminal Court two elements must be present for a person to incur criminal liability for war crimes. First: the conduct took place in the context of and was associated with an international armed conflict; and, second, the perpetrator was aware of factual circumstances that established the existence of an armed conflict.²⁶ “The term ‘international armed conflict’ includes military occupation.”²⁷ With respect to these two elements of war crimes:

- (a) There is no requirement for a legal evaluation by the perpetrator as to the existence of an armed conflict or its character as international or non-international;
- (b) 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;
- (c) 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 associate with.”²⁸

²² Office of Hawaiian Affairs, Native Hawaiian Health Fact Sheet 2017, p. 2, available at <https://19of32x2yl33s8o4xza0gf14-wpengine.netdna-ssl.com/wp-content/uploads/Volume-IV-Health-Status.pdf>.

²³ ICRC Commentary, p. 274.

²⁴ *Id.*, p. 290.

²⁵ ICTY, *Delalic case*, Case No. IT-96-21-T, Judgment, Trial Chamber II, 16 November 1998, §§437 and 439, available at http://www.icty.org/x/cases/mucic/tjug/en/981116_judg_en.pdf.

²⁶ *Elements of Crimes*, International Criminal Court, Article 8—War crimes, p. 13, available at <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>.

²⁷ *Id.*, n. 34.

²⁸ *Id.*, p. 13.

War crimes include acts of commission as well as acts of omission. In this case the war crime of omission and abrogation of the Queen’s Hospital’s free health care to aboriginal Hawaiians as protected persons, and as mandated in your charter before the occupation, is a violation Article 47 and [50] of the GCIV and, therefore, would constitute a war crime. “Of crimes of omission in general, it may be said that the extent of liability depends upon the extent of the duty to act which international law imposes in the circumstances of the case.”²⁹

Genocide Committed Against Aboriginal Hawaiians by Queen’s Hospital

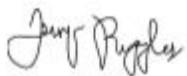
There seems to be a direct nexus of deaths of aboriginal Hawaiians as ‘the single racial group with the highest health risk in the State of Hawai‘i [that] stems from...late or lack of access to health care’ to genocide as defined by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (“GC”). This Convention was ratified by the United States on November 25, 1988 and was codified under United States criminal under 18 U.S.C. §1091. According to Article 2 of the GC “genocide means any of the following acts committed with intent to destroy, in whole in part, a national, ethnic, racial or religious groups, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measure intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.”

Article 3 of the GC provides that the “following acts shall be punishable: (a) Genocide; (b) Conspiracy to commit genocide; (c) Direct and public incitement to commit genocide; (d) Attempt to commit genocide; (e) Complicity in genocide.” It would appear that Queen’s Hospital may have committed the international crime of genocide against aboriginal Hawaiians.

This letter serves as your knowledge and “awareness of the factual circumstances that established the existence of an armed conflict” between the Hawaiian Kingdom and the United States, the application of the HCIV and GCIV, and the protection afforded aboriginal Hawaiians as protected persons.

Sincerely,



Jennifer Ruggles
Hawai‘i County Council Member

²⁹ The United Nations War Crimes Commission, *Law Reports of Trials of War Criminals*, vol. XV (1949), p. 57, available at https://www.loc.gov/rr/frd/Military_Law/pdf/Law-Reports_Vol-15.pdf.

enclosures

cc: Office of the Prosecutor, International Criminal Court
President, Human Rights Council
United Nations Independent Expert for the promotion of a democratic and equitable
international order
International Committee of the Red Cross
Amnesty International
Human Rights Watch



Larsen v. Hawaiian Kingdom

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

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

Representatives of the parties

Number of arbitrators in case 3

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

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

Length of proceedings 1-2 years

Additional notes

Attachments **Award or other decision**

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

Other

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

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





Office of the High Commissioner for Human Rights
Palais des Nations, CH-1211 Geneva 10, Switzerland

MEMORANDUM

Date: 25 February 2018

From: Dr. Alfred M. deZayas
United Nations Independent Expert
Office of the High Commissioner for Human Rights

To: Honorable Gary W. B. Chang, and
Honorable Jeannette H. Castagnetti, and
Members of the Judiciary for the State of Hawaii

Re: The case of Mme Routh Bolomet

As a professor of international law, the former Secretary of the UN Human Rights Committee, co-author of book, *The United Nations Human Rights Committee Case Law 1977-2008*, and currently serving as the UN Independent Expert on the promotion of a democratic and equitable international order, 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).

Based on that understanding, in paragraph 69(n) of my 2013 report (A/68/284) to the United Nations General Assembly I recommended that the people of the Hawaiian Islands — and other peoples and nations in similar situations — be provided access to UN procedures and mechanisms in order to exercise their rights protected under international law. The adjudication of land transactions in the Hawaiian Islands would likewise be a matter of Hawaiian Kingdom law and international law, not domestic U.S. law.

I have reviewed the complaint submitted in 2017 by Mme Routh Bolomet to the United Nations Office of the High Commissioner for Human Rights, pointing out historical and ongoing plundering of the Hawaiians' lands, particularly of those heirs and descendants with land titles that originate from the distributions of lands under the authority of the Hawaiian Kingdom. Pursuant to the U.S. Supreme Court judgment in the *Paquete Habana Case* (1900),

U.S. courts have to take international law and customary international law into account in property disputes. The state of Hawaii courts should not lend themselves to a flagrant violation of the rights of the land title holders and in consequence of pertinent international norms. Therefore, the courts of the State of Hawaii must not enable or collude in the wrongful taking of private lands, bearing in mind that the right to property is recognized not only in U.S. law but also in Article 17 of the Universal Declaration of Human Rights, adopted under the leadership of Eleanor Roosevelt.

Respectfully,



Dr. Alfred M. deZayas
United Nations Independent Expert on the promotion of a
democratic and equitable international order
Office of the High Commissioner for Human Rights
Palais des Nations, CH-1211 Geneva 10, Switzerland