HAWAI‘I COUNTY COUNCIL

October 11, 2018

Sean Kaul, Special Agent in Charge
Federal Bureau of Investigation
91-1300 Enterprise Street
Kapolei, HI 96707

Re: Reporting International Crimes under 18 U.S.C. §2441 and §1091 committed by the Queen’s Health Systems, a.k.a. the Queen’s Hospital, and §2441 committed by Circuit Court Judges of the State of Hawai‘i

Dear Special Agent in Charge Kaul:

I am an elected public official of the Hawai‘i County Council serving District 5—Western Puna, in the State of Hawai‘i. To my dismay, I have become aware of Hawai‘i’s status as a nation-state, under international law, which has been under an illegal occupation by the United States since it, by its own admission, illegally overthrew the Hawaiian Kingdom government on January 17, 1893. I have done my due diligence to become educated on this subject and I have reached out to experts in this field. I’ve learned that after a presidential investigation was completed on October 18, 1893, then United States President Grover Cleveland notified the Congress, two months later, and stated 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

Through acts of war that initiated 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”). The United States Senate ratified both the HCIV and the GCIV and their provisions are, thus, United States federal 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 violates Article 43 of the HCIV and Article 64 of the GCIV. These articles mandate the United States, as the occupying State, to administer Hawaiian Kingdom law, as the Hawaiian Kingdom is the occupied State. The plaintiff, Lance Paul Larsen, alleged that the United States’ failure to administer Hawaiian Kingdom law led to his unfair trial and unlawful confinement by the State of Hawai‘i. This led to a dispute between Larsen and the Hawaiian Kingdom government, which had been restored in 1995, in which Larsen alleged that the Hawaiian government is liable for allowing the unlawful imposition of United States laws over Hawaiian territory that led to his rights being violated by the United States through the State of Hawai‘i.

The Permanent Court of Arbitration (“PCA”), located at The Hague, Netherlands, accepted the dispute on November 8, 1999 as *Lance Paul Larsen v. Hawaiian Kingdom* and assigned it PCA Case no. 1999-01. The PCA Secretariat acknowledged both the continuity of the Hawaiian Kingdom, as a State under international law, and the existence of its government, in the form of the Council of Regency, as its organ. 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 Hawaiian Council of Regency should be liable for any international law violations that the United States had committed against him.

Before the Tribunal was formed by the PCA, the Secretary General recommended to the Hawaiian government to provide an invitation to the United States to join in the dispute. On March 3, 2018, an invitation was given to the United States at a meeting with the State Department in Washington, D.C., but it chose to deny

---


the offer. 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. The voluntary absence and hence lack of participation by the United States, prevented the Tribunal from concluding that the United States, as the occupying State, had violated Mr. Larsen’s rights because it chose to absent itself and was not present to answer to the allegations. The absence of the United States prompting the Tribunal to recommend that Larsen and the Hawaiian government could form an international fact-finding commission of inquiry under the jurisdiction of the PCA where the indispensable third party rule would not apply. 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.

**Jurisdiction of the International Criminal Court Over the Hawaiian Islands**

On November 28, 2012, the Hawaiian Council of Regency acceded to the Rome Statute of the International Criminal Court (ICC). The instrument of accession was deposited with the Secretary General of the United Nations General Assembly, by the United Nations Treaty Section, pursuant to Article 125(3) of the Rome Statute, on December 10, 2012. ICC jurisdiction over actions occurring in Hawaiian territory began on March 4, 2013, in accordance with Article 126 of the Rome Statute. Crimes within the ICC’s jurisdiction include genocide, crimes against humanity, war crimes, and crimes of aggression.

**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. Independent Experts, also known as Special Rapporteurs, receive information on allegations of human rights violations and communicate with governments to address the violations. 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).

It is apparent to me that there is no clear constitutional basis for the presence of the United States law on Hawaiian Kingdom territory. This lack of clear authority was noted by the Department of Justice’s Office of

---

7 Illegal State of War, p. 3-4.
Legal Counsel’s 1988 legal opinion which admitted it could not explain how the Hawaiian Islands was annexed by a Congressional joint resolution in 1898.9

As a Council member I understand that legislation is limited to the territorial jurisdiction of the law-making body. The Congress has no constitutional authority, nor any authority under international law, to unilaterally declare Hawai‘i was annexed by a joint resolution. Similarly, the British Parliament has no authority to declare it annex the United States through a British law. This lack of authority is consistent with the United States Supreme Court’s ruling in United States v. Curtiss Wright Corporation, 299 U.S. 304, 318 (1936). It said: “Neither the Constitution nor the laws passed in pursuant of it have any force in foreign territory unless in respect of our own citizens, and operations of the nation in such territory must be governed by treaties, international understandings and compacts, and the principles of international law.” Acknowledging this lack of authority, then Acting Assistant Attorney General, Douglas W. Kmiec, of the Office of Legal Counsel opined, “It is therefore unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution. Accordingly, it is doubtful that the acquisition of Hawaii can serve as an appropriate precedent for a congressional assertion of sovereignty over an extended territorial sea.”10 The United States could no more annex Hawai‘i by enacting a domestic statute than it could annex Canada today by statute.

It appears the Independent Expert’s communication to the State of Hawai‘i is an accurate, and so far, uncontested, statement of law and describes the legal obligations of the United States, including its State of Hawai‘i, to comply with the provisions of the HCIV and the GCIV as a Contracting Power.

National Education Association Published Article on State of War between the United States and the Hawaiian Kingdom since 1893

Due to education and awareness of Hawai‘i’s history, the National Education Association (NEA) published an article on April 2, 2018 titled “The Illegal Overthrow of the Hawaiian Kingdom Government.”11 In its article the NEA acknowledged that “on December 18, 1893, the President proclaimed by manifesto, in a message to the United States Congress, the circumstances for committing acts of war against the Hawaiian Kingdom that transformed a state of peace to a state of war on January 16, 1893.” The NEA concluded:

Despite the unprecedented prolonged nature of the illegal occupation of the Hawaiian Kingdom by the United States, the Hawaiian State, as a subject of international law, is afforded all the protection that international law provides. “Belligerent occupation,” concludes Judge Crawford in his book The Creation of States in International Law (2nd ed., 2006), “does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State (p. 34).” Without a treaty of peace, the laws of war and neutrality would continue to apply.

The article stemmed from a resolution that was passed by the NEA’s Annual Meeting and Representative Assembly on July 4, 2017 held in Boston, Massachusetts. The resolution stated, “The NEA will

---

10 Id., p. 262.
publish an article that documents the illegal overthrow of the Hawaiian Monarchy in 1893, the prolonged occupation of the United States in the Hawaiian Kingdom and the harmful effects that this occupation has had on the Hawaiian people and resources of the land.”

The delegates from the Hawai‘i State Teachers Association (HSTA), being an affiliate member union of the NEA, introduced the resolution. When the resolution passed, the HSTA put out the following message on its Facebook page:

Today, the National Education Association’s Representative Assembly, meeting in Boston, approved New Business Item 37, “The NEA will publish an article that documents the illegal overthrow of the Hawaiian Monarchy in 1893, the prolonged illegal occupation of the United States in the Hawaiian Kingdom and the harmful effects that this occupation has had on the Hawaiian people and resources of the land.” Mahalo to Chris Santomauro, a teacher at Kaneohe Elementary, who introduced the proposal and Uluhani Waialeale, a teacher at Kualapuu charter school on Moloka‘i, whose impassioned and articulate argument in favor of the Hawaiian overthrow measure swayed a majority of teachers from across the country to support it.¹²

The NEA is the largest labor union and professional interest group in the United States with 3.2 million members. It represents public school teachers, faculty members, education support professionals, retired educators, and students preparing to become teachers.

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, titled “Inviolability of Rights,” and which states:

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.

“Annexation” appears in the article, but neither the GCIV, nor customary international law, recognizes annexation as lawful when it takes place in the absence of a treaty of peace. Annexation, by definition, is “to add or join.” It is the outcome of cession and not the act of cession. Professor Oppenheim explains, “Cession of State territory is the transfer of sovereignty over State territory by the owner-State to another State.”¹³ He concludes that the “only form in which a cession can be effected is an agreement embodied in a treaty between

the ceding and the acquiring State. Such treaty may be the outcome of peaceable negotiations or of war, and the cession may be one with or without compensation.”

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.” 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 a peace treaty. This is a universally-recognized rule and is endorsed by jurists and confirmed by numerous rulings of international and national courts.” According to the ICRC, “an Occupying Power continues to be bound to apply the Convention as a whole even when, in disregard of the rules of international law, it claims during a conflict to have annexed all or part of an occupied territory.” The United States Supreme Court in *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006), also acknowledged that the ICRC commentary, which includes the ICRC’s commentary on the GCIV, which I previously referenced, is authoritative as to the interpretation of the articles of the Geneva Conventions.

There is no peace treaty between the Hawaiian Kingdom and the United States.

**Protected Persons**

Article 4 of the GCIV, defines protected persons as civilians who find themselves in the hands of a party to the conflict of which they are not nationals. Using this definition, protected persons would appear to be nationals of the Hawaiian Kingdom along with all nationals of foreign States, who find themselves under the control of the United States in Hawaiʻi. At the time of its codification, it would not have been understood to include United States citizens. However, its definition has been enlarged to include nationals of the occupying State, which here would be the United States, by the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia decision in its 1999 judgment in the Tadic case. The Appeals Chamber’s rationale was that ‘protected person’ status is not determined as excluding those having the nationality of the occupying State, but rather is determined by the “allegiance” the person has as to the territory upon which they are situated.

Under Hawaiian Kingdom law, all persons, other than the military and diplomats of foreign powers who are on Hawaiian soil owe allegiance to the Hawaiian Kingdom. Since 1999, international criminal law would appear to classify citizens of the United States, who are within the territory of the Hawaiian Kingdom, as protected persons. This is due to the allegiance they owe to the Hawaiian Kingdom by reason of their presence in Hawaiian territory even while their country, the United States, is at war with the Hawaiian Kingdom.

Chapter VI of the Hawaiian Penal Code, 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

14 *Id.*, p. 286-287.
16 *Id.*, p. 275.
17 *Id.*, p. 276.
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 the apparent occupation, international law mandates the United States, as the occupying State, to serve as the temporary protector of their rights.

According to the ICRC, “Whether a war is ‘just’ or ‘unjust’, whether it is a war of aggression or of resistance to aggression, whether the intention is to merely occupy territory or to annex it, in no way affects the treatment protected persons should receive.” And as the Nuremburg Tribunal stated in USA v. William List et al., “whatever may be the cause of a war that has broken out, and whether or not the cause be a so-called just cause, the same rules of international law are valid as to what must not be done, [and what] may be done.”

Concern Over Incurring Criminal Liability for War Crimes

As an elected 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.” I am also bound “to respect and ‘ensure respect for’ the Convention in all circumstances” by every and all agents of the United States as the occupying State.

My first step, as an agent, was to inquire of Hawai‘i County Corporation Counsel, legal counsel for the Hawai‘i County Council, Mr. Joe Kamelamela, to assure me as to whether I have incurred, or would incur, criminal liability for legislating United States law as a Council member in violation of Article 43 of the HCIV and Article 64 of the GCIV. To do this I retained legal counsel and a letter was sent to Mr. Kamelamela on my behalf on August 21, 2018. The following day Mr. Kamelamela wrote me an unacceptable opinion by stating that I “will not incur any criminal liability under state, federal and international law.”

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. When Corporation Counsel gave me his unqualified opinion that I will not be incurring criminal liability, he did not dispute either the occupation of Hawai‘i by the United States nor the commission of war crimes against protected persons. He, in effect, conceded, by omission, 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 become a

---

20 Id., p. 16-17.
23 Id.
whistleblower 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 is not valid due to the existence of the new [GCIV], the new GCIV merely amplifies it in so far as the question of the protection of civilians is concerned.”

“…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.”

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 obligates me to not advance the enactment of legislation which violates the federal constitution. It obligates me to uphold the federal constitution. Article VI, paragraph 2 of the federal 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 the occupation of Hawai‘i, 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 feel I am bound to uphold the HCIV and the GCIV and ensure respect for the conventions in all circumstances as they apply throughout the territory of the Hawaiian Kingdom.

Misprision of Felony—18 U.S.C. §4

Under 18 U.S.C. §2441(c)(1) and (2), a war crime is defined “as a grave breach in any of the international conventions signed at Geneva 12 August 1949 [GCIV],” or conduct “prohibited by Article…28 of the Annex to the Hague Convention IV, Respecting the Laws and Customs of War on Land, signed 18 October 1907 [HCIV].” Whoever commits a war crime “shall be fined under this title or imprisoned for life or any term of years, or both, and if death results to the victim, shall be subject to the penalty of death.” 18 U.S.C. §1091 prohibits genocide whether committed in time of peace or in time of war. Section 1091 (b)(1) and (2) provides punishment for genocide is “where death results, by death or imprisonment for life and a fine of not more than

---

27 ICRC Commentary, Article 47, p. 273
$1,000,000, or both; and a fine of not more than $1,000,000 or imprisonment for not more than twenty years, or both, in any other case.” As such, war crimes and the crime of genocide are both felonies because both crimes carry more than one year imprisonment.

Under 18 U.S.C. §4, any person “having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.” Therefore, I am obligated to report “as soon as possible” war crimes and the crime of genocide because both are felonies under federal criminal law.

I am also aware that Professor Williamson Chang of the William S. Richardson School of Law reported war crimes being committed in the Hawaiian Islands to United States Attorney General Eric Holder on September 17, 2014 in accordance with the misprision of felony statute. Professor Chang stated he became aware of the commission of war crimes from a memorandum authored by Dr. David Keanu Sai who was commissioned by the State of Hawai‘i Office of Hawaiian Affairs (“OHA”) to do the memorandum. According to Dr. Sai, “In light of Hawai‘i’s legal status under international law, OHA may have incurred criminal liability under both U.S. federal law and international law under what is called ‘war crimes’ as defined under Title 18 United States Code…§2441.”

I am, however, unaware whether Attorney General Holder directed the FBI to initiate a criminal investigation. In any event, I am reporting the commission of international crimes to the FBI whose primary responsibility is to investigate federal crimes as defined under 18 U.S.C. §2441 and §1091.

United States Obligation to Investigate War Crimes

The United States recognizes that there is no statute of limitations for war crimes. In 1986, “the United States wrote a note to Iraq [who like the United States was not a party to the U.N. Convention on the Non-Applicability of Statutory Limitations to War Crimes or Crimes against Humanity] to the effect that individuals guilty of war crimes could be subject to prosecution at any time, without regard to any statute of limitations.” Rule 160 in the International Committee of the Red Cross study on customary international humanitarian law (“ICRC study”) provides:

The recent trend to pursue war crimes more vigorously in national and international criminal courts and tribunals, as well as the growing body of legislation giving jurisdiction over war crimes without time-limits, has hardened the existing treaty rules prohibiting statutes of limitation for war crimes in customary law. In addition, the operation of statutory limitations

32 Id., p. 3.
could prevent the investigation of war crimes and the prosecution of the suspects and would constitute a violation of the obligation to do so.\textsuperscript{34}

Under customary international law, all States, to include the United States, “are under an obligation to investigate war crimes over which they have jurisdiction and to prosecute the suspects if necessary.”\textsuperscript{35} Rule 158 ICRC study provides:

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.\textsuperscript{36}

According to United Nations Resolution 3074 (XXVIII) of December 3, 1973, \textit{Principles of international co-operation in the detention, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity}, “War crimes and crimes against humanity, wherever they are committed, shall be subject to investigation and the persons against whom there is evidence that they have committed such crimes shall be subject to tracing, arrest, trial and, if found guilty, to punishment.”

Reporting the CEO of Queen’s Hospital for International Crimes under §2441 and §1091, and the Circuit Court Judges of the State of Hawai‘i for War Crimes under §2441

As an elected official, I have a special duty and obligation to report crimes, especially severe crimes such as war crimes and the crime of genocide. Therefore, I am reporting the commission of war crimes and the international crime of genocide to the FBI’s field office in Kapolei, Island of O‘ahu, because the FBI has no legal attaché situated in a United States embassy or consulate here in the Hawaiian Islands. I am also reporting these crimes, which are felonies, pursuant to 18 U.S.C. §4—\textit{Misprision of felony}.

Attached please find a copy of my communication with Mr. Art Ushijima, CEO of Queens Health Systems (a.k.a. Queen’s Hospital) dated September 20, 2018 informing him that based on the evidence I uncovered regarding Queen’s Hospital, he may be liable for the commission of war crimes and the international crime of genocide. Also attached is his acknowledgment of receipt of my communication.


\textsuperscript{34} ICRC, Rule 160. Statutes of Limitation, available at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter44_rule160.
\textsuperscript{35} Customary International Humanitarian Law, p. 541.
Melvin Fujino; and Fifth Circuit Court Judges Randal G.B. Valenciano and Kathleen N.A. Watanabe. All the letters were identical and were received by certified mail through the United States Postal Service.

If you have any questions please feel free to call my attorney, Mr. Steve Laudig at (808) 232-1935 or by email at stevelaudig@gmail.com.

Sincerely,

Jennifer Ruggles
Hawai‘i County Council Member

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
    Art Ushijima, CEO Queen’s Health Systems
    First Circuit Judge James H. Ashford
    First Circuit Judge Bert I. Ayabe
    First Circuit Judge R. Mark Browning
    First Circuit Judge Jeannette Castagnetti
    First Circuit Judge Gary W.B. Chang
    First Circuit Judge Jeffrey P. Crabtree
    First Circuit Judge Virginia L. Crandall
    First Circuit Judge Todd W. Eddins
    First Circuit Judge Colette Y. Garibaldi
    First Circuit Judge Keith K. Hiraoka
    First Circuit Judge Shirley M. Kawamura
    First Circuit Judge Glenn J. Kim
    First Circuit Judge Edward H. Kubo, Jr.
    First Circuit Judge Christine E. Kuriyama
    First Circuit Judge Edwin C. Nacino
    First Circuit Judge Karen T. Nakasone
    First Circuit Judge Dean E. Ochiai
    First Circuit Judge Rowena Somerville
    First Circuit Judge Fa‘auuga L. To’oto‘o
    First Circuit Judge Rom A. Trader
    First Circuit Judge Matthew J. Viola

Hawai‘i County is an Equal Opportunity Provider and Employer
First Circuit Judge Paul B.K. Wong
Second Circuit Judge Richard T. Bissen, Jr.
Second Circuit Judge Peter T. Cahill
Second Circuit Judge Joseph E. Cardoza
Second Circuit Judge Rhonda I.L. Loo
Third Circuit Judge Greg Nakamura
Third Circuit Judge Henry T. Nakamoto
Third Circuit Judge Robert D.S. Kim
Third Circuit Judge Melvin Fujino
Fifth Circuit Judge Randal G.B. Valenciano
Fifth Circuit Judge Kathleen N.A. Watanabe
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

---


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:

---


⁵ Illegai 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.” 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.” There is no peace treaty between the Hawaiian Kingdom and the United States. As to the ICRC’s commentary on the GCVI, 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. 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.

---


7 *Id.*, p. 275.

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.”

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.” I am also bound “to respect and ‘ensure respect for’ the Convention in all circumstances.”

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. 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.”

---

11 Id.
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. 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.”

“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.” 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 HCIV 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.

---

15 ICRC Commentary, Article 47, p. 273
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.” 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.” 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.” 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.”

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.

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

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

---

health care.”\textsuperscript{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.”\textsuperscript{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.”\textsuperscript{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.\textsuperscript{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.\textsuperscript{26} “The term ‘international armed conflict’ includes military occupation.”\textsuperscript{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.”\textsuperscript{28}

\textsuperscript{23} ICRC Commentary, p. 274.
\textsuperscript{24} Id., p. 290.
\textsuperscript{27} Id., n. 34.
\textsuperscript{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

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

<table>
<thead>
<tr>
<th>Case name</th>
<th>Larsen v. Hawaiian Kingdom</th>
</tr>
</thead>
<tbody>
<tr>
<td>Case description</td>
<td>Lance Paul Larsen, a resident of Hawaii, brought a claim against the Hawaiian Kingdom by its Council of Regency (&quot;Hawaiian Kingdom&quot;) 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. 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. 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.</td>
</tr>
<tr>
<td>Name(s) of claimant(s)</td>
<td>Lance Paul Larsen (Private entity)</td>
</tr>
<tr>
<td>Name(s) of respondent(s)</td>
<td>The Hawaiian Kingdom (State)</td>
</tr>
<tr>
<td>Names of parties</td>
<td></td>
</tr>
<tr>
<td>Case number</td>
<td>1999-01</td>
</tr>
<tr>
<td>Administering institution</td>
<td>Permanent Court of Arbitration (PCA)</td>
</tr>
<tr>
<td>Case status</td>
<td>Concluded</td>
</tr>
<tr>
<td>Type of case</td>
<td>Other proceedings</td>
</tr>
<tr>
<td>Subject matter or economic sector</td>
<td>Treaty interpretation</td>
</tr>
<tr>
<td>Rules used in arbitral proceedings</td>
<td>UNCITRAL Arbitration Rules 1976</td>
</tr>
<tr>
<td>Treaty or contract under which proceedings were commenced</td>
<td>Other</td>
</tr>
<tr>
<td></td>
<td>The 1849 Treaty of Friendship, Commerce and Navigation with the United States of America</td>
</tr>
<tr>
<td>Language of proceeding</td>
<td>English</td>
</tr>
<tr>
<td>Seat of arbitration (by country)</td>
<td>Netherlands</td>
</tr>
<tr>
<td>Arbitrator(s)</td>
<td>Dr. Gavan Griffith QC</td>
</tr>
<tr>
<td></td>
<td>Professor Christopher J. Greenwood QC</td>
</tr>
<tr>
<td></td>
<td>Professor James Crawford SC (President of the Tribunal)</td>
</tr>
<tr>
<td>Representatives of the claimant(s)</td>
<td>Ms. Ninia Parks, Counsel and Agent</td>
</tr>
<tr>
<td>Representatives of the respondent(s)</td>
<td>Mr. David Keanu Sai, Agent</td>
</tr>
<tr>
<td>Section</td>
<td>Details</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>-------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Representatives of the parties</td>
<td></td>
</tr>
<tr>
<td>Number of arbitrators in case</td>
<td>3</td>
</tr>
<tr>
<td>Date of commencement of proceeding [dd-mm-yyyy]</td>
<td>08-11-1999</td>
</tr>
<tr>
<td>Date of issue of final award [dd-mm-yyyy]</td>
<td>05-02-2001</td>
</tr>
<tr>
<td>Length of proceedings</td>
<td>1-2 years</td>
</tr>
<tr>
<td>Additional notes</td>
<td></td>
</tr>
<tr>
<td>Attachments</td>
<td>Award or other decision</td>
</tr>
<tr>
<td></td>
<td>&gt; Arbitral Award 15-05-2014 English</td>
</tr>
<tr>
<td>Other</td>
<td></td>
</tr>
<tr>
<td></td>
<td>&gt; Annex 1 - President Cleveland’s Message to the Senate and the House of Representatives 18-12-1893 English</td>
</tr>
<tr>
<td></td>
<td>&gt; 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</td>
</tr>
</tbody>
</table>

Powered by the Permanent Court of Arbitration, All Rights Reserved.
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
September 24, 2018

The Honorable Jennifer Ruggles  
Hawaii County Council  
25 Aupuni Street, Suite 1402  
Hilo, HI 96720

Dear Council Member Ruggles:

Re: Your Letter, Dated September 20, 2018, War Crimes

I received your letter today. I have forwarded your letter to our staff for review. The issues you are raising are quite complex. After our review, we will be following up with you. In the meantime, if you have any questions, please feel free to call (691-4688) or email me at aushijima@queens.org.

Aloha,

Arthur A. Ushijima  
President & CEO

The mission of The Queen’s Health Systems is to fulfill the intent of Queen Emma and King Kamehameha IV to provide in perpetuity quality health care services to improve the well-being of Native Hawaiians and all of the people of Hawai`i.
September 28, 2018

The Honorable Jennifer Ruggles  
Hawai‘i County Council  
25 Aupuni Street, Suite 1402  
Hilo, HI 96720

Re: Letter dated September 20, 2018 – War Crimes

Dear Council Member Ruggles:

Thank you for your letter addressed to Arthur Ushijima dated September 20, 2018. This acknowledges receipt of your letter.

Very truly yours,

John S. Nitao  
Vice President and General Counsel

Cc: Arthur Ushijima, CEO
HAWAIʻI COUNTY COUNCIL

September 23, 2018

The Honorable Judge James H. Ashford
The Honorable Judge Bert I. Ayabe
The Honorable Judge R. Mark Browning
The Honorable Judge Jeannette Castagnetti
The Honorable Judge Gary W.B. Chang
The Honorable Judge Jeffrey P. Crabtree
The Honorable Judge Virginia L. Crandall
The Honorable Judge Todd W. Eddins
The Honorable Judge Colette Y. Garibaldi
The Honorable Judge Keith K. Hiraoka
The Honorable Judge Shirley M. Kawamura
The Honorable Judge Glenn J. Kim
The Honorable Judge Edward H. Kubo, Jr.
The Honorable Judge Christine E. Kuriyama
The Honorable Judge Edwin C. Nacino
The Honorable Judge Karen T. Nakasone
The Honorable Judge Dean E. Ochiai
The Honorable Judge Rowena Somerville
The Honorable Judge Faʻauuga L. Toʻotoʻo
The Honorable Judge Rom A. Trader
The Honorable Judge Matthew J. Viola
The Honorable Judge Paul B.K. Wong
First Circuit Court
Kaʻahumanu Hale
777 Punchbowl Street
Honolulu, HI 96813-5093
Dear Judge Ashford:

I am an elected public official 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, 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. 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 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 was prevented from concluding that the occupying State violated Mr. Larsen’s rights because the U.S. wasn’t present to answer to

---


\(^3\) Id., p. 2-3.

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.\textsuperscript{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 the 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:

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.

\textsuperscript{5} Illegal State of War, p. 3-4.
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.” 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.” 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, this 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. 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 Hawaiian territory even when their country, the United States, is at war with the Hawaiian Kingdom. Under Chapter VI of the Hawaiian Penal Code, it 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. According to the ICRC, “Whether a war is ‘just’ or ‘unjust’, whether it is a war of aggression or of resistance to aggression, whether the intention is to merely occupy territory or to annex it, in no way affects the treatment protected persons should receive.”

---

7 *Id.*, p. 275.  
10 *Id.*, p. 16-17.
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.”\(^\text{11}\) I am also bound “to respect and ‘ensure respect for’ the Convention in all circumstances”\(^\text{12}\) by every and all agents of the United States as the occupying State.

My first order of business as an agent was to inquire of Hawai‘i County Corporation Counsel, legal counsel for the Council, Mr. Joe Kamelamela, as to whether I have incurred criminal liability for legislating United States law as a Council member in violation of Article 43 of the HCIV and Article 64 of the GCIV. To do this I retained legal counsel and a letter was sent to Mr. Kamelamela on August 21, 2018.\(^\text{13}\) The following day Mr. Kamelamela wrote me an unacceptable opinion by stating that I “will not incur any criminal liability under state, federal and international law.”\(^\text{14}\)

**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.\(^\text{15}\) 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.”\(^\text{16}\) “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.”\(^\text{17}\) I understand this phrase to mean the entire legal order of the Hawaiian Kingdom.

---

\(^\text{12}\) Id.
\(^\text{16}\) ICRC Commentary, Article 47, p. 273
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 HCVI 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 HCVI and the GCIV and ensure respect for the conventions in all circumstances as they apply throughout the territory of the Hawaiian Kingdom.

Conveyance of Real Property under Hawaiian Kingdom law

Private ownership interests in real estate in the Hawaiian Kingdom began in 1845 with fee-simple, life estates, leasehold properties, and mortgages being recorded in the Bureau of Conveyances. The Bureau of Conveyances served as the public registry and was established by joint resolution approving the Second Act of Kamehameha III entitled An Act to Organize the Executive Departments of the Hawaiian Islands (April 27, 1846). §1255 of the Hawaiian Civil Code provides:

To entitle any conveyance, or other instrument to be recorded, it shall be acknowledged by the party or parties executing the same, before the Registrar of Conveyances, or his agent, or some judge of a court of record, or notary public of this Kingdom, or before some minister, commissioner or consul of the Hawaiian Islands, or some notary public or judge of a court of record in any foreign country.

Under Section 5 of an Act Requiring the Identification of Persons offering Acknowledgments to Instruments (1872), “No certificate of acknowledgment contrary to the provisions of this Act shall be held valid in any court of this Kingdom, nor shall it be entitled to be recorded in the Registry of Public Conveyances.” After the United States illegally overthrew the Hawaiian Kingdom government on January 17, 1893, real property was incapable of being conveyed or mortgaged as liens to secure loans. President Cleveland in his message to the Congress referred to members of the so-called provisional government as “insurgents.” He stated the Queen,

had possession of the palace, of the barracks, and of the police station, and had at her command at least five hundred fully armed men and several pieces of artillery. Indeed, the whole military force of her kingdom was on her side… In this state of things if the Queen could have dealt with
the insurgents alone her course would be plain and the result unmistakable. But the United States had allied itself with her enemies, had recognized them as the true Government of Hawaii, and had put her and her adherents in the position of opposition against lawful authority. She knew that she could not withstand the power of the United States, but she believed that she might safely trust to its justice.\footnote{Cleveland’s Message, p. 453.}

The insurgency was not a government but rather a puppet of the United States, and, therefore, real property could not be conveyed or mortgaged after January 17, 1893. The imposition of United States laws since the fraudulent annexation in 1898 did not alter this situation.

**All Titles to Real Property and Mortgages in the Hawaiian Islands are Defective**

Before lenders loan money they require the borrower to mortgage their real estate as collateral to secure the repayment of the loan. But before the lender accepts the mortgaged property as collateral, the lender requires the borrower to also purchase a loan title insurance policy for the protection of the lender that covers the full debt owed under the promissory note.

Escrow companies provide the service of doing a title search on the proposed mortgage property in order to ensure that the borrower has clear title to mortgage. If the title search finds no defects in the title, a title insurance company will underwrite the title report and provide insurance coverage to the lender for the amount borrowed. Black’s Law dictionary defines title insurance as a “policy issued by a title company after searching the title, representing the state of that title and insuring the accuracy of its search against claims of title defects.”\footnote{Black’s Law Dictionary (1990), p. 806.} As an indemnity contract, the insurance policy does not guarantee the state of the title but covers loss incurred from a defect in title that would arise from an inaccurate title report.

According to the American Land Title Association, the following are covered risks for an insurance claim of a defect in title and/or mortgage, which include:

- (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
- (ii) failure of any person or Entity to have authorized a transfer or conveyance;
- (iii) a document affecting title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
- (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
- (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
- (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
- (vii) a defective judicial or administrative proceeding.\footnote{See American Land Title Association’s *Title Insurance: A Comprehensive Overview*, available at https://www.alta.org/press/TitleInsuranceOverview.pdf.}

\footnote{18 Cleveland’s Message, p. 453.} \footnote{19 Black’s Law Dictionary (1990), p. 806.} \footnote{20 See American Land Title Association’s *Title Insurance: A Comprehensive Overview*, available at https://www.alta.org/press/TitleInsuranceOverview.pdf.}
The aforementioned coverages apply to all land titles in the Hawaiian Islands due to the failure to administer Hawaiian Kingdom law according to the HCIV and GCIV. As covered risks, the lenders are protected regarding the debts owed to them by the borrowers, and the borrowers are protected if they purchased an owner’s title insurance policy. Section 1109 of the HUD-1 statement of closing costs at escrow would disclose the borrower’s purchase of a loan title insurance policy, and section 1110 would disclose the purchase of an owner’s title insurance policy.

**Plundering Private Property**

Article 46 of the HCIV provides, “Private property cannot be confiscated.” Article 47 of the GCIV provides, “Pillage is formally forbidden.” To plunder is to pillage. Black’s Law dictionary defines plunder as to “pillage or loot. To take property from persons or places by open force, and this may be in course of war... The term is also used to express the idea of taking property from a person or place, without just right.” According to the United Nations Independent Expert there is an: ongoing plundering of the Hawaiians’ land, 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.

The ‘wrongful taking of private lands’ by lenders, through the circuit courts of the State of Hawai‘i under foreclosure proceedings, is the war crime of pillaging. The courts are complicit in the war crime by enabling and colluding ‘in the wrongful taking of private lands.’ “Conspiracy... as well as complicity in the commission of... war crimes are punishable.” As an agent for the United States I am bound ‘to ensure respect for the Convention in all circumstances,’ and, therefore, call upon you to cease and desist ‘in the wrongful taking of private lands’ from protected persons that are under foreclosure. The lender is protected under the loan title insurance policy that was purchased by the borrower as a condition of the loan. As such, there is no reason to have any foreclosure proceedings in the first place because the defects in titles have rendered all mortgage liens invalid.

This letter serves as 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 to protected persons.

---

21 Black’s Law, p. 1154.
Sincerely,

Jennifer Ruggles
Hawai‘i County Council Member

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**

<table>
<thead>
<tr>
<th>Case name</th>
<th>Larsen v. Hawaiian Kingdom</th>
</tr>
</thead>
<tbody>
<tr>
<td>Case description</td>
<td>Lance Paul Larsen, a resident of Hawaii, brought a claim against the Hawaiian Kingdom by its Council of Regency (&quot;Hawaiian Kingdom&quot;) 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.</td>
</tr>
<tr>
<td>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.</td>
<td></td>
</tr>
<tr>
<td>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.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name(s) of claimant(s)</th>
<th>Lance Paul Larsen (Private entity)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name(s) of respondent(s)</td>
<td>The Hawaiian Kingdom (State)</td>
</tr>
<tr>
<td>Names of parties</td>
<td></td>
</tr>
<tr>
<td>Case number</td>
<td>1999-01</td>
</tr>
<tr>
<td>Administering institution</td>
<td>Permanent Court of Arbitration (PCA)</td>
</tr>
<tr>
<td>Case status</td>
<td>Concluded</td>
</tr>
<tr>
<td>Type of case</td>
<td>Other proceedings</td>
</tr>
<tr>
<td>Subject matter or economic sector</td>
<td>Treaty interpretation</td>
</tr>
<tr>
<td>Rules used in arbitral proceedings</td>
<td>UNCITRAL Arbitration Rules 1976</td>
</tr>
<tr>
<td>Treaty or contract under which proceedings were commenced</td>
<td>The 1849 Treaty of Friendship, Commerce and Navigation with the United States of America</td>
</tr>
<tr>
<td>Language of proceeding</td>
<td>English</td>
</tr>
<tr>
<td>Seat of arbitration (by country)</td>
<td>Netherlands</td>
</tr>
</tbody>
</table>
| 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 |
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
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