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UNIVERSITY INSTITUTE

MEMORANDUM

Date: 14 December 2018

To: United Nations Secretary General, António Guterres
and Member States of the United Nations

From: Dr. Alfred M. de Zayas
Professor of Law, Geneva School of Diplomacy
United Nations Independent Expert on the promotion of a democratic and equitable
international order (May 2012-April 2018)

Re: The application of international law in the context of the Hawaiian Islands

On 25, February 2018, in my capacity as Professor of Law and UN Independent Expert for the promotion of a democratic and equitable international order, I stated in a Memorandum to Honorable Jeanette H. Castagnetti, Honorable Gary W.B. Chang, and members of the U.S. State of Hawaii Judiciary;

"... 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)."

My memorandum was based on knowledge obtained during decades of work as a lawyer with the Office of the UN High Commissioner for Human Rights, followed by six years as Human Rights Council mandate holder, spanning the study of reports, complaints, interventions and petitions submitted by Hawaiians to various Committees and bodies of the United Nations with regard to the situation of the Hawaiian Islands.

Legal and historical questions raised by Hawaiians at the United Nations regarding the political status of the Hawaiian Islands stretch back over forty years. Admittedly controversial and complex, these issues were relevant to my mandate pursuant to Human Rights Council Resolution 18/6, which emphasizes the necessity to implement the *jus cogens* right of self-determination.

On 17 December 2017 a Petition/Complaint from Madam Routh Bolomet was submitted to the United Nations Office of the High Commissioner for Human Rights, calling for an investigation and correction of GA Resolution 1469 of 12 December 1959. Madam Bolomet maintains that said GA Resolution 1469 in effect, makes the United Nations and its Member States complicit in human rights violations that stem from the wrongful occupation of the Hawaiian Islands by the United States of America. Among the most egregious of abuses being aided and abetted by UN GA Resolution 1469 is the wrongful seizure of private lands from the heirs and descendants who hold original allodial titles (absolute titles in perpetuity) issued by the sovereign King Kamehameha III, under the laws of the Hawaiian Kingdom. Madam Bolomet is one of the rightful heirs to these inalienable lands that were summarily taken by the occupier.

Private Lands in an occupied territory are protected under the Fourth Geneva Convention and Article 42 of the 1907 Hague Regulations (HR) that states a "*...territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.*" According to their common Article 2, the Fourth Geneva Convention of 1949 applies to any territory occupied during international hostilities. They also apply in situations where the occupation of state territory meets with no armed resistance. While the entry into force of the Hague and Geneva Conventions are subsequent to the overthrow of the Hawaiian Kingdom by the United States in 1893, the hostile actions perpetrated by the occupiers since 1893 entail continuing violations of fundamental rules of international law and human rights. By analogy, it should be remembered that the colonisation and exploitation of sovereign peoples in Asia and Africa were gradually phased out in the 20th century, and that the international community supported the aspiration of many peoples to exercise their right of self-determination, whereas in Hawaii the occupation and spoliation persists to this day, in gross violation of the human rights of the Hawaiian people.

Every occupation of territory is subject to the UN Charter and is regulated by international law. Once a situation exists which factually amounts to an occupation, the laws of occupation should be applied – whether or not the occupation is considered lawful, what its aim is or whether it is called an “invasion”, “liberation”, “administration” or “occupation.” As the law of occupation is primarily motivated by human rights and humanitarian considerations, it is solely the facts on the ground, that determine its application.

The duties of the occupying power are spelled out in the 1907 Hague Regulations (articles 42-56) and the Fourth Geneva Convention (GC IV, articles 27-34 and 47-78), as well as in certain provisions of Additional Protocol I and customary international humanitarian law.

The occupying power and the local authorities cannot deprive the population of an occupied territory of the protection afforded by international humanitarian law (GC IV, article 47). Under those laws the people of Hawaii are internationally protected persons, and under no circumstance can protected persons be deprived of their rights or coerced into renouncing their rights (GC IV, article 8). Mme Bolomet is, therefore an internationally protected person.

The main rules of the law applicable to Mme Bolomet’s complaint are:

- 1) *The occupying power does not acquire sovereignty over the territory.*
- 2) *The occupying power must respect the laws in force in the occupied territory, unless they constitute a threat*

to its security or an obstacle to the application of the international law of occupation. 3) Reprisals against protected persons or their property are prohibited. 4) The confiscation of private property by the occupier is prohibited.

Madam Bolomet not only meets the definition of a Civilian Protected Person under Geneva Convention (IV) defined in the 12 August 1949. COMMENTARY OF 1958 [p.45] ARTICLE 4; as a direct descendant of several Hawaiian Kingdom High Ali'i (Royalty), thus also qualifying as a descendant of a Head of State for "International Protected Person" status under the Protection of Diplomats Convention the UNGA adopted 14 December 1973.

A central provision of the convention is the principle of *aut dedere aut judicare* — that a party to the treaty must either (1) prosecute a person who commits an offence against an internationally protected person or (2) send the person to another state that requests his or her extradition for prosecution of the same crime.

All members of the State of Hawaii Judiciary are required to take an oath to uphold the U.S. Constitution. Article VI, Paragraph 2 of the U.S. Constitution, establishes that federal laws made pursuant to it, and treaties (such as the Geneva and Hague conventions) duly ratified, constitute **the supreme law of the land**. This is also the tenor of the US Supreme Court judgment in the *Paquete Habana* case (175 U.S. 677 (1900)) <https://supreme.justia.com/cases/federal/us/175/677/>

Therefore, judges and other officers of the courts of the State of Hawaii are bound by their oaths to respect, honor and apply such international laws to which the United States has subscribed. The judges and justices serving in the U.S. State of Hawaii judicial system are bound by their oaths of office to comply with appropriate international laws when applicable. But numerous complaints submitted to the UN indicate the judges and justices of the U.S. State of Hawaii completely disregard and even display contempt for international laws.

The ongoing plundering of Hawaiian Kingdom Private Lands by the legal systems of the United States and the State of Hawaii calls for an emergency investigation and intervention holding all those who are willful participants to be held accountable to U.S. Federal and international law. It is my understanding that the U.S. Executive Office and the U.S. Department of State have been put on notice of Mme Bolomet's "International Protected Person's Status" as a Hawaiian Kingdom subject as well as an heir of the Head of State; King Kamehameha I. But those U.S. offices have refused to acknowledge Mme Bolomet's status and have not made any effort to provide relief. Therefore, by *aut dedere aut judicare*, all signatories to the Hague and Geneva Conventions have a legitimate interest and an *erga omnes* obligation to hold wrong doers to the highest standard of compliance to the Conventions.

Respectfully,



Dr. Alfred M. deZayas

UN Independent Expert on the promotion of a democratic and equitable international order 2012-2018...

