

national lawyers guild

"An organization of lawyers, law students, legal workers, and jailhouse lawyers... in the service of the people, to the end that human rights shall be regarded as more sacred than property interests." Preamble to the NLG Constitution

November 10, 2020

Dear Governor Ige, State of Hawai'i;

The National Lawyers Guild (NLG), the oldest and largest progressive bar association in the United States, with 70 chapters and more than 6,000 members, calls upon the State of Hawai'i and its County governments, as the proxy of the United States, which is in effective control of Hawaiian territory, to immediately comply with international humanitarian law while the United States continues its prolonged and illegal occupation of the Hawaiian Kingdom since 1893.

International humanitarian law recognizes that proxies of an occupying State, which are in effective control of the territory of the occupied State, are obligated to administer the laws of the occupied State. The State of Hawai'i and its County governments, and not the Federal government, meet this requirement of effective control of Hawaiian territory under Article 42 of the 1907 Hague Regulations, and need to immediately comply with the law of occupation. The United States has been in violation of international law for over a century, exercising, since 1893, the longest running belligerent occupation of a foreign country in the history of international relations without establishing an occupying government.

In *Larsen v. Hawaiian Kingdom* (2001), the Permanent Court of Arbitration recognized "that in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States." [1] The lack of any U.S. congressional authority to unilaterally annex a foreign State's territory without a treaty was noted in a 1988 memorandum by the Office of Legal Counsel of the U.S. Department of Justice where it concluded "It is therefore unclear which constitutional power of Congress exercised when it acquired Hawaii by joint resolution." [2]

Its author, Douglas Kmiec, cited constitutional scholar Westel Willoughby:

"The constitutionality of the annexation of Hawaii, by a simple legislative act, was strenuously contested at the time both in Congress and by the press. The right to annex by treaty was not denied, but it was denied that this might be done by a simple legislative act. ... Only by means of treaties, it was asserted, can the relations between States be governed, for a legislative act is necessarily without extraterritorial force—confined in its operation to the territory of the State by whose legislature it is enacted." [3]

On February 25, 2018, Dr. Alfred M. deZayas, a United Nations Independent Expert, communicated to two State of Hawai'i trial judges and members of the judiciary:

"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).” [4]

The NLG International Committee established a Hawaiian Kingdom Subcommittee in March of 2019 [5], and in December of 2019, the NLG’s full membership voted and passed a resolution on the independent sovereign State of the Hawaiian Kingdom that was introduced at its annual convention in Durham, North Carolina: “the National Lawyers Guild calls upon the United States of America immediately to begin to comply with international humanitarian law in its prolonged and illegal occupation of the Hawaiian Islands.” [6]

On January 13, 2020, the NLG publicly elaborated its position regarding the prolonged occupation of the Hawaiian Kingdom. [7]

- NLG strongly condemns the prolonged and illegal occupation of the Hawaiian Islands.
- NLG also condemns the unlawful presence and maintenance of the United States Indo-Pacific Command with its 118 military sites throughout the Hawaiian Islands, which has caused the islands to be targeted for nuclear strike by North Korea, China and Russia.
- NLG calls for the United States to immediately comply with international humanitarian law and begin to administer the laws of the Hawaiian Kingdom as the occupied State.
- NLG calls on the legal and human rights community to view the United States presence in the Hawaiian Islands through the prism of international law and to roundly condemn it as an illegal occupation under international law.
- NLG supports the Hawaiian Council of Regency, who represented the Hawaiian Kingdom at the Permanent Court of Arbitration, in its efforts to seek resolution in accordance with international law as well as its strategy to have the State of Hawai‘i and its Counties comply with international humanitarian law as the administration of the Occupying State.
- NLG calls on all United Nations member States and non-member States to not recognize as lawful a situation created by a serious violation of international law, and to not render aid or assistance in maintaining the unlawful situation. As an internationally wrongful act, all States shall cooperate to ensure the United States complies with international humanitarian law and consequently bring to an end the unlawful occupation of the Hawaiian Islands.

Dr. Keanu Sai, Chairman of the Council of Regency, a recognized scholar and co-chair of the NLG’s Hawaiian Kingdom Subcommittee, is also the Head of the Royal Commission of Inquiry (RCI). The RCI’s mandate is to investigate war crimes and human rights violations committed in the Hawaiian Kingdom and to provide recommendations in order to hold to account those individuals who committed war crimes and human rights violations in accordance with international humanitarian law. [8]

Dr. Federico Lenzerini, a professor of international law from the University of Siena, Italy, authored a legal opinion affirming the lawful authority of the Council of Regency under international humanitarian law, and, thereby, the RCI's investigative authority. [9] The NLG supports the actions taken by the Council of Regency and the RCI in its efforts to ensure compliance with the international laws of occupation by the United States and the State of Hawai'i and its Counties.

As an organization committed to the mission that human rights and the rights of ecosystems are more sacred than property interests, the NLG is deeply concerned that international humanitarian law continues to be flagrantly violated with apparent impunity by the State of Hawai'i and its County governments. This has led to the commission of war crimes and human rights violations of a colossal scale throughout the Hawaiian Islands. International criminal law recognizes that the civilian inhabitants of the Hawaiian Islands are "protected persons" who are afforded protection under international humanitarian law and their rights are vested in international treaties. There are no statutes of limitation for war crimes, as you must be aware.

We urge you, Governor Ige, to proclaim the transformation of the State of Hawai'i and its Counties into an occupying government pursuant to the Council of Regency's proclamation of June 3, 2019, in order to administer the laws of the Hawaiian Kingdom. [10] This would include carrying into effect the Council of Regency's proclamation of October 10, 2014 that bring the laws of the Hawaiian Kingdom in the nineteenth century up to date. [11] We further urge you and other officials of the State of Hawai'i and its Counties to familiarize yourselves with the contents of the recent eBook published by the RCI and its reports that comprehensively explains the current situation of the Hawaiian Islands and the impact that international humanitarian law and human rights law have on the State of Hawai'i and its inhabitants. [12]

Best Regards,

National Lawyers Guild

[1] *Larsen v. Hawaiian Kingdom*, 119 *Int'l L. Reports* 566, 581 (2001); see also *Larsen v. Hawaiian Kingdom*, Permanent Court of Arbitration, PCA Case no. 1999-01: <https://pca-cpa.org/en/cases/35/>.

[2] Douglas W. Kmiec, "Legal Issues Raised by Proposed Presidential Proclamation To Extend the Territorial Sea," 12 *Op. O.L.C.*, 238, 252 (1988): https://hawaiiankingdom.org/pdf/1988_Opinion_OLC.pdf.

[3] *Ibid.*

[4] https://hawaiiankingdom.org/pdf/Dr_deZayas_Memo_2_25_2018.pdf

[5] <https://www.nlg.org/guild-notes/article/nlg-international-committee-announces-new-hawaiian-kingdom-subcommittee/>

[6] <https://www.nlg.org/wp-content/uploads/2019/08/Hawaiian-Subcommittee-Resolution-Final.pdf>

[7] <https://www.nlg.org/nlg-calls-upon-us-to-immediately-comply-with-international-humanitarian-law-in-its-illegal-occupation-of-the-hawaiian-islands/>

[8] <https://hawaiiankingdom.org/royal-commission.shtml>

[9] https://hawaiiankingdom.org/pdf/RCI_Preliminary_Report_Regency_Authority.pdf

[10] https://hawaiiankingdom.org/pdf/Proc_Recognizing_State_of_HI.pdf

[11] https://hawaiiankingdom.org/pdf/Proc_Provisional_Laws.pdf

[12] <https://hawaiiankingdom.org/royal-commission.shtml>