

Native Hawaiian Law A Treatise

Chapter 6 Native Hawaiians And International Law

Native Hawaiian Law: A Treatise, Chapter 6 - Native Hawaiians and International Law

The unique legal status of Native Hawaiians presents a complex tapestry woven from customary practices, US federal law, and international human rights frameworks. This article delves into the intersection of Native Hawaiian law and international law, specifically exploring the implications discussed in a hypothetical "Chapter 6: Native Hawaiians and International Law" of a treatise on Native Hawaiian law. This exploration will touch upon key themes such as **self-determination, indigenous rights, land rights, and cultural preservation**, examining how international legal norms interact with and potentially inform the ongoing struggle for Native Hawaiian sovereignty.

Introduction: Navigating the Intersection of Indigenous Rights and International Law

Understanding the relationship between Native Hawaiians and international law requires acknowledging the historical context of annexation and the subsequent erosion of Native Hawaiian governance. While the US government holds ultimate sovereignty over Hawai'i, international law increasingly recognizes the rights of Indigenous peoples to self-determination, cultural preservation, and the protection

of their ancestral lands. This chapter would analyze how these international norms, enshrined in instruments like the **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)**, can be leveraged to advance Native Hawaiian claims and aspirations. The application of international law in this context is complex, however, due to the unique political and legal situation of Hawai'i within the US.

Self-Determination and the Pursuit of Sovereignty: A Core Tenet

A central theme in any discussion of Native Hawaiians and international law is the principle of self-determination. This principle, affirmed by numerous international instruments, grants Indigenous peoples the right to freely determine their political status and pursue their economic, social, and cultural development. Chapter 6 of the hypothetical treatise would likely explore the various avenues through which Native Hawaiians might seek to exercise this right. This might include exploring the possibility of greater autonomy within the existing US framework, pursuing greater control over land and resources, or even advocating for a renewed recognition of Hawaiian nationhood. The legal arguments would draw heavily upon UNDRIP's affirmation of the right to self-determination as a fundamental human right for Indigenous peoples globally.

Land Rights and the Protection of 'Āina: A Sacred Connection

The concept of **'āina** (land) holds profound spiritual and cultural significance for Native Hawaiians. Chapter 6 would undoubtedly dedicate significant attention to the complex interplay between international legal frameworks concerning Indigenous land rights and the specific claims of Native Hawaiians. This includes exploring how international norms concerning free, prior, and informed consent (FPIC) relate to land management decisions impacting Native Hawaiian communities. It would also examine the role of international mechanisms for redress in situations where Native Hawaiian land rights have been violated, either historically or in the present day. The chapter might delve into case studies of successful applications of international human rights law related to land claims by other Indigenous groups to illustrate potential strategies for Native

Hawaiians.

Cultural Preservation and the Revitalization of Hawaiian Culture: A Vital Aspect

The preservation and revitalization of Hawaiian culture are inextricably linked to the well-being of the Native Hawaiian people. Chapter 6 would analyze how international human rights law, specifically its emphasis on the right to culture, provides a framework for supporting these efforts. This might involve exploring the role of international organizations in providing funding and expertise for cultural preservation initiatives. It could also address the challenges of balancing cultural preservation with economic development and the potential conflicts between traditional practices and modern legal systems. The chapter might discuss successful examples of cultural revitalization programs undertaken by Indigenous communities elsewhere, highlighting best practices and offering potential lessons for Native Hawaiians.

The Role of International Courts and Mechanisms: Seeking Justice on a Global Stage

Chapter 6 would also explore the potential role of international courts and human rights mechanisms in addressing the concerns of Native Hawaiians. While direct recourse to international courts may be limited given Hawai'i's status as a US state, there are avenues for pursuing claims through international human rights bodies such as the UN Human Rights Committee. The chapter would assess the feasibility and potential effectiveness of such strategies, considering the complexities of jurisdiction and the potential political sensitivities involved. The examination would include an analysis of past successful cases involving Indigenous rights violations globally to illuminate possible pathways for future action.

Conclusion: Charting a Path Forward Through International Law

The intersection of Native Hawaiian law and international law presents both challenges and opportunities. While the US government's sovereignty remains paramount, the growing recognition of Indigenous rights within international law provides a valuable framework for advancing Native Hawaiian claims. By strategically engaging with international legal norms, institutions, and mechanisms, Native Hawaiians can strengthen their efforts to achieve greater self-determination, protect their 'āina, and revitalize their unique culture. A comprehensive treatise, including a dedicated chapter on international law, would serve as a crucial tool for educating, empowering, and guiding Native Hawaiians in their pursuit of justice and self-determination.

FAQ

Q1: Does UNDRIP apply directly to Native Hawaiians in the US context?

A1: While UNDRIP doesn't have direct legal force within the US, it serves as a powerful normative framework that influences domestic legal interpretations and policy decisions. The US has affirmed its commitment to UNDRIP's principles, though the extent of its implementation remains a subject of debate and ongoing advocacy. Native Hawaiians can and do use UNDRIP's provisions as a persuasive tool in advocating for their rights.

Q2: What international organizations are relevant to Native Hawaiian issues?

A2: Several organizations, including the UN Permanent Forum on Indigenous Issues (UNPFII), the International Labour Organization (ILO), and the Inter-American Commission on Human Rights, address Indigenous rights. These bodies provide platforms for raising awareness, advocating for policy changes, and seeking redress for rights violations.

Q3: What are the limitations of using international law to

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advance Native Hawaiian claims?

A3: Key limitations include the US's sovereignty over Hawai'i, the complexities of jurisdiction, and the potential reluctance of US courts to defer to international legal norms in domestic legal proceedings. Further, political considerations often influence the practical application of international law at the national level.

Q4: Can Native Hawaiians directly sue the US government in international courts?

A4: Direct recourse to international courts is generally limited due to state sovereignty. However, avenues exist for submitting communications to treaty bodies like the UN Human Rights Committee or the Inter-American Commission on Human Rights, which can investigate alleged human rights violations.

Q5: What is the role of customary international law in the context of Native Hawaiian rights?

A5: Customary international law, based on widespread and consistent state practice, can contribute to the legal framework. Principles like self-determination and Indigenous rights, though not codified in a single treaty, have gained significant recognition through customary international law.

Q6: How can international law support the economic development of Native Hawaiian communities?

A6: International law, particularly through development assistance programs and initiatives promoting sustainable development, can support economic opportunities that respect Native Hawaiian cultural values and land rights. This includes initiatives focusing on sustainable tourism, agriculture, and cultural heritage preservation.

Q7: What is the significance of Free, Prior, and Informed Consent (FPIC) for Native Hawaiians?

A7: FPIC is crucial for ensuring that any development or land management decisions impacting Native Hawaiians are made with their full and informed consent. It affirms their right to control their own destiny and resources.

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Q8: What are the future implications of engaging with international law for Native Hawaiians?

A8: Continued engagement with international law can provide a powerful framework for advocating for self-determination, land rights, and cultural preservation. By strategically using international norms and mechanisms, Native Hawaiians can enhance their ability to assert their rights and participate in shaping their own future.

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Introduction:

This chapter delves into the complex intersection of Native Hawaiian claims and international law. For centuries, the special legal and cultural heritage of Native Hawaiians has been shaped by both internal and external powers. Understanding how international legal frameworks relate to their situation is crucial for achieving self-determination and protecting their ancestral heritage. This exploration examines the relevance of international human rights law, international environmental law, and the principles of self-determination within the context of the Native Hawaiian experience.

Main Discussion:

The relationship between Native Hawaiians and international law is complex. It's not simply a matter of applying pre-existing legal norms; rather, it involves a ongoing process of negotiation and adaptation.

1. International Human Rights Law: The Universal Declaration of Human Rights (UDHR) and subsequent international covenants provide a strong foundation for asserting Native Hawaiian rights. Articles concerning self-determination, cultural rights, and the right to land are particularly applicable. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) further strengthens this structure by explicitly prohibiting discrimination based on race and origin. However, the enforcement of these instruments within the context of the US legal system poses substantial difficulties. For instance, harmonizing the principle of self-determination with the US's federal structure requires sensitive consideration.

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2. International Environmental Law: The strong spiritual and cultural bond between Native Hawaiians and their ecosystem is unparalleled. International environmental law, including conventions on biodiversity, climate change, and the protection of indigenous knowledge, provides a significant forum for advocating for the conservation of Hawaiian ecological resources. The destruction of sacred sites and ecosystems represents not only an ecological crisis but also a spiritual one. International legal mechanisms can be utilized to emphasize awareness and to seek redress for natural injustices.

3. Self-Determination: The principle of self-determination, enshrined in the UN Charter and other international instruments, is central to the Native Hawaiian struggle. This principle grants peoples the right to freely determine their political status and pursue their economic, social, and cultural development. While the US government recognizes the right to self-determination in a confined sense, the scope of this right for Native Hawaiians stays a subject of persistent dispute. The problem of sovereignty and the position of the Native Hawaiian nation within the US federal system are key aspects of this ongoing fight.

4. International Courts and Mechanisms: While direct recourse to international courts may be limited due to the domestic legal framework, Native Hawaiians can use other international mechanisms, such as submitting information to UN treaty bodies, participating in special procedures, and participating in international forums to raise their concerns and advocate for their rights. This implicit engagement can impact international opinion and influence the US government to deal with the underlying concerns.

Conclusion:

The interplay between Native Hawaiian law and international law is a challenging but important area of study. The application of international human rights law, environmental law, and the principle of self-determination provides a effective framework for defending Native Hawaiian rights and interests. While difficulties certainly exist in handling the relationship between domestic and international legal systems, the ongoing engagement with international law provides a crucial means towards achieving self-determination and securing a just future for the Native Hawaiian people. Further research and strategic defense are necessary to further develop and implement these legal strategies.

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Frequently Asked Questions (FAQ):

1. **Q:** Can Native Hawaiians directly sue the US government in international courts?

A: Direct access to international courts is generally limited due to the principle of state sovereignty. However, they can use other mechanisms like reporting to UN treaty bodies.

2. **Q:** What is the significance of international environmental law for Native Hawaiians?

A: It provides tools to protect sacred sites and ecosystems crucial to their cultural and spiritual identity, addressing both environmental and cultural damage.

3. **Q:** How does the principle of self-determination apply to Native Hawaiians?

A: It's a complex issue. While the US acknowledges self-determination, the extent to which it applies to Native Hawaiians within the US federal system remains a point of ongoing debate.

4. **Q:** What role can international NGOs play in supporting Native Hawaiian rights?

A: NGOs play a vital role by raising awareness internationally, providing technical assistance, and advocating for Native Hawaiian interests at international forums.

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