

RULES OF PROCEDURE

SECTION I. INTRODUCTORY RULES

Scope of Application

Article 1

1. The fact-finding proceedings shall be conducted in accordance with Special Agreement of January 19, 2017, Part III of the 1907 Hague Convention for the Pacific Settlement of Disputes and these Rules.
2. The Secretary General designated by the Commission of Inquiry shall act as registry and shall provide administrative support in the fact-finding proceedings.

Notice, Calculation of Periods of Time

Article 2

1. For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received when it has been delivered to the addressee. Notice shall be deemed to have been received on the day it is so delivered.
2. For the purposes of paragraph 1 of this article, “delivered” includes delivery by electronic means.
3. For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received. If the last day of such period is an official holiday or a non-work day in the State of the addressee, the period is extended until the first workday, which follows. Official holidays or non-work days occurring during the running of the period of time are included in calculating the period.
4. The time zone by which periods of time shall be calculated is that of Hawai‘i Standard Time. Deadlines for submissions and other notifications, communications, and proposals shall expire at midnight on the date due under such designated time zone.

Representation and Assistance

Article 3

Each party shall appoint an agent. The parties may also be assisted by persons of their choice. The name and address of the agent must be communicated in writing to the other party, to the Secretary General and to the commission of inquiry after its members have been appointed.

SECTION II. COMPOSITION OF THE COMMISSION OF INQUIRY

Commissioners

Article 4

For the purposes of these Rules, “commissioner” or “commissioners” refers to those appointed or approved by the parties in accordance with the *Special Agreement*.

Challenge to Commissioners

Article 5

A prospective commissioner shall disclose to those who approach him/her in connection with his/her possible appointment any circumstances likely to give rise to justifiable doubts as to his/her impartiality or independence. A commissioner, once appointed or chosen, shall disclose such circumstances to the parties unless they have already been informed by him/her of these circumstances.

Article 6

1. Any commissioner may be challenged if circumstances exist that give rise to justifiable doubts as to the commissioner’s impartiality or independence.
2. Either party may challenge the commissioner appointed by that party only for reasons of which the party becomes aware after the appointment has been made.

Article 7

1. A party who intends to challenge a commissioner shall send notice of its challenge within thirty days after the appointment of the challenged commissioner has been notified to the challenging party or within thirty days after the circumstances mentioned in articles 5 and 6 became known to that party.
2. The challenge shall be notified to the other party, to the commissioner who is challenged and to the other members of the commission. The notification shall be in writing and shall state the reasons for the challenge.
3. When a commissioner has been challenged by one party, the other party may agree to the challenge. The commissioner may also, after the challenge, withdraw from his/her office. In neither case does this imply acceptance of the validity of the grounds for the challenge. In both cases the procedure provided in *Special Agreement* shall be used in full for the appointment of the substitute commissioner, even if during the process of appointing the challenged commissioner a party had failed to exercise its right to appoint or to participate in the appointment.

Article 8

1. If the other party does not agree to the challenge and the challenged commissioner does not withdraw, the decision on the challenge shall be made by the Secretary-General.
2. If the Secretary-General sustains the challenge, a substitute commissioner shall be appointed or chosen pursuant to the procedure set out in the *Special Agreement*.

Replacement of a Commissioner

Article 9

1. In the event of the death or resignation of a commissioner during the course of the fact-finding proceedings, a substitute commissioner shall be appointed or chosen pursuant to the procedure set out in the *Special Agreement*. Any resignation by a commissioner shall be addressed to the commission and shall not be effective unless the commission determines that there are sufficient reasons to accept the resignation, and if the commission so determines the resignation shall become effective on the date designated by the commission.
2. In the event that a commissioner fails to act or in the event of the *de jure* or *de facto* impossibility of his/her performing his/her functions, the procedure in respect of the challenge and replacement of a commissioner as provided in the *Special Agreement*, the 1907 Hague Convention, and these Rules shall apply.

Repetition of Hearings in the Event of the Replacement of a Commissioner

Article 10

If the presiding commissioner is replaced under articles 7 through 9, any hearings held previously shall be repeated; if any other commissioner is replaced, such prior hearings may be repeated at the discretion of the commission.

SECTION III. FACT-FINDING PROCEEDINGS

General Provisions

Article 11

1. Subject to the provisions of the *Special Agreement*, the 1907 Hague Convention, and these Rules, the commission may conduct the fact-finding proceedings in such manner as it considers appropriate, provided that the parties are closely consulted and treated with equality and that at any stage of the fact-finding proceedings each party is given a full opportunity of presenting its case. The commission, in exercising its discretion, shall conduct the fact-finding proceedings so as to provide a fair and efficient process for resolving the parties' dispute and to avoid unnecessary delay and expense.

2. If either party so requests at any appropriate stage of the fact-finding proceedings, the commission shall hold an oral hearing on interlocutory matters. In the absence of such a request, the commission shall decide whether to hold such a hearing or whether decisions on such matters shall be made on the basis of documents and other materials.

3. All documents or information supplied to the commission by one party shall at the same time be communicated by that party to the other party and a copy shall be filed with the Secretary General.

Place of Hearings and Meetings

Article 12

1. Unless the parties agree otherwise, the place where hearings will be held shall be in Honolulu, the Hawaiian Kingdom.

2. The commission may hold meetings for consultation among its members at any place it deems appropriate, having regard to the circumstances of the fact-finding proceedings.

3. After inviting the views of the parties, the commission may meet at any place it deems appropriate for the inspection of property or documents. The parties shall be given sufficient notice to enable them to be present at such inspection.

Language

Article 13

1. The language of the fact-finding proceedings is English.

2. Any documents annexed to the parties' statements, and any supplementary documents or exhibits submitted in the course of the fact-finding proceedings, delivered in their original language, shall be accompanied by a translation into English.

Order of Submissions

Article 14

1. The timetable for submissions shall be as follows:

(a) Hawaiian Kingdom's submission of its statement: TBD

(b) Lance Larsen's submission of its statement: TBD

2. At the request of either party, and after having sought the views of the other party, the commission may extend the time for the submission of any statements.

3. The commission may, *proprio motu* or at the request of a party, and after seeking the views of the parties, direct that the parties file such further written statements as may be required, and shall fix the periods of time for the submission of such statements.

4. Having regard to paragraph 3 hereof, either party shall, within 15 days of the submission of the statement, make any application for the filing of further written statements as it considers appropriate. After affording the other party an opportunity to express its views on the application in question, the commission shall rule on the application within 15 days.

5. Unless the commission otherwise decides, no further document or witness may be tendered by a party after the close of the written proceedings.

Statements by the Parties

Article 15

1. Consistent with the timetable at article 14 and requirements as to form at article 17, the Hawaiian Kingdom and Lance Larsen shall communicate its statement in writing to the commission.

2. The statement shall include a precise statement of the following particulars:

- (a) The names and addresses of the parties;
- (b) A statement of the supporting facts;
- (c) The points at issue;
- (d) The relief or remedy sought.

Amendments to the Statement

Article 16

During the course of the fact-finding proceedings either party may amend or supplement its statement, unless the commission considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances. However, a claim may not be amended in such a manner that the amended claim falls outside the scope of the issue before the commission as provided in Article III of the *Special Agreement*.

Form of Written Statements

Article 17

1. The parties shall submit together with any written submission all documentary, witness, expert and other evidence upon which they intend to rely in support of that submission. The parties shall also append legal authorities (such as treaties, laws, decrees, or judicial decisions) cited in their submissions.

2. The parties' written statements shall be transmitted in the following manner:

(a) On or before the day of the deadline, the submitting party shall transmit an electronic copy of its statement, if possible in searchable Adobe PDF, by email and by USB flash drive (or other electronic device) to the other party and to the Secretary General, for onward transmission to the commission.

(b) On or before the same day, the submitting party shall dispatch by courier three hard copies of the same materials sent electronically to the Secretary General, for onward transmission to the commission. The submitting party shall also dispatch two hard copies of those materials to the other party, unless the other party indicates that it does not require hard copies.

3. Evidence and legal authorities appended to the parties' written statements shall be organized as follows:

(a) Documents submitted to the commission shall be numbered consecutively throughout the fact-finding proceedings and shall clearly distinguish between different types of documents (e.g., exhibits, witness statements, expert reports, legal authorities). The parties shall agree on a method of numbering and labeling of documents that is consistent between them.

(b) Written statements shall be accompanied by a detailed table of contents describing all evidence and legal authorities appended to them by exhibit number, date, type of document, and author or recipient, if and as applicable.

Evidence and Hearings

Article 18

1. Each party shall have the burden of proving the facts relied on to support its statement.

2. At any time during the fact-finding proceedings the commission may call upon the parties to produce documents, exhibits or other evidence within such a period of time as the commission shall determine, subject to any appropriate confidentiality requirements. The commission shall take note of any refusal to do so as well as any reasons given for such refusal.

Article 19

1. There shall be an oral hearing. The commission shall give the parties adequate advance notice of the date, time and place thereof, and shall make reasonable efforts to accommodate the parties' availability in scheduling the hearing.
2. Before any hearing, a party may be called upon by the commission or the other party to present at the hearing for examination and cross-examination any witness or expert whose written testimony has been advanced with the written statements. A party may also call its own witnesses or experts for examination at the hearing. Each party shall notify the Secretary General and the other party of the names of the witnesses and experts it wishes to call to testify at the hearing no later than thirty days prior to the hearing.
3. Except with leave of the commission, no expert or witness of fact may be heard unless he or she has provided a signed written expert report or statement.
4. Where a language other than English is to be used by a witness or expert, the necessary arrangements for interpretation into English shall be made by the Secretary General.
5. Before testifying, witnesses (other than experts) shall not be in attendance at the hearing. The commission is free to determine the manner in which witnesses are examined.
6. The commission shall determine the admissibility, relevance, materiality and weight of the evidence offered.
7. The Secretary General shall make arrangements for a verbatim record of each hearing to be produced.

Confidentiality

Article 20

1. The fact-finding proceedings shall be listed on the website at www.alohaquest.com/commission by the Secretary General. The listing shall identify the parties to the fact-finding proceedings, the members of the commission, and the parties' agents, co-agents, counsel, advocates and advisers.
2. Hearings shall be held *in open* and all statements, evidence, including witness statements and other written material, and the content therein, related to the fact-finding proceedings shall be open to the public unless otherwise agreed by the parties.
3. Subject to any redactions ordered by the commission upon the application of either party, any decision of the commission shall be made public on the website for these fact-finding proceedings.

4. Within thirty days after the receipt of any decision, either party, with notice to the other party, may apply to the commission for redactions to the decision. After considering the views of the parties, the commission shall decide on the requested redactions within thirty days, after which the decision shall be made public.

5. Pending publication of a decision in accordance with paragraphs 3 and 4, it shall remain confidential. In the event that the commission decides to make public a redacted decision, the unredacted decision shall remain confidential unless otherwise agreed by the parties.

6. If the parties agree to the publication of written statements, documents and evidence submitted in the fact-finding proceedings, verbatim transcripts of meetings and hearings, or the commission's procedural orders and decisions, the same procedure for redactions shall apply as for any decision.

7. Sanctions for a breach of confidentiality shall be at the discretion of the commission, including termination of the fact-finding proceedings.

Interim Measures of Protection

Article 21

1. Unless the parties otherwise agree, the commission may, at the request of either party, take any interim measures it deems necessary to preserve the respective rights of either party.

2. Such interim measures may be established in the form of an interim decision. The commission shall be entitled to require security for the costs of such measures.

Failure to Appear or to Make Submissions

Article 22

1. If, within the period of time fixed by the commission, one of the parties have failed to communicate its statement without showing sufficient cause for such failure, the commission shall issue an order for the termination of the fact-finding proceedings.

2. If one of the parties, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the commission shall, subject to the decision of the other party, proceed with the fact-finding proceedings.

3. If one of the parties, duly required to produce documentary evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the commission may make a decision on the evidence before it.

Closure of Hearings

Article 25

1. The commission may inquire of the parties if they have any further proof to offer or witnesses to be heard or statements to make and, if there are none, it may declare the hearings closed.
2. The commission may, if it considers it necessary owing to exceptional circumstances, decide, *proprio motu* or upon application of a party, to reopen the hearings at any time before the final decision is made.

Waiver of Rules

Article 26

A party who knows that any provision of, or requirement under, these Rules has not been complied with and yet proceeds with the fact-finding proceedings without promptly stating its objection to such non-compliance, shall be deemed to have waived its right to object.

SECTION IV. THE DECISION

Decisions

Article 27

1. Any decision of the commission shall be made by a majority of the commissioners.
2. In the case of questions of procedure, when there is no majority or when the commission so authorizes, the presiding commissioner may decide on his/her own, subject to revision, if any, by the commission.

Form and Effect of the Decision

Article 28

1. In addition to making a final decision, the commission shall be entitled to make interim, interlocutory, or partial decisions.
2. The parties shall have entire freedom as to the effect to be given to the decision.
3. The commission shall state the reasons upon which the decision is based, unless the parties have agreed that no reasons are to be given.

4. A decision shall be signed by the commissioners and shall contain the date on which the decision was made. Where a commissioner fails to sign, the decision shall state the reason for the absence of the signature.

5. Copies of the decision signed by the commissioners shall be communicated to the parties by the Secretary General.

Applicable Law

Article 29

The commission shall decide such disputes in accordance with the terms of the *Special Agreement* and relevant international law, such as:

(a) International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;

(b) International custom, as evidence of a general practice accepted as law;

(c) The general principles of law recognized by civilized nations;

(d) Judicial and arbitral decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

Interpretation of the Decision

Article 30

1. Within sixty days after the receipt of a decision, either party, with notice to the other party, may request that the commission give an interpretation of the decision.

2. The interpretation shall be given in writing within forty-five days after the receipt of the request. The interpretation shall form part of the decision and the provisions of article 28, paragraphs 2 through 5, shall apply.

Correction of the Decision

Article 31

1. Within sixty days after the receipt of a decision, either party, with notice to the other party, may request the commission to correct in the decision any errors in computation, any clerical or typographical errors, or any errors of similar nature. The commission may within thirty days after the communication of the decision make such corrections on its own initiative.

2. Such corrections shall be in writing, and the provisions of article 28, paragraphs 2 through 5, shall apply.

Additional Decision

Article 32

1. Within sixty days after the receipt of a decision, either party, with notice to the other party, may request the commission to make an additional decision as to statements presented in the fact-finding proceedings but omitted from the decision.

2. If the commission considers the request for an additional decision to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall complete its decision within sixty days after the receipt of the request.

3. When an additional decision is made, the provisions of article 28, paragraphs 2 through 5, shall apply.

Costs

Article 33

The term “costs” includes only:

- (a) The fees of the commission;
- (b) The travel and other expenses incurred by the commission;
- (c) The costs of assistance required by the commission;
- (d) The travel and other expenses of witnesses to the extent such expenses are approved by the commission;
- (e) Any fees and expenses of the Secretary-General.

Article 34

1. The fees of the commission shall be reasonable in amount, taking into account the complexity of the subject matter, the time spent by the commissioners, the facts in dispute, if any, and any other relevant circumstances of the case.

2. When a party so requests, the commission shall fix its fees only after consultation with the Secretary-General who may make any comment he/she deems appropriate to the commission concerning the fees.

Article 35

1. All costs incurred for these proceedings shall be borne by the Government of the Hawaiian Kingdom, with the exception of any legal fees and costs incurred by Lance Paul Larsen for his representation in these proceedings, which includes travel and expenses.
2. No additional fees may be charged by the commission for interpretation or correction or completion of its decision under articles 30 through 32.

Deposit of Costs

Article 36

1. The Secretary General, following the commencement of the fact-finding proceedings, may request the Hawaiian Kingdom to deposit additional amounts for the costs referred to in article 33. All amounts deposited by the Hawaiian Kingdom pursuant to this paragraph and paragraph 2 of this article shall be directed to the Secretary General, and disbursed by it for such costs, including, inter alia, fees to the commissioners and the Secretary-General.
2. During the course of the fact-finding proceedings the commission may request supplementary deposits from the Hawaiian Kingdom.
3. If the requested deposits are not paid in full within sixty days after the receipt of the request, the commission shall so inform the Hawaiian Kingdom in order they may make the required payment. If such payment is not made, the commission may order the suspension or termination of the fact-finding proceedings.
4. After the final decision has been made, the Secretary General shall render an accounting to the parties of the deposits received by the Hawaiian Kingdom and return any unexpended balance to the Hawaiian Kingdom.