



Larsen v. Hawaiian Kingdom (PCA Case No. 1999-01) - Special Agreement to institute an International Commission of Inquiry

LENZERINI FEDERICO <federico.lenzerini@unisi.it>

Tue, Jan 24, 2017 at 9:27 AM

To: bureau@pca-cpa.org

Cc: keanu.sai@gmail.com, cdexk@hotmail.com

To the kind attention of the International Bureau of the Permanent Court of Arbitration.

Dear Sirs,

I hope this email finds you well.

In the position of counsel and advocate of the Hawaiian Kingdom for the Case of Larsen v. Hawaiian Kingdom (PCA Case No. 1999-01), I would like to inform you that the Government of the Hawaiian Kingdom and Lance Paul Larsen have entered into a special agreement to institute an International Commission of Inquiry under Part III of the 1907 Hague Convention for the Pacific Settlement of International Disputes, as recommended by the Arbitral Tribunal in its award of February 5, 2001. The Hawaiian Kingdom is a non-contracting Power to the Hague Convention, in accordance with Article 47 of the latter. Please find the joint letter and Special Agreement, dated January 19, 2017, and signed by the representative of the Hawaiian Kingdom, Dr. Keanu Sai, and by Lance Paul Larsen, attached to this email. I would also like to inform you that the Hawaiian Kingdom has already paid the advanced deposit of \$10,000.00 which is required under Article VII of the Special Agreement in order to institute an International Commission of Inquiry under the auspices of the PCA; this deposit is available in the PCA account.

Thank you very much in advance for your consideration. I would be grateful if you might acknowledge receipt of the present communication.

Please accept the expression of my highest consideration.

Dr. Federico Lenzerini,
Ph.D., International Law
Professor of International Law, University of Siena (Italy)
Counsel and Advocate of the Hawaiian Kingdom
Case of Larsen v. Hawaiian Kingdom
Phone: [+39 3394677222](tel:+393394677222)
Email: federico.lenzerini@unisi.it

 **Jnt_Ltr_&_Agmt_1_19_17.pdf**
2585K

January 19, 2017

International Bureau of the Permanent Court of Arbitration
Peace Palace
Carnegieplein 2
2517 KJ The Hague
The Netherlands

Re: Hawaiian Kingdom – Lance Paul Larsen, Incidents of War Crimes in the Hawaiian Islands—the Larsen Case

Greetings:

We, the undersigned, have the honor to inform you that the Government of the Hawaiian Kingdom and Lance Paul Larsen have accepted the recommendation of the Arbitral Tribunal in its Award, dated February 5, 2001, for the parties to pursue the course of fact-finding enquiry under the auspices of the Permanent Court of Arbitration. Therefore, we have entered into a Special Agreement to form an International Commission of Inquiry under Part III—*International Commissions of Inquiry*, 1907 Hague Convention for the Pacific Settlement of International Disputes. The Hawaiian Kingdom is a non-Contracting Power to the Hague Convention in accordance with Article 47. Pursuant to Article VIII of the Special Agreement, this Special Agreement is hereby transmitted to you in order to enable the facilitation of these proceedings. We are the same parties to the *Lance Paul Larsen v. Hawaiian Kingdom* case held under the auspices of the Permanent Court of Arbitration, from 1999 through 2001.



David Keanu Sai, Ph.D.
Chairman of the Acting Council of Regency
Minister of the Interior of the Hawaiian Kingdom



Lance Paul Larsen

SPECIAL AGREEMENT

The Government of the Hawaiian Kingdom, by its Acting Council of Regency, and Lance Paul Larsen, a Hawaiian subject, hereinafter collectively the “Parties,”

Mindful of the presumption of the Hawaiian Kingdom’s continued existence, as an independent State under customary international law, despite the United States of America’s admitted unlawful invasion and overthrow of the legitimate Government of the Hawaiian Kingdom, on January 17, 1893, and the subsequent re-invasion and military occupation of the Hawaiian Kingdom, being neutral territory during the Spanish-American War that continues to the present; and

Conscious that territory of the Hawaiian Kingdom was explicitly recognized as neutral under Article 26 of the 1863 Hawaiian-Spanish Treaty, and, under customary international law, the territory of a neutral State was recognized as inviolable during the Spanish-American War, which was subsequently codified under Article 1 of the 1907 Hague Convention, V, *Respecting the Rights and Duties of Neutral Powers*; and

Aware that “military occupation is a question of fact, that presupposes a hostile invasion, resisted or unresisted, as a result of which the invader has rendered the invaded government incapable of publicly exercising its authority, and that the invader has successfully substituted its own authority for that of the legitimate government in the territory invaded (United States Army Field Manual 27-10, paragraph 355)”; and

Acting in compliance with Hawaiian constitutional law and within the legal parameters of necessity, the Government of the Hawaiian Kingdom was re-established on December 15, 1995, and styled the Acting Council of Regency, as officers *de facto*, serving in the absence of the Executive Monarch; and

Stressing their desire to settle a dispute between the Parties, whereby Lance Paul Larsen alleged that the Government of the Hawaiian Kingdom was committing negligence for allowing the unlawful imposition of American municipal laws that led to war crimes committed against him, being a Protected Person under Article 4 of the 1949 Geneva Convention, IV, by agents of the United States of America when he was deprived of a right to a fair and regular trial that led to his unlawful confinement, both being defined as grave breaches and war crimes under Article 147 of the 1949 Geneva Convention, IV; and

Being unable to resolve their dispute through international arbitration in *Lance Paul Larsen v. Hawaiian Kingdom*, being a contentious case between a State and a Private

entity, held under the auspices of the Permanent Court of Arbitration pursuant to Article 47 of the 1907 Hague Convention, I, (Article 26 of the 1899 Hague Convention, I), on account of the United States of America's refusal to participate in the arbitral proceedings, thereby preventing, under Procedural Order no. 3, the Tribunal to adjudge and declare "(1) that his rights as a Hawaiian subject are being violated under international law as a result of the prolonged occupation of the Hawaiian Islands by the United States of America, and (2) that the plaintiff does have redress against the Respondent Government in relation to these violations," in light of the principle of the indispensable third-party rule, pursuant to the *Monetary Gold Case* (Italy v. France, United Kingdom of Great Britain and Northern Ireland, and United States of America) and *Case Concerning East Timor* (Portugal v. Australia); and

Taking notice that the *Lance Paul Larsen v. Hawaiian Kingdom Case* was recognized by the South China Sea Arbitral Tribunal (Philippines v. China) in its Award on Jurisdiction and Admissibility as a precedent case, along with the *Monetary Gold Case* and the *Case Concerning East Timor*, regarding the principle of the indispensable third-party rule; and

Acknowledging that the Arbitral Tribunal in its Award noted the prospect for the Parties to pursue fact-finding enquiry by stating, "fact-finding commissions so far held under the auspices of the Permanent Court of Arbitration have not confined themselves to pure questions of fact but have gone on, expressly or by clear implication, to deal with issues of responsibility for those facts (Award, paragraph 13.2)"; and

Recognizing that the Government of the Hawaiian Kingdom has an obligation and responsibility to protect the just rights of its citizenry under a military occupation, which includes Lance Paul Larsen, in light of the complexities of international humanitarian law and the role and function of the government of an occupied State toward its citizenry; and

Cognizant of the continued unlawful imposition of American municipal laws throughout Hawaiian territory that continues to place Lance Paul Larsen in economic hardship and suffering, since the aforementioned war crimes were committed against his person; and

Remain firm to re-establish a trustful and lasting relationship, between a national and his government, while both parties are provisionally under a prolonged occupation by the United States of America, and where both Parties mutually agree that there is no dispute between them, but rather a situation; and

Endeavor to fairly resolve this situation according to a coherent body of legal rules, in a manner fitting the principles of international humanitarian law and the basic fundamental

right of every person to life, liberty, and of pursuing and obtaining safety and happiness, during a belligerent occupation;

This Special Agreement shall supersede and replace the former Special Agreement made between the Parties dated 22 August 2016;

Having jointly accepted the recommendation of the Tribunal, in its Award in *Lance Paul Larsen v. Hawaiian Kingdom*, the Parties entered into a Special Agreement to form an International Commission of Inquiry under the auspices of the Permanent Court of Arbitration, as follows,

ARTICLE I

International Commission of Inquiry

1. The International Commission of Inquiry, hereinafter the “Commission,” shall sit at The Hague, Netherlands.
2. The Commission shall consist of three (3) Commissioners to be chosen by an appointing authority to be determined hereafter by the Parties.
3. The International Bureau of the Permanent Court of Arbitration at The Hague shall act as a channel of communications between the Parties and the Commission, and provide secretariat including, *inter alia*, arranging for hearing rooms and stenographic or electronic records of hearings.

ARTICLE II

Title of Case

Parties: Hawaiian Kingdom – Lance Paul Larsen

Case: Incidents of War Crimes in the Hawaiian Islands—The Larsen Case

ARTICLE III

Issue before the Commission

The Commission is requested to determine: *First*, what is the function and role of the Government of the Hawaiian Kingdom in accordance with the basic norm and framework of international humanitarian law; and, *Second*, what are the duties and obligations of the Government of the Hawaiian Kingdom toward Lance Paul Larsen, and, by extension, toward all Hawaiian subjects domiciled in Hawaiian territory and abroad in accordance with the basic norm and framework of international humanitarian law.

ARTICLE IV

Proceedings

1. The Parties shall co-operate with the Commission in good faith and shall, in particular, comply with requests by the Commission to submit written materials, provide evidence and attend meetings.
2. All such documents submitted to the Commission shall, at the same time, be transmitted to the other Party and to the International Bureau.
3. The Commission shall give the Parties every opportunity to be present at hearings and investigations, and to submit documents, present evidence and have witnesses and experts called.
4. The Commission, after notice to the Parties, may consult any experts of its choice. Such experts shall perform their functions impartially and conscientiously.
5. The language of the proceedings shall be English.
6. All matters relating to the fact-finding proceedings, including the investigation, hearings, deliberations and findings of the Commission, shall be made public.

ARTICLE V

Rules

The rules applicable to the matter shall be Part III—*International Commissions of Inquiry*, 1907 Hague Convention for the Pacific Settlement of International Disputes, unless otherwise determined by the terms of this Agreement.

ARTICLE VI

Costs

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.

ARTICLE VII

Deposits

The Government of the Hawaiian Kingdom agrees to deposit \$10,000.00 (USD) in advance for the costs referred to in Article VI as soon as this Agreement shall be notified to the International Bureau of the Permanent Court of Arbitration.

ARTICLE VIII
Execution of Agreement

1. This agreement shall enter into force on the date of the signatures of the two Parties.
2. This Agreement shall be notified to the International Bureau of the Permanent Court of Arbitration by joint letter of the Parties.

In witness whereof, the undersigned, being duly authorized thereto, have in the city of Hilo, Hawaiian Islands, signed this Special Agreement on January 19, 2017.



David Keanu Sai, Ph.D.
Chairman, Acting Council of Regency
Minister of the Interior of the Hawaiian Kingdom



Lance Paul Larsen