

PERMANENT COURT OF ARBITRATION

LANCE PAUL LARSEN, CLAIMANT

VS.

THE HAWAIIAN KINGDOM, RESPONDENT

COUNTER-MEMORIAL OF LANCE PAUL LARSEN

23 JUNE 2000

COUNTER-MEMORIAL OF LANCE PAUL LARSEN

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COUNTER-MEMORIAL OF LANCE PAUL LARSEN

INTRODUCTION

A. THE ISSUES BEFORE THE ARBITRAL TRIBUNAL

1. This case comes before the Court, in accordance with Article I of the UNCITRAL Arbitration Rules, pursuant to an agreement between the Claimant, Mr. Lance Paul Larsen, and the Respondent, the Government of the Hawaiian Kingdom, requesting the Arbitral Tribunal to determine, on the basis of international law, whether

(1) the rights of the Claimant under international law as a Hawaiian subject are being violated, and if so,

(2) does Claimant have any redress against the Respondent Government of the Hawaiian Kingdom?

B. SUMMARY OF CLAIMANT'S ARGUMENT

2. In his Memorial, Mr. Larsen summarized his position with respect to the issues before the Tribunal as the following:

In sum, because of the prolonged occupation of the Hawaiian Islands, and the resulting denial of his nationality as a Hawaiian subject and imposition of American laws over his person, Mr. Larsen's rights have been violated under international law. Mr. Larsen's government, the Government of the Hawaiian Kingdom, has a duty under both domestic and international law to protect the rights of Mr. Larsen as well as all Hawaiian subjects. While Mr. Larsen has requested assistance from the acting Council of Regency, the occupation and corresponding violation of his rights continues today. It is Claimant's position that he does have redress against his government for failing to fulfill its obligations towards him.¹

3. As the submissions proposed by the Claimant in his Memorial, Mr. Larsen has requested the Arbitral Tribunal to adjudge and declare that

1. Mr. Larsen's 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.

2. Mr. Larsen does have redress against the Respondent Government of the Hawaiian Kingdom, as his government has obligations and duties to protect the rights of Hawaiian subjects even in times of war and occupation.

4. The factual and legal basis for Claimant's position is summarized in Claimant's Memorial, submitted to the Permanent Court of Arbitration on 22 May 2000.

C. SUMMARY OF RESPONDENT'S ARGUMENT

5. In the Memorial submitted by the Respondent, the Government of the Hawaiian Kingdom summarizes its position with respect to the issues before the Tribunal as the following:

The Hawaiian Kingdom Government is not liable to the Claimant because it has not violated its public trust in accordance with Hawaiian Kingdom law and the law of nations. Rather, it is the United States who has committed international violations against the Hawaiian Kingdom, and thereby violating the rights of its subjects, in particular, the Claimant.²

6. As the submissions proposed by the Respondent in its Memorial, The Government of the Hawaiian Kingdom requests the Arbitral Tribunal to adjudge and declare that

1. The Claimant's rights, as a Hawaiian subject, are being violated under international law,

2. The Claimant does not have a rights to redress against the Hawaiian Kingdom Government for these violations; and

3. The Party responsible for the violations of the Claimant's rights, as a Hawaiian subject, is the United States Government.

D. PROCEDURAL STATEMENT

7. Arbitration in the current case was formally initiated on 8 November 1999, at which point Claimant, Mr. Larsen, served upon Respondent, the Government of the Hawaiian Kingdom, a Notice of Arbitration to Initiate Recourse to Arbitral Proceedings.³

8. The parties exchanged Memorials in Honolulu, on 25 May 2000. Copies of the Memorials were also submitted to the Permanent Court of Arbitration for forwarding to the judges at that time.

9. The present Counter-Memorial is now submitted pursuant to the Joint Letter from the Parties to the Permanent Court of Arbitration notifying the Court of a 10 day extension to file the Counter-Memorials dated 12 June 2000, fixing 23 June 2000 as the date for the submission of the party's second round of written pleadings.

Part One

CLAIMANT'S RESPONSE TO THE MEMORIAL OF THE HAWAIIAN KINGDOM

CHAPTER I

ISSUES AGREED UPON BY THE PARTIES

10. Both parties have acknowledged that the rights of the Claimant are being violated under international law.⁴

11. Both parties have also acknowledged that the primary cause of these injuries is the prolonged occupation of the Hawaiian Islands by the United States of America.⁵

12. Both parties have also acknowledged that the Respondent Government of the Hawaiian Kingdom does have an obligation to protect the rights of the Claimant, Mr. Larsen, as a Hawaiian subject.⁶ Specifically the Government of the Hawaiian Kingdom acknowledged that

The Hawaiian Kingdom Government was established by its sovereign to acknowledge and protect the rights of its citizenry. This protection covers the acts of States at war within the territory of the Kingdom.

CHAPTER II

ISSUE IN DISPUTE:

RESPONDENT'S LIABILITY FOR CLAIMANT'S INJURIES

13. The primary issue in contention between the parties is that of the liability of the Respondent Government of the Hawaiian Kingdom towards the Claimant with respect to his injuries.

14. As summarized in Claimant's Memorial,⁷ It is Claimant's position that the Respondent Government of the Hawaiian Kingdom has a duty to protect Claimant's rights as a Hawaiian subject, even in times of war and occupation.

15. It is Claimant's position that although the United States of America is primarily liable to the Claimant for his injuries, the Government of the Hawaiian Kingdom can also be held liable for these injuries, to the extent that the Government of the Hawaiian Kingdom has not fulfilled its duty to protect Claimant's rights as a Hawaiian subject by preventing the United States of America from imposing its laws (as a part of occupation) within the territory of the Hawaiian Kingdom.⁸

16. Claimant acknowledges the many steps taken by the Respondent Government of the Hawaiian Kingdom to end the unlawful occupation of the Hawaiian Islands by the United States of America. Unfortunately, none of these steps have successfully protected the rights of Claimant as a Hawaiian subject from the continual denial of his nationality and imposition of American laws over his person.

17. Because the occupation of the Hawaiian Islands still continues, Claimant's rights continue to be violated. Until Claimant's rights are fully protected, his Government has not fulfilled its obligation towards him as a Hawaiian subject. Claimant now seeks redress against his Government because this obligation has not been fulfilled. Claimant seeks to hold his Government liable only to the extent requested in the award requested by Claimant in his Memorial.

CHAPTER III

CLARIFICATION AS TO AWARD REQUESTED BY CLAIMANT

18. Claimant is NOT requesting monetary compensation from the Government of the Hawaiian Kingdom for his injuries in the award requested from the Arbitral Tribunal. Claimant reserves his right at some future date to make a claim against the United States of America for monetary damages.⁹

19. Instead, Claimant seeks to force the hand of his government to intervene or otherwise act to successfully end the unlawful occupation of the Hawaiian Islands, and thus to end the denial of his nationality and to end the imposition of American laws over his person.

20. Claimant has not requested an award for specific performance from this Arbitral Tribunal. Claimant has requested clarification as to whether he can hold his own Government liable for the continual occupation of his country.

21. If the Arbitral Tribunal issues an award that the Claimant is entitled to redress against the Hawaiian Kingdom, Claimant will at that point consider his options for seeking specific performance or some other remedy from Respondent. In his Memorial, Claimant did request clarification of what types of redress are available to him given such a ruling. It is Claimant's hopes that the Arbitral Tribunal can recommend action to be taken by the Government of the Hawaiian Kingdom that will effectively protect Claimant's rights.

Part Two

SUBMISSIONS AND TASK OF THE COURT

In view of the facts and arguments set forth in Claimant's Memorial, together with the clarification of those arguments set forth in this Counter-Memorial,

Mr. Larsen requests the Arbitral Tribunal to adjudge and declare that

1. Mr. Larsen's 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.

2. Mr. Larsen does have redress against the Respondent Government of the Hawaiian Kingdom, as his government has obligations and duties to protect the rights of Hawaiian subjects even in times of war and occupation.

In the event of affirmation of these submissions, Mr. Larsen further requests from the Arbitral Tribunal any clarification on *what types* of redress are available to him, specifically whether there is any way to force the Government of the Hawaiian Kingdom to take specific steps that will protect Claimant's rights.

Respectfully submitted, this 23 day of June, 2000.

Ninia Stacia Parks
Attorney for Claimant Lance Paul Larsen

¹ See paragraph 96, Memorial of Lance Paul Larsen.

² See paragraph 320, Memorial of the Hawaiian Kingdom.

³ See Annex 7 of Claimant's Memorial.

⁴ See Submissions for both parties in their Memorials, or paragraphs 3.1 and 6.1 *supra*.

⁵ *Id.*

⁶ See Claimant's Memorial at paragraph 84; and Respondent's Memorial at paragraph 335.

⁷ See Claimant's Memorial, Part II, Chapter II, or paragraphs 84-96.

⁸ See paragraph 12, *supra*.

⁹ See Annex 1: "Affidavit" of Lance Paul Larsen, dated 21 May 2000.