ANNEX A

Note dated 29 October 2012 from the Argentine Ambassador in Ghana to the Foreign Minister instituting proceedings against Ghana under Annex VII of the UNCLOS.
Acera, 29 de octubre de 2012

Excedencia,

1. Por expresas instrucciones de mi Gobierno, me refiero por la presente a la situación que motivara la conversación telefónica que mantuviera con usted el pasado 3 de octubre el Ministro de Relaciones Exteriores y Culto de la República Argentina, D. Héctor Timerman, y la nota que el mismo funcionario le remitió el 4 de octubre de 2012⁴, en relación con la detención por parte de Ghana, en el puerto de Tema desde el día 2 de octubre de 2012, del buque de guerra “ARA Fragata Libertad” perteneciente a la Armada de la República Argentina.

2. En dichas comunicaciones la República Argentina manifestó claramente que la mencionada medida resulta contraria al derecho internacional, en particular, aunque no exclusivamente, una violación de las inmunidades que gozan los buques de guerra conforme al Artículo 32 de la Convención de Naciones Unidas sobre el Derecho del Mar (en adelante, “la CNUDM”) y otras reglas de derecho internacional. La Argentina solicitó a su Gobierno que adopte con la mayor urgencia las medidas necesarias para poner fin a esta situación.

3. Con el objeto de resolver la controversia con la urgencia que el caso requiere y a fin de continuar sin demora el intercambio de opiniones que ya se había iniciado entre las partes, de conformidad con el artículo 283 de la CNUDM, mi Gobierno procedió a enviar a Acera una delegación de alto nivel constituida por el Vice-Ministro de Relaciones Exteriores, Embajador Eduardo Zuaja y el Secretario de Asuntos

Al Señor Ministro de Relaciones Exteriores e Integración Regional de la República de Ghana
Alhaji Muhammad Musa

⁴ Anexo 1.
Internacionales del Ministerio de Defensa, Lic. Alfredo Forti. Entre el 16 y el 19 de octubre de 2012, dicha delegación se entrevistó en tres oportunidades con Vuestra Excelencia, dos veces con el Ministro de Defensa y en una oportunidad con el Ministro del Interior, el Fiscal General (Attorney General), el Fiscal General Adjunto (Deputy Attorney General), así como con asesores del Presidente de la República de Ghana y otros funcionarios. La República Argentina lamenta profundamente que tales intercambios de opiniones y negociaciones no hayan podido resolver la controversia que opone a nuestros dos Estados y que la “ARA Fragata Libertad” continúe ilegalmente detenida y sujeta a diversas medidas de apremio en el puerto de Tema en flagrante violación de normas básicas de Derecho Internacional.

4. Habida cuenta que tanto la Argentina como Ghana son partes a la CNUDM, pero no han aceptado el mismo procedimiento para la solución de la controversia, ésta debe ser sometida al procedimiento de arbitraje previsto en el Anexo VII de la CNUDM, en virtud del Art. 287 de tal Convención. Por la presente, mi Gobierno notifica al de Ghana el sometimiento de la presente controversia al procedimiento de arbitraje, de conformidad con el Artículo 1 del Anexo VII de la CNUDM (I). La Argentina solicita igualmente a Ghana que adopte la medida provisional consistente en permitir sin condiciones el reabastecimiento y la salida del buque de guerra argentina “ARA Fragata Libertad” de sus aguas jurisdiccionales, o en su defecto, en el plazo de 14 días de recibida la presente demandará esa medida al Tribunal Internacional del Derecho del Mar, como lo dispone el Artículo 290, par. 5 de la CNUDM (II).

(I) SOMETIMIENTO DE LA CONTROVERSI A A ARBITRAJE

3. La República Argentina somete al arbitraje previsto en el Anexo VII de la CNUDM contra la República de Ghana la controversia relativa a la detención y a las medidas judiciales tomadas en relación con el buque de guerra “ARA Fragata Libertad” por parte del Gobierno de Ghana.

(A) Exposición de las pretensiones de la República Argentina y de los motivos en que éstos se fundan
6. La República Argentina requiere del tribunal arbitral que declare que la República de Ghana, al detener el buque de guerra “ARA Fragata Libertad”, al mantenerlo detenido, al impedirle abastecerse y al tomar diversas medidas judiciales en su contra:

(1) Viola la obligación internacional de respetar la inmunidad de jurisdicción y de ejecución de la que goza el mencionado buque, de conformidad con el Art. 32 de la CNUDM, el Art. 3 de la Convención para la Unificación de Ciertas Normas relativas a la Inmunidad de los Buques de Propiedad del Estado de 1926, así como con las reglas bien establecidas de derecho internacional general o consuetudinario en la materia;

(2) Impide el ejercicio del derecho de salir de las aguas jurisdiccionales del Estado ribereño y de la libre navegación que goza el mencionado buque y su tripulación, de conformidad con los artículos 18, par. 1 b), 87, par. 1 a) y 90 de la CNUDM.

7. Por consiguiente, la Argentina solicita al tribunal arbitral que, al hacer valer la responsabilidad internacional de Ghana, este Estado debe:

(1) Cesar inmediatamente la violación de sus obligaciones internacionales descriptas en el párrafo anterior;

(2) Pagar a la República Argentina una indemnización adecuada para resarcir en su totalidad los perjuicios materiales ocasionados;

(3) Presentar en forma solemne un escrito al pabellón argentino como satisfacción por el perjuicio moral ocasionado al detener ilícitamente al buque insignia de la Armada Argentina ARA Fragata Libertad e impedirle cumplir con su actividad y ordenarle la entrega de la documentación y del pañol de señales del mencionado buque a las autoridades portuarias de Tema, República de Ghana.

(4) Aplicar sanciones disciplinarias a los funcionarios de la República de Ghana directamente responsables de las decisiones por las cuales dicho Estado ha incurrido en las violaciones de sus obligaciones internacionales arriba mencionadas.

(b) Motivos que fundan las pretensiones de la Argentina
8. La "ARA Fragata Libertad" es un buque de guerra de la Armada de la República Argentina, en el sentido de la definición del Art. 29 de la CNUDM. Se trata del buque insignia de la Armada Argentina, como tal representa al Estado argentino y ha navegado por más de 50 años por todos los mares del mundo transmitiendo un mensaje de paz y amistad en procura de afianzar las relaciones de la Armada Argentina con sus pares de terceros Estados. La ARA Fragata Libertad es utilizada para la instrucción de cadetes de esa fuerza armada. Al momento de ser detenida por Ghana se encontraba realizando su cuadragésimo tercer viaje de instrucción. La tripulación del buque detenido incluía oficiales invitados de las Armadas de Bolivia, Brasil, Chile, Paraguay, Perú, Sudáfrica, Surinam, Uruguay y Venezuela.

9. Los Gobiernos de Argentina y Ghana acordaron la visita de la ARA Fragata Libertad al puerto de Tema (República de Ghana). El Gobierno de Ghana autorizó el 4 de junio de 2012 tal visita y comunicó esa decisión al Gobierno argentino a través de la vía diplomática mediante correspondencia intercambiada por las respectivas representaciones en Abuja, Nigeria. Surgieron con total claridad de la correspondencia intercambiada la condición de buque de guerra de la ARA Fragata Libertad, el propósito oficial de la visita y los arreglos de ceremonial correspondientes concertados por la Argentina y Ghana. Los últimos preparativos para la visita de la ARA Fragata Libertad a Ghana fueron acordados por personal diplomático argentino, destacado en Ghana desde el 26 de septiembre, en contacto con las autoridades navales de ese país, según fuera requerido por el Gobierno local.

10. La ARA Fragata Libertad arribó en la fecha prevista (1º de octubre) y ese mismo día se realizó una recepción protocolar a bordo del buque a la que asistieron autoridades gubernamentales, representantes de las Fuerzas Armadas de Ghana y representantes del cuerpo diplomático acreditado en ese país, en un todo de acuerdo con las indicaciones recibidas del Gobierno local en los contactos previos.

---

11. A las 20 horas del 2 de octubre de 2012, se presentó en la ARA Fragata Libertad un funcionario que alegó pertenecer al Servicio Judicial de la Corte Superior de Judicature de Ghana - División Comercial - acompañado por otras personas, a los fines de diligenciar un oficio de la misma fecha que contenía una resolución de esa Corte, dictada por el Juez Richard Adjei-Primpang, para retener a la ARA Fragata Libertad en el Puerto de Tema. El funcionario se retiró del buque sin que los oficiales a cargo de éste le aceptaran su pretensión de realizar semejante notificación.

12. Al día siguiente, y pese a que ya se habían iniciado los contactos de las autoridades argentinas y las del Gobierno de Ghana, incluyendo conversaciones entre los respectivos Ministros, de Relaciones Exteriores, en las cuales se exhortó a este último país a desistir de su conducta violatoria del derecho internacional, se presentó en el buque una persona que manifestó concurrir en nombre de la Autoridad Portuaria, junto con un Agente Marítimo, solicitando ver al Sr. Comandante de la ARA Fragata Libertad, con el fin de retirar la documentación del buque y el pañol de señales, en cumplimiento de lo ordenado por la Corte Superior de Justicia de Ghana - División Comercial - en la resolución autecífica, pretensión que también fue rechazada por los oficiales a cargo del buque.

13. A pesar del requerimiento de mi gobierno, el Gobierno de Ghana no desistió de su actitud ilícita. Frente a ello, el Gobierno argentino se presentó ante el juez que había ordenado la medida interlocutoria contra la ARA Fragata Libertad³, con el fin de informarlo que carecía de jurisdicción y de rechazar su pretensión de tomar medidas en y contra la ARA Fragata Libertad, con la consiguiente violación de la inmunidad que posee ese buque.

14. Pese a todos los antecedentes, y no obstante la claridad del contenido de las normas internacionales en juego determinantes de la responsabilidad internacional de Ghana, el juez interviniente, Richard Adjei-Primpang, confirmó el 11 de octubre de 2012 su decisión precedente que ordenaba el embargo sobre la ARA Fragata Libertad⁴.

---

³ In the Superior Court of Judicature in the High Court of Justice (Commercial Division), Aecra, Order for Interlocutory Injunction and Infirm Preservation of the «ARA Libertad», 2 October 2012 (Anexo 3).
⁴ In the Superior Court of Judicature, in the High Court of Justice Aecra Commercial Division, held on Thursday the 11th day of October, 2012. Before His Lordship Justice Richard Adjei-Primpang. Ruling (Anexo 4).
Por esta razón, el buque permanece inmovilizado en el puerto de Tema hasta el día de la fecha, cuando debería haber zarparo —de acuerdo con lo previamente acordado por ambos Gobiernos— el 4 de octubre de 2012. Esta situación coloca al buque en la imposibilidad de cumplir con su programa, tal como fue acordado con los otros Estados a los que debía igualmente visitar (Angola, Namibia, Sudáfrica, Brasil y Uruguay), así como con aquellos cuyos agentes se encontraban a bordo del buque.

15. Debido a la orden interlocutoria del juez Adjei-Frimpong, ejecutada por las autoridades portuarias de Tema, la ARA Fragata Libertad está imposibilitada de abastecerse de combustible. El mencionado buque depende de dicho combustible para el mantenimiento de sus dos generadores eléctricos y su destilador de agua. Debido a esta imposibilidad, el buque agotará su combustible en los próximos días. Frente a esta situación, mi gobierno se vio obligado a repatriar a su costo el pasado 24 de octubre mediante un charter aéreo a la mayor parte de la tripulación del buque y a la totalidad de los agentes de Estados extranjeros que participaban de la expedición, es decir 281 personas. En la actualidad, se encuentran en la ARA Fragata Libertad el Capitán del buque y una tripulación de cuarenta y cuatro personas. El Gobierno argentino está también afrontando los gastos causados por la estadía involuntaria impuesta al buque detenido y sus tripulantes. Mi gobierno hace responsable al de Ghana por la seguridad del buque y de su tripulación que permanece en él mientras dure su ilícita detención.

16. El Juez Richard Adjei-Frimpong, además de atribuirse una jurisdicción de la que carece, desconoce manifiestamente el Derecho Internacional al pretender justificar su decisión en el hecho de que la legislación de Ghana no le prohibiría tomar medidas de ejecución contra un buque de guerra extranjero. El mismo juez interpreta en un sentido manifiestamente absurdo y arbitrario el contenido de un título de deuda argentino emitido en 1994, al considerar que la Argentina sería prácticamente un Estado sin ningún tipo de inmunidad. Del texto mismo de tal cláusula surge que la Argentina no ha renunciado explícitamente a la inmunidad de sus buques de guerra. En efecto, la decisión del juez ghanés ignora el hecho fundamental y bien establecido en Derecho Internacional según el cual la renuncia a la inmunidad de ejecución de un bien público
del Estado debe ser expresa y que la Argentina no ha renunciado jamás a las inmunidades de que goza el buque de guerra ARAfragata Libertad⁵.

17. Hasta el presente, el gobierno de Ghana no ha tomado ningún tipo de medidas para poner fin al acto ilícito generado por la decisión de su órgano judicial. Ello en clara contradicción con las normas aplicables de Derecho Internacional, según las cuales corresponde al gobierno del Estado velar por que sus tribunales resuelvan de oficio la cuestión del respeto de la inmunidad de los otros Estados, como lo expresa el Artículo 6 de la Convención de las Naciones Unidas sobre las inmunidades jurisdiccionales de los Estados y sus bienes⁶, que refleja una regla bien establecida de derecho consuetudinario.

18. El gobierno de Ghana tampoco ignora que el Estado es responsable por los actos de todos sus órganos, ya sea que éstos ejerzan funciones judiciales u otras, como lo establece el Derecho Internacional general y lo refleja el Artículo 4 de los Artículos sobre la responsabilidad del Estado por hechos internacionalmente ilícitos elaborados por la Comisión de Derecho Internacional⁷. Por lo demás, es la Autoridad Portuaria de Tema, órgano administrativo del Estado de Ghana, quien ha procedido a ejecutar las decisiones ilícitas del juez Richard Adjei-Frimpong.

19. A pesar de los esfuerzos de la Argentina para solucionar la controversia, los diferentes órganos del Estado de Ghana persisten en su comportamiento, que constituye una violación de las obligaciones internacionales reconocidas por la CNUDM y comprometen la responsabilidad internacional de Ghana, como surge de las pretensiones argentinas enumeradas en la sección (a).

(B) Designación de un miembro del tribunal arbitral

20. De conformidad con el Art. 3 b) del Anexo VII de la CNUDM, la República Argentina notifica el nombramiento como miembro del Tribunal Arbitral de la Señora

---

⁵ International Court of Justice, Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening), Judgment of 3 February 2012, para. 118.
⁶ Anexo de la Resolución 59/38 de la Asamblea General de las Naciones Unidas del 2 de diciembre de 2004.
⁷ Anexo a la Resolución 58/63 de la Asamblea General de las Naciones Unidas del 28 de enero de 2002.
Elisa Kelly, miembro del Tribunal Internacional del Derecho del Mar, cuya noticia biográfica se acompaña 8.

21. La Argentina invita a Ghana a nombrar un miembro del Tribunal Arbitral en el plazo de 30 días y a iniciar contactos para nombrar a la brevedad los otros miembros, de conformidad con lo dispuesto en el Art. 3 c), d) y e) del Anexo VII.

II. SOLICITUD DE MEDIDA PROVISIONAL

22. Pendiente la constitución del Tribunal Arbitral, de conformidad con lo dispuesto en el Artículo 290, par. 5 de la CNUDM, la Argentina solicita a Ghana que, como medida provisional, permita sin condiciones el reabastecimiento y la salida del buque de guerra argentino “ARA Fragata Libertad” del puerto de Tema y de sus aguas jurisdiccionales. De no procederse a tal medida en el plazo de 14 días, la Argentina demandará al Tribunal Internacional del Derecho del Mar que le decrete, como lo prevé la citada disposición.

23. La medida provisional solicitada tiende a preservar los derechos de la Argentina en virtud de la CNUDM mencionados en I (a). La pretensión de Ghana de ejercer jurisdicción sobre el ARA Fragata Libertad impide el ejercicio de tales derechos y puede tornarlos ilusorios por un período de tiempo indeterminado. La amenaza de ejecución de dicho buque de guerra que surge de las decisiones judiciales del 2 y 11 de octubre de 2012 y la voluntad del gobierno ghanés de no hacer nada para impedirlo, de ponerse en práctica, podría producir un perjuicio irreversible e irreparable a tales derechos.

24. Existe urgencia en la adopción de la medida solicitada. Mientras dura la detención de la ARA Fragata Libertad, la Armada Argentina se ve impedida de utilizar su buque insignia. Se trata de una medida a la vez disruptiva de la organización de las fuerzas armadas de un Estado soberano y de una ofensa a uno de los símbolos de la Nación que hiere a los sentimientos del pueblo argentino, cuyos efectos se agravan con el transcurso del tiempo. Por las razones indicadas en el párrafo 15, la mayor parte de la tripulación

---

8 Anexo 5.
dolió ser evacuada. El número restringido de la tripulación actualmente existente hace imposible hacer frente al conjunto de las tareas de mantenimiento, lo que requiere normalmente una presencia mínima de 145 tripulantes. En caso de emergencia, lo escaso de la tripulación tampoco podría hacer frente a tal eventualidad. De ocurrir un incendio, el total de la tripulación actual sólo podría cubrir una de las tres brigadas necesarias a bordo. De no permitirse el abastecimiento y la salida del buque en forma inmediata, su actividad y la de su personal se verá alterada de manera grave, con riesgo inclusive para la seguridad del buque y para la salud y la integridad de la tripulación restante. Esta situación, de prolongarse, pone también en grave riesgo el funcionamiento futuro de la ARA Fragata Libertad.

25. La Convención de las Naciones Unidas para el Derecho del Mar ha tenido en cuenta la necesidad fundamental de garantizar la libertad de navegación a buques privados o que ejercen actividades de índole comercial⁹, previendo mecanismos de pronta liberación a su respecto¹⁰, con mayor razón un buque de guerra debe tener la posibilidad de ejercer tal derecho sin condición ni restricción alguna y en forma pronta. Ello así, a punto tal que inclusive si un buque de guerra viola disposiciones legislativas o reglamentarias del Estado ribereño, todo lo que éste puede hacer es ordenarlo que salga inmediatamente de su mar territorial¹¹.

26. De no mediar la medida provisional, la presencia forzada de la ARA Fragata Libertad y de su tripulación en el puerto de Tema quedará a la merced de la decisión de un Estado que carece manifestamente de toda jurisdicción sobre el buque de guerra detenido. La pretensión del gobierno y del sistema judicial ghaneño de ejercer jurisdicción sobre el buque de guerra y de ejecutarlo importan no solo la imposibilidad del ejercicio de los derechos por un lapso prolongado, sino la amenaza de su pérdida irreparable.

27. Por otra parte, el tiempo prolongado que requieren la constitución del tribunal arbitral, el procedimiento a seguir y la adopción del juicio, hacen imposible la espera del final del procedimiento sin grave perjuicio a los derechos que la Argentina invoca.

⁹ Por ejemplo, Arts. 27 y 28 de la CNUDM.
¹⁰ Art. 292 de la CNUDM.
¹¹ Art. 36 de la CNUDM.
28. Este hecho sin precedentes de violación flagrante de derechos que son por demás plausibles y que se fundamentan en reglas básicas y de larga data en la conducta de las relaciones internacionales, de tolerarse, no solo pondría en peligro los derechos de la Argentina, sino también crearía un precedente de in calculables consecuencias para los buques de guerra de todos los Estados, si los mismos debieran permanecer inmovilizados ante cualquier procedimiento judicial que se iniciare en su contra, en espera de la decisión de última instancia de los órganos judiciales internos.

Hago propicia la oportunidad para saludar a Vuestra Excelencia con mi más alta y distinguida consideración.

[Copia recibida con cinco (5) anexos]

María Susana Pataca
Ambassador
Accra, October 29th, 2012

Excellency,

1. Upon express instructions of my Government, I am writing to refer to the situation that led to the telephone conversation held on October 3rd 2012 between you and the Minister of Foreign Affairs and Worship of Argentina, Héctor Timerman, and the note that he sent you on October 4th 2012, regarding the detention by Ghana in the port of Tema, since October 2nd 2012, of the warship "ARA Fragata Libertad", which belongs to the Argentine Navy.

2. In such communications, the Argentine Republic clearly stated that said measure is contrary to international law and, in particular, albeit not exclusively, is a violation of the immunities enjoyed by warships pursuant to Article 32 of the United Nations Convention on the Law of the Sea (hereinafter, "UNCLOS") and other international law rules. Argentina requested your Government to urgently adopt the necessary measures to put an end to this situation.

3. With a view to resolving the dispute as urgently as required by this case and for the purpose of continuing without delay the exchange of views already initiated between the parties, pursuant to Article 283 of UNCLOS, my Government sent to Accra a high-level delegation comprised of the

To the Ministry of Foreign Affairs and Regional Integration
of the Republic of Ghana

Alhaji Muhammad Mumuni

1Annex 1.
Vice-Minister of Foreign Affairs, Ambassador Eduardo Zúñin, and the Secretary of International Affairs of the Ministry of Defence, Couns. Alfredo Forti. On 16-19 October 2012, the delegation met three times with Your Excellency, twice with the Minister of Defence and once with the Minister of Interior, the Attorney General, the Deputy Attorney General and advisors to the President of the Republic of Ghana, in addition to other officials. The Argentine Republic deeply regrets that such exchanges of views and negotiations failed to resolve the dispute between our two States as well as the fact that the warship “ARA Fragata Libertad” remains unlawfully detained and subject to restraint measures in the port of Tema in flagrant violation of basic rules of international law.

4. Since both Argentina and Ghana are parties to UNCLOS, but have not accepted the same procedure for the settlement of the dispute, it must be submitted to the arbitral procedure provided for in UNCLOS Annex VII, by virtue of Article 287 of the said Convention. My Government hereby notifies to the Government of Ghana that this dispute is being submitted to the arbitral procedure, pursuant to Article 1 of Annex VII of UNCLOS (I). Argentina further requests Ghana to adopt the provisional measure of unconditionally enabling the warship “ARA Fragata Libertad” to be resupplied and to leave the Ghanaian jurisdictional waters. Otherwise, within 14 days as from the date of receipt hereof, Argentina shall demand that such measure be ordered by the International Tribunal for the Law of the Sea, as provided in Article 290, paragraph 5, of UNCLOS (II).

**(I) SUBMISSION OF THE DISPUTE TO ARBITRATION**

5. The Argentine Republic submits to arbitration as provided in Annex VII of UNCLOS the dispute that exists with the Republic of Ghana related
to the detention of and the court measures adopted against the warship “ARA Fragata Libertad” by the Government of Ghana.

(A) The Argentine Republic’s Statement of Claims and Grounds upon which it is based

(a) Statement of Claims

6. The Argentine Republic requests the arbitral tribunal to declare that the Republic of Ghana, by detaining the warship “ARA Fragata Libertad”, keeping it detained, not allowing it to refuel and adopting several judicial measures against it:

(1) Violates the international obligation of respecting the immunities from jurisdiction and execution enjoyed by such vessel pursuant to Article 32 of UNCLOS and Article 3 of the 1926 Convention for the Unification of Certain Rules concerning the Immunity of State-owned Vessels as well as pursuant to well-established general or customary international law rules in this regard;

(2) Prevents the exercise of the right to sail out of the waters subject to the jurisdiction of the coastal State and the right of freedom of navigation enjoyed by the said vessel and its crew, pursuant to Articles 18, paragraph 1 (b), 87, paragraph 1 (a), and 90 of UNCLOS.

7. Thus, Argentina requests the arbitral tribunal to assert the international responsibility of Ghana, whereby such State must:

(1) immediately cease the violation of its international obligations as described in the preceding paragraph;

(2) pay to the Argentine Republic adequate compensation for all material losses caused;
(3) offer a solemn salute to the Argentine flag as satisfaction for the moral damage caused by the unlawful detention of the flagship of the Argentine Navy, ARA Fragata Libertad, preventing it from accomplishing its planned activities and ordering it to hand over the documentation and the flag locker to the Port Authority of Tema, Republic of Ghana;

(4) impose disciplinary sanctions on the officials of the Republic of Ghana directly responsible for the decisions by which such State has engaged in the violations of its aforesaid international obligations.

(b) Grounds for Argentina’s claims

8. ARA Fragata Libertad is a warship of the Argentine Navy within the scope defined by Art. 29 of UNCLOS. It is the flagship vessel of the Argentine Navy and, as such, represents the Argentine State, and has been sailing the world’s seas for more than 50 years, conveying a message of peace and friendship with a view to consolidating relations between the Argentine Navy and its counterparts in third countries. ARA Fragata Libertad is used for navy cadet training trips. At the time of its detention by Ghana it was on its 45th instruction voyage. The crew of the vessel detained included guest officers from the Navies of Bolivia, Brazil, Chile, Paraguay, Peru, South Africa, Suriname, Uruguay and Venezuela.

9. The Governments of Argentina and Ghana agreed on the visit of ARA Fragata Libertad to the port of Tema (Republic of Ghana). The Government of Ghana on June 4th 2012 authorized such visit and notified its decision to the Argentine Government through diplomatic channels, by means of notes exchanged between the respective representations in Abuja,
Nigeria. The notes exchanged clearly indicate that ARA Fragata Libertad is a warship, the official purpose of the visit and the relevant protocol arrangements between Argentina and Ghana. The final preparations for the visit by ARA Fragata Libertad to Ghana were agreed upon by Argentine diplomatic staff posted in Ghana since 26 September, which established contact with the naval authorities of that country as had been required by the local Government.

10. ARA Fragata Libertad arrived on the scheduled date (October 1st) and, on that same day, a formal welcome ceremony was held on board the ship to which governmental authorities, representatives of the Ghanaian Armed Forces and representatives of the diplomatic corps accredited to that country attended, in full compliance with the instructions received from the local Government in previous communications.

11. At 8:00 pm on 2 October 2012, a person claiming to be an official for the Judicial Service of the Superior Court of Judicature of Ghana — Commercial Division— appeared at ARA Fragata Libertad with other persons, for the purpose of delivering an official letter bearing the same date which contained an order by that Court, rendered by Judge Richard Adjei-Frimpong, requiring that ARA Fragata Libertad be held in the Tema Port. The official left the ship without the officers in charge of it accepting such service of process.

12. On the following day, and even though the contacts between the Argentine and Ghanaian authorities had already begun, including talks

---

between their respective Ministers of Foreign Affairs, in which Argentina urged Ghana to desist from its conduct, which constituted a violation of international law, a person claiming to represent the Port Authority appeared at the ship, together with a Maritime Agent, and requested to meet with the Commander of ARA Fragata Libertad, for the purpose of taking the documents of the ship and the flag locker in pursuance of the abovementioned order issued by the Superior Court of Judicature of Ghana—Commercial Division. This request was also rejected by the officers in charge of the ship.

13. Despite my government’s request, the Government of Ghana has not desisted from its unlawful conduct. In view of this attitude, the Argentine Government appeared before the judge that had ordered the interlocutory measure against ARA Fragata Libertad for the purpose of informing that he lacked jurisdiction and rejecting his attempt to take steps in connection with and against ARA Fragata Libertad, as this entailed a violation of such ship’s immunity.

14. In spite of all the precedents and of the clear content of the applicable international rules giving rise to Ghana’s international responsibility, the acting judge, Richard Adjei-Frimpong, on October 11th 2012 confirmed his previous order of seizure of ARA Fragata Libertad. The ship has thus remained stranded at the Tema port to this day even though it should have set sail—as previously agreed by both Governments—on 4 October 2012. This situation renders the ship unable to follow its program as agreed with the other States it was also going to visit (Angola, Namibia, South Africa, 

3 In the Superior Court of Judicature in the High Court of Justice (Commercial Division), Accra, Order for Interlocutory Injunction and Interim Preservation of the « ARA Libertad », 2 October 2012 (Annex 2).

4 In the Superior Court of Judicature, in the High Court of Justice Accra Commercial Division, held on Thursday the 11th day of October, 2012, Before His Lordship Justice Richard Adjei-Frimpong, Ruling (Annex 3).
Brazil and Uruguay), as well as with the States whose officers were on board of it.

15. Due to the interlocutory order by judge Adjei-Frimpong, enforced by the port authorities of Tema, ARA Fragata Libertad is unable to refuel. The ship depends on fuel for the maintenance of its two electricity generators and water distiller. As a result of this impossibility, the vessel will run out of fuel in the coming days. Faced with this situation, my government on October 24th 2012 had to repatriate at its own cost, on board a charter flight, most of the vessel’s crew and all of the officers of foreign States that were participating in the expedition, i.e., 281 individuals. At present, the captain of the ship and 44 crew members are still on board ARA Fragata Libertad. The Argentine Government is also bearing all the costs arising from this involuntary stay imposed on it and its crew. My government holds Ghana responsible for the security of the ship and of the crew remaining in it for as long as its unlawful detention lasts.

16. Judge Richard Adjei-Frimpong, in addition to claiming a jurisdiction he does not have, manifestly disregards international law by attempting to justify his decision by reference to the fact that Ghana legislation would not prohibit him from taking enforcement measures against a foreign warship. This judge interprets in a downright absurd and arbitrary manner the content of an Argentine bond issued in 1994, virtually holding that Argentina would be a State without any kind of immunity. The language of the clause itself states that Argentina has not waived the immunities to which warships are entitled under international law. Therefore, the Ghanaian judge’s decision ignores the fundamental and well-established international law fact that a waiver of immunity from enforcement of a government’s public property must be express, and the fact that Argentina
never waived the immunities protecting the warship ARA Fragata Libertad.

17. Until today the government of Ghana has not taken any kind of measures aimed at putting an end to the unlawful act generated by the decision of its judiciary. This is in flagrant violation of applicable international law rules providing that the government of a State shall ensure that its courts determine on their own initiative that the immunity of other States is respected, as set forth in Article 6 of the United Nations Convention on Jurisdictional Immunities of States and Their Property, which reflects a well-established rule of customary law.

18. The government of Ghana is not unaware of the fact that the State is responsible for the acts of all its organs, whether they exercise judicial or other functions, as established by general international law and as reflected in Article 4 of the Articles on Responsibility of States for Internationally Wrongful Acts elaborated by the International Law Commission. Furthermore, it is the Tema Port Authority, an administrative organ of the State of Ghana that has enforced the unlawful decisions of judge Richard Adjei-Prinmpong.

19. Despite Argentina’s efforts to resolve the dispute, the various State organs of Ghana persist in their conduct, which violates international obligations recognized by UNCLOS and entails international responsibility on the part of Ghana, as arises from the Argentine arguments set out in (a).

---

5 See International Court of Justice, Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening), Judgment of 3 February 2012, para. 118.
(B) Appointment of a Member of the Arbitral Tribunal

20. Pursuant to Article 3 (b), Annex VII of UNCLOS, the Argentine Republic notifies the appointment of Ms Elsa Kelly, member of the International Tribunal for the Law of the Sea, a biographical summary of whom is enclosed, as member of the Arbitral Tribunal.

21. Argentina invites Ghana to appoint a member of the Arbitral Tribunal within 30 days and to begin contacts to appoint the other members as soon as possible, in accordance with Article 3 (c), (d) and (e) of Annex VII.

II. REQUEST FOR PROVISIONAL MEASURE

22. Pending the constitution of the Arbitral Tribunal, as provided in Article 290, paragraph 5, of UNCLOS, Argentina requests Ghana to adopt a provisional measure to unconditionally enable the Argentine warship “ARA Fragata Libertad” to be resupplied and to leave the Tema port and the jurisdictional waters of Ghana. If such measure is not adopted within a term of 14 days, Argentina shall request the International Tribunal for the Law of the Sea to order such measure as set forth in the aforesaid provision.

23. The purpose of the provisional measure requested is to preserve the rights of Argentina arising from UNCLOS and referred to in I (a). Ghana’s attempt to exercise jurisdiction over ARA Fragata Libertad prevents the exercise of such rights and may render them illusive for an indefinite period of time. If carried out, the threatened execution of the said warship arising from the court decisions of 2 and 11 October 2012—and in view of

*Annex 5.
the reluctance of the Government of Ghana to do anything to prevent it —, this could cause an irreversible and irreparable impairment of such rights.

24. The requested measure must be adopted urgently. The Argentine Navy will be unable to use its flagship vessel for as long as the ARA Fragata Libertad remains detained. Such detention is, in turn, a measure that disrupts the organization of the armed forces of a sovereign State and an offence to one of the symbols of the Argentine Nation that hurts the feelings of the Argentine people, the effects of which are only compounded by the passage of time. For the reasons stated in paragraph 15, most of the crew had to be evacuated. The limited number of crewmembers that are now on board makes it impossible to carry out all maintenance tasks, which normally require at least 145 crew members. In case of an emergency, such a small number of crewmembers would be unable to respond. If a fire were to occur, the crew now present would merely be able to cover only one of the three brigades needed on board. If the vessel is not immediately allowed to refuel and sail off, its activities and those of the crew will be seriously disrupted, even jeopardizing the security of the vessel and the health and integrity of the crew remaining on board. If this situation persists, the future functioning of ARA Fragata Libertad will also be in peril.

25. The United Nations Convention on the Law of the Sea has taken into account the fundamental need to guarantee the freedom of navigation of private vessels or vessels operated for commercial purposes, providing mechanisms for prompt release in this regard, and thus a warship has all the more reason to be able to exercise such right promptly and without any
condition or restriction. This holds true to such an extent that even if a
warship does not comply with the laws and regulations of the coastal State,
all that this State can do is to require it to leave its territorial sea
immediately.¹¹

26. If the provisional measure is not adopted, the involuntary presence of
ARA Fragata Libertad and its crew in the Tema port will be left at the
mercy of the decision of a State that manifestly lacks any jurisdiction over
the detained warship. The attempt by the government and judiciary system
of Ghana to exercise jurisdiction over the warship and execute it not only
eantails the impossibility of exercising such rights for a prolonged period,
but also the threat of irreparable loss.

27. Furthermore, the long time required for the constitution of the arbitral
tribunal, for the conduct of the relevant procedure and for the award to be
rendered makes it impossible to wait for the completion of the procedure
without seriously impairing the rights invoked by Argentina.

28. Should this unprecedented flagrant violation of these more than
plausible rights that arise from basic and long-standing rules regarding the
conduct of international relations be tolerated, not only would Argentina’s
rights be in jeopardy. This would also set a precedent that would have
incalculable consequences for the warships of all States, if they would have
to remain stranded upon any lawsuit being brought against them and until a
final decision of the highest domestic judicial authorities is rendered.

I avail myself of this opportunity to reiterate to Your Excellency the
assurances of my highest consideration.

¹¹ Article 30 of UNCLOS.
ANNEX 1
BUENOS AIRES, 4 de octubre de 2012.

EXCELENCIA:

Continuando nuestra conversación telefónica de ayer, quisiera reiterarle nuestra gran preocupación en cuanto a la resolución de la Corte Superior de Judicatura (División Comercial) de su país de fecha 2 de octubre de 2012 por la cual se trajo embargo sobre el buque de guerra "ARA Fragata Libertad" perteneciente a la Armada de la República Argentina, que se encuentra en el puerto de Tema.

La República Argentina lamenta profundamente que la Fragata Libertad haya sido retenida indebidamente en ese puerto como consecuencia de la mencionada orden judicial.

Esta orden resulta contraria al derecho internacional toda vez que viola las inmunidades de las que gozan los buques de guerra conforme al Artículo 32 de la Convención de las Naciones Unidas de 1982 sobre el Derecho del Mar y la Convención de las Naciones Unidas sobre las Inmunidades Jurisdiccionales de los Estados y de sus Bienes de 2004 cuyas disposiciones reflejan el derecho consuetudinario en la materia, normas en virtud de las cuales un buque de guerra como la Fragata Libertad es inembargable.

La Fragata Libertad está actualmente en su cuadragésimo tercer viaje de instrucción con una tripulación compuesta, además de oficiales argentinos, de personal militar que representa a las Fuerzas Navales de Bolivia, Brasil, Chile, Paraguay, Perú, Sudáfrica, Surinam, Venezuela y Uruguay. Cabe destacar que la Fragata Libertad se encuentra en visita en el Puerto de Tema sobre la base de una invitación oficial de su Gobierno con lo cual sorprende la medida tomada por las autoridades de su país.

La Fragata Libertad es venerada como un símbolo argentino con alto valor histórico y cultural, y representa ante el mundo a la República Argentina y a su pueblo.

AL SEÑOR CANCILLER DE LA REPÚBLICA DE GHANA
ALHAJI MUHAMMAD MUMUNI
S. / D.
Los viajes anuales de instrucción alrededor del mundo de la Fragata Libertad sirven al importante rol de promover las relaciones de amistad y cooperación entre la República Argentina y las naciones visitadas entre las cuales se encuentra su país. Además de Ghana, dentro del actual viaje está programada la visita a otros 12 países (Brasil, Surinam, Guyana, Venezuela, Portugal, España, Marruecos, Senegal, Angola, Namibia, Sudáfrica y Uruguay) bajo un estricto cronograma que fue previamente acordado con autoridades militares y civiles de los países visitados, incluyendo al Gobierno de Ghana. Cualquier retraso en el Puerto de Tema afecta la agenda oficial y pone en riesgo la misión del viaje de instrucción.

La medida dictada por el poder judicial de su país, además de contravenir el derecho internacional, causa un grave perjuicio a la República Argentina y repercutirá, sin dudas, negativamente en el normal desarrollo de las relaciones bilaterales de no ser la misma dejada sin efecto con la mayor urgencia, a fin de que la Fragata Libertad pueda continuar con su viaje de instrucción tal como ha sido planeado.

Es por ello que, en homenaje a la histórica amistad que une a nuestros dos países y en virtud del favorable escenario que presenta hoy la cooperación sur-sur, solicito muy especialmente al Gobierno de VE—y agradezco desde ya— adoptar con la mayor urgencia las medidas que estén a su alcance para poner fin a esta situación que lamentablemente empañó la exitosa gira por países amigos del emblemático buque escuela de la Argentina.

Puedo asegurarle que para mi país, la elección del puerto de Tema como una de las escalas del itinerario de la Fragata Libertad fue motivo de enorme satisfacción por permitirnos honrar los vínculos de fraternidad que nos unen.

Aprovecho esta ocasión para renovar a V.E. las seguridades de mi más alta y distinguida consideración.

HECTOR TIMERMAN
Ministro de Relaciones Exteriores
y Culto
COURTESY TRANSLATION

BUENOS AIRES, 4 October 2012

EXCELLENCY:

Further to our telephone conversation yesterday, I would like to reiterate to you our deep concern about the Ghana Superior Court of Judicature (Commercial Division) order dated 2 October 2012, issuing an attachment against the “ARA Fragata Libertad” warship that belongs to the Navy of the Argentine Republic, and which is at Tema port.

The Argentine Republic is deeply distressed that Fragata Libertad has been unduly withheld at that port as a result of the aforesaid order.

Such order is contrary to international law, insofar as it violates the immunities enjoyed by warships pursuant to Article 32 of the 1982 United Nations Convention on the Law of the Sea and the 2004 United Nations Convention on Jurisdictional Immunities of States and Their Property, the provisions of which reflect the customary law in this regard, by which a warship such as Fragata Libertad cannot be subject to any measure of attachment.

Fragata Libertad is currently on its 43rd crew training trip, and its crew comprises, in addition to Argentine officers, military personnel representing the Naval Forces of Bolivia, Brazil, Chile, Paraguay, Peru, South Africa, Suriname, Venezuela and Uruguay. It is worth noting that Fragata Libertad is visiting Tema Port on an official invitation from your Government, and therefore the measure adopted by the authorities of your country has taken us by surprise.

Fragata Libertad is revered as an Argentine symbol that boasts a high historic and cultural value, and represents Argentina and its people before the world.

The annual training trips around the world of Fragata Libertad serve the significant role of promoting ties of friendship and cooperation between the Argentine Republic and the nations visited, including your country. In addition to Ghana, the frigate is planned to continue this trip in 12 other countries (Brazil, Suriname, Guyana, Venezuela, Portugal, Spain, Morocco, Senegal, Angola, Namibia, South Africa and Uruguay) on a strict schedule that has been previously agreed with military and civil authorities of the countries visited, including the Government of Ghana. A delay in Tema Port adversely affects the official schedule and jeopardizes the mission of the training trip.
The measure adopted by the Ghana judiciary, in addition to violating international law, causes serious harm to the Argentine Republic and will certainly have an adverse impact on our normal bilateral relations if this measure is not set aside promptly, so that Frigate Libertad can continue its training trip according to plan.

Hence, as a way of paying homage to the historic friendship between our two countries and in view of the positive outlook of South-South cooperation nowadays, I kindly request Your Excellency’s Government – and I thank Your Excellence in advance for this – to adopt as soon as possible such measures as may be within your reach to put an end to a situation that unfortunately tarnishes the successful visit to countries that are friends of Argentina’s emblematic school ship.

I can assure you that for my country, the election of Tema port as one of the stops on the itinerary of Frigate Libertad was a source of enormous satisfaction as it allows us to honour the fraternal ties between our countries.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest and most distinguished consideration.

TO THE MINISTER FOR FOREIGN AFFAIRS OF THE REPUBLIC OF GHANA
ALHAJI MUHAMMAD MUMUNI
ANNEX 2
The Embassy of Argentine Republic in Nigeria presents its compliments to the High Commission of Ghana in Nigeria and has the honor to inform, that in the frame of deepening the warm bilateral relations and the initiatives already in place since recent years, the Argentinian Navy has organized the visit to Tema Port of the Instruction Frigate A.R.A. Libertad from 1st till 4th of October in the course of its annual instruction trip for graduating naval cadets.

This occasion will be the first for the School Ship to anchor in a Ghanaian port ever, and we hope, it will be an unforgettable occasion for Ghanaians to visit and get acquainted with the museum-ship.

In this light, and following a special request from the authorities of the above mentioned vessel, we wish to request for information regarding the contact details of authority, contact person, focal point in Ghana in order to facilitate proper arrangements, discuss logistics and operational details with the Argentinian side in the Frigate.

More information on the A.R.A. Fragata Libertad can be found at www.marinedesarmada.gov.ar/AlmiranteLibertad (in Spanish)

Our contacts are as follows: Embassy of Argentina, Plot 1611, Yusuf Maitama Sule street, Asokoro, Abuja. Email: embg@argentina.gov.ar, Tel: 09-7800651, 08065292334

The Embassy of Argentina in Nigeria avails itself of this opportunity to renew to the High Commission of Ghana in Nigeria the assurance of its highest consideration.

Abuja, May 21, 2012
NOTE: EE/257/12

The Embassy of Argentine Republic in Nigeria presents its compliments to the High Commission of Ghana in Nigeria and with reference to our previous Note Verbal has the honor to request for the Permit from the appropriate authorities of Your Esteemed Country to enter the jurisdictional waters of Ghana and stop over at the Tema Port.

Details of the Frigate:

Crew:
- Officers: 25 (Twenty five)
- Official Guests (Domestic and Foreign): 16 (Sixteen)
- Midshipmen in commission: 71 (seventy one)
- Midshipmen in commission (Foreign): 23 (Twenty three)
- Assistant Officers: 21 (Twenty one)
- Caporals: 172 (One hundred and seventy two)
- Civil personnel: 04 (four)

Entry to Jurisdictional waters: 29 SEP 07:00 GMT; Lat. 00°24', 80(N); Long: 000°00', 90(W)
Exit: 05 OCT 15:00 GMT; Lat: 00°24', 80(N); Long: 000°00', 90(W)

Entry to Tema Port: 01 OCT 09:00 GMT
Exit from the Tema Port: 04 OCT 15:00 GMT

Our contacts are as follows: Embassy of Argentina, Plot 1611, Yusuf Maitama Sule street, Asokoro, Abuja. Email: embac@mpeci.gov.ar, Tel: 09-7800651, 08065292334

The Embassy of Argentina in Nigeria avails itself of this opportunity to renew to the High Commission of Ghana in Nigeria the assurances of its highest consideration.

Abuja, May 24, 2012
The Embassy of the Argentine Republic in Nigeria presents its compliments to the -High Commission of Ghana- in Nigeria and regarding the visit to Ghana of the Argentinean Ship A.R.A. LIBERTAD from the 1st to 4th October 2012, has the honor to forward additional information attached to this Note.

The Embassy of the Argentina Republic avails itself of the opportunity to renew to the -High Commission of Ghana- in Nigeria the assurances of its highest consideration.

Abuja, 19 June 2012
The Embassy of the Argentine Republic in Nigeria presents its compliments to the -High Commission of Ghana- in Nigeria and with reference to the Note Verbal EE/218/12 dated 19th June 2012, has the honor to forward the C.V. (English version) of the Captains of the Argentinean Ship A.R.A. LIBERTAD: Executive Officer Mr. Carlos Maria Allievi and Commanding Officer Mr. Pablo Lucio Salonio.

The Embassy of the Argentina Republic avails itself of the opportunity to renew to the -High Commission of Ghana- in Nigeria the assurances of its highest consideration.

Abuja, 21 June 2012
The Embassy of the Argentine Republic in Nigeria presents its compliments to the High Commission of Ghana in Nigeria and regarding the visit to Ghana of the Argentinean Frigate A.R.A. LIBERTAD, which was authorized by the Ghanaian Authorities to dock at Tema harbour, and in order to comply with the visit, has the honor to request the following:

1) - Protocol list of Port Authorities and city of Tema suggested for courtesy visit.

2) - Authorities and personalities that Ghanaian protocol would kindly advice to include in a list of possible guests for the reception to be hosted on board by Commander of the Frigate.

Our contact is as follows: Plot 1611, Yusuf Maitama Sule Street, Asokoro District, Abuja, Nigeria. Tel: +234 9 7800651; e-mail: enige@mrecic.gov.ar

The Embassy of the Argentina Republic avails itself of the opportunity to renew to the High Commission of Ghana in Nigeria the assurances of its highest consideration.

Abuja, 28th June 2012

Original copy received by
Eme 29/6/12
The Embassy of the Argentine Republic in Nigeria presents its compliments to the High Commission of Ghana in Nigeria and with reference to the previous Note Verbal: EE/238/12 dated 28th June 2012 regarding the visit to Ghana of the Argentinean Frigate A.R.A. LIBERTAD, which was authorized by the Ghanaian Authorities to dock at Tema harbour, has the honor to request the following:

1) - Protocol list of Port Authorities and city of Tema suggested for courtesy visit.

2) - Authorities and personalities that Ghanaian protocol would kindly advice to include in a list of possible guests for the reception to be hosted on board by Commander of the Frigate.

The Embassy contact details are as follow: Plot 1611, Yusuf Maitama Sule Street, Asokoro District, Abuja, Nigeria. Tel: +234 9 7800651; e-mail: enige@mreccic.gov.ar

The Embassy of the Argentine Republic avails itself of the opportunity to renew to the High Commission of Ghana in Nigeria the assurances of its highest consideration.

Abuja, 28th August 2012

THE HIGH COMMISSION OF GHANA
Abuja
The Embassy of Argentine Republic in Nigeria presents its compliments to the High Commission of Ghana in Nigeria and has the honor to inform, that the Instructional Frigate A.R.A. Libertad will arrive to the Tema port at 12.00 noon on 1st of October. Therefore the official cocktails on board is scheduled for same day at 7.30pm.

We would humbly suggest that through the good offices of the Ghanaian Ministry of Foreign Affairs, the ceremony on board stated (Monday, October 1st at 7.30am) be put into knowledge of the authorities of the Ministry of Defense, Ministry of Agriculture, Accra city Authorities, traditional rulers, Members of International Organizations and Diplomatic Missions.

In order to participate in the official welcoming ceremony of the Instruction Frigate A.R.A. Libertad, Ambassador - H.E. Maria Susana Patro will arrive to Accra on 26th September 2012 by Arik flight W3 61 at 17.50hrs and depart from Accra on 05th October by Arik flight W3 64 at 06.00hrs. During the visit, Her Excellency will stay in Labadi Beach Hotel.

In order to coordinate the visit of the Frigate, Secretary - Mr. Gustavo Fernandez Briozzo is arriving today -26th of September from Spain. His contacts are as follows: +34-606067882

For further information you can kindly contact us as follows: Embassy of Argentina, Plot 1611, Yusuf Maitama Sule street, Asokoro, Abuja. Email: enige@miracsic.gov.ar, Tel: 09-7800651, 08065292334

The Embassy of Argentina in Nigeria avails itself of this opportunity to renew to the High Commission of Ghana in Nigeria the assurances of its highest consideration.

Abuja, September 25, 2012
The High Commission of the Republic of Ghana presents its compliments to the Embassy of the Republic of Argentine and with reference to the latter's Note Verbale No. EE/206/12 dated 21st May, 2012, requesting for its Naval ship to dock at Tema harbour from 1st to 4th October, 2012 has the honour to inform that the Ghanaian Authorities have granted the request.

The High Commission of the Republic of Ghana avails itself of this opportunity to renew to the Embassy of Argentine the assurances of its highest consideration.

ABUJA, 4TH JUNE 2012

THE EMBASSY OF ARGENTINE
ABUJA
ANNEX 3
IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
(COMMERCIAL DIVISION)
ACCRA, A. D. 2012

SUIT NO.MISC/58/12

NML CAPITAL LIMITED
HUNTLAW CORPORATE SERVICE
THE HUNTLAW BUILDING
75 FOR STREET, GRAND CAYMAN
CAYMAN ISLANDS

VERSUS

THE REPUBLIC OF ARGENTINA
MINISTRY OF FOREIGN AFFAIRS
& WORSHIP ESMERALDA

1212 C1007 ABR BUENOS AIRES
ARGENTINA

ORDER FOR INTERLOCUTORY INJUNCTION
AND INTERIM PRESERVATION OF THE “ARA
LIBERTAD”

UPON READING the affidavit of KWEKU AGGREY-
ORLEANS, of House No.7 Abokobi Close, East Cantonments
filed on 2nd October 2012, in support of the motion ex-prt for
interlocutory injunction and interim preservation:

AND UPON HEARING ACE ANAN ANKOMAH ESQ,
Counsel for and on behalf of the Plaintiff/Applicant herein:

IT IS HEREBY ORDERED THAT the “Ara Libertad” be
injected and preserved as follows:

1. The Defendant, its servants, agents, privies and/or assigns
   including the captain (Capitán de Navío Pablo LucioSalonio) and crew are restrained from moving the
   ARA Libertad from the Port of Tema without further order of
   the court.

2. The Defendant, its servants, agents, privies and/or assigns
   including the captain (Capitán de Navío Pablo LucioSalonio) and crew are restrained from bunkering the
   ARA Libertad without further order of the court.

3. The Harbour Master, his servants, agents, privies, assigns
   are ordered to preserve the presence of the ARA Libertad in
Ghana and ordered to board the *ARA Libertad* forthwith and take possession of all copies, whether electronic or otherwise, of the *ARA Libertad*'s mandatory documents as listed in schedule 1 below and to refrain from permitting pilots, tugs or other personnel and services of Tema Port in assisting the *ARA Libertad* departing from its berth.

4. The Defendant, its servants, agents, privies and/or assigns including the captain of the *ARA Libertad* (Capitán de Navío Pablo LucioSalonio), are ordered to surrender to the Harbour Master his servants, agents, privies, assigns at the Port of Tema all copies, whether electronic or otherwise, of the *ARA Libertad*'s mandatory documents as listed in schedule 1 below.

5. The Harbour Master his servants, agents, privies, assigns at the Port of Tema are ordered not to issue the *ARA Libertad* with a Clearance certificate or Departure permit without further order of the court.

6. The Harbour Master his servants, agents, privies, assigns at the Port of Tema are ordered to take possession of the flag locker of the *ARA Libertad* until further order of the court.

**Schedule 1 List of mandatory documents**

i. Crew and passenger manifest.

ii. The international tonnage certificate (1969).

iii. The international Load Line Certificate.

iv. The international Load Line exemption certificate.

v. The intact stability booklet.

vi. Damage control plans and booklets.


viii. On board training and drills record.

ix. Certificates for masters, officers or ratings.

x. International oil pollution prevention certificate

xi. Oil record book

xii. International sewage pollution prevention certificate.

xiii. Voyage data recorder system-certificate of compliance.


xvi. Safety management certificate.


xix. Continuous Synopsis Record (CSR).

xx. Exemption Certificate.

xxi. List of operational limitations.

xxii. Ship’s register.
xxiii. Safety Radiotelegraphy Certificate.
xxiv. Safety equipment Certificate.
xxv. Bill of Health.
xxvi. Vaccination List.
xxvii. Cargo Manifest

IT IS HEREBY FURTHER ORDERED that leave is granted the Plaintiff to serve a copy of this order of injunction and preservation together with the Notice of the Writ on the Defendant outside the jurisdiction.

The Order of interlocutory injunction shall remain in force for ten (10) days save that pursuant to Order 25 Rule 1 (10) of C.I. 47 the said Order shall not so lapse after the expiration of ten (10) days unless the defendant provides sufficient security acceptable to this or any other court of competent jurisdiction within Ghana to satisfy the Plaintiff’s claim against the Defendant.


[SGD]
GLORIA E. OCANSEY (MRS)
REGISTRAR
FILED PURSUANT TO LEAVE GRANTED BY THE HONOURABLE COURT ON 2ND OCTOBER 2012

WRIT ISSUED FROM

IN THE COMMERCIAL DIVISION OF THE HIGH COURT

ACCRABETWEEN

NML CAPITAL LIMITED
Huntlow Corporate Services
The Huntlow Buildings
75 Fort Street, Grand Cayman-
Cayman Islands

PLAINTIFF

And

To

THE REPUBLIC OF ARGENTINA
Ministry of Foreign Affairs and Worship
Embaralde 1212
C1007 ABR, Buenos Aires
Argentina

DEFENDANT

An ACTION having been commenced against you by the issue of this Writ by the above-named Plaintiff

YOU ARE HEREBY COMMANDED that within eight days after the service of this Writ on you inclusive of the day of service you do cause an appearance to be entered for you.

The Republic of Argentina

AND TAKE NOTICE that in default of your so doing this, Judgement may be given in your absence without further notice to you.

Chief Justice of Ghana, the 2nd day October 2012

N. E. is to be served within twelve calendar months from the date of issue unless it is renewed within six calendar months from the date of last renewal.

The defendant may appear hereto entering appearance either personally or by solicitor, at the Registry of the Court of issue of the Writ at A defendant appearing personally may, if he desires enter his appearance by post and the appropriate forms may be obtained from the registrar after paying the appropriate fees.
STATEMENT OF CLAIM

The Plaintiff's claim is for:

(a) The sum of US$284,184,632.30 being the amount of the judgment awarded by the United States District Court for the Southern District of New York;

(b) Interest on the sum of US$284,184,632.30 at the rate of 4.95% per annum (compounded annually) and amounting to US$91,784,681.30 as at 1st October 2012;

(c) Continuing interest at the rate of 4.95% per annum (compounded annually) currently amounting to US$49,071.03 per day from 1st October 2012 until judgment or sooner payment; or

(d) Alternatively, interest on the said amount at the prevailing commercial bank rate from 18th December 2006 to the date of final payment.

This Writ was issued by

Bentsi-Enchill, Letsa & Ankomah

Address

1st Floor Teachers' Hall Complex, Education Loop, Off Barnes Road, Adabraka,

Accra

Whose address for service is

NML Capital Limited

Agent for

Bentsi-Enchill, Letsa & Ankomah

who

Solicitor for the Plaintiff

Resides at

Accra

Endorsement to be made within 3 days after service

This Writ was served by me at

On the defendant

On the day of 20

Indorsed the day of 20

Signed

Address

Note: Any defence or other pleadings should be filed in the Court in which you have entered an appearance. Any other communication should be sent to the Registrar at the court where you entered an appearance will tell you where you should send it.

(Ordinary Writ of Summons Civil Form 1, App. A part 1)
IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
(COMMERCIAL DIVISION)
ACCRA – A.D. 2012

NML CAPITAL LIMITED
Huntlaw Corporate Services
The Huntlaw Buildings
75 Fort Street
Grand Cayman
Cayman Islands

VERSUS

THE REPUBLIC OF ARGENTINA
Ministry of Foreign Affairs and Worship
Esmeralda 1212
C1007 ABR
Buenos Aires
Argentina

DEFENDANT

STATEMENT OF CLAIM

1. The Plaintiff is a company registered and incorporated under the laws of the
   Cayman Islands engaged in the business of management of investments on
   behalf of, among others, university endowments and pension funds.

2. The Defendant is a foreign state.

3. The Plaintiff states that on 7th November 2003, it commenced an action against
   the Defendant in the United States District Court for the Southern District of
   New York (the “New York Action”).

4. The Plaintiff states that its claims in the New York Action were for sums due
   and payable under two series of bonds issued by the Defendant, namely 12%
   Global Bonds CUSIP No. 040114FBI (the “12% Bonds”) authenticated on 3rd
   February 2000; and 10.25% Global Bonds CUSIP No. 040114GBO (the
   “10.25% Bonds”) authenticated on 21st July 2000 (together, the “Bonds”).

5. The Plaintiff adds that at all material times it has been the beneficial owner of
   US$60,244,000.00 principal amount of the 12% Bonds, and
   US$111,909,000.00 principal amount of the 10.25% Bonds.
6. The Plaintiff further states that both series of bonds were issued pursuant to and under the terms of a Fiscal Agency Agreement dated 19th October 1994 made between the Defendant and Bankers Trust Company (the "FAA.")

7. The Plaintiff states that under the terms of the Bonds, the Defendant submitted to the jurisdiction of the New York Courts in respect of any proceedings relating to the Bonds.

8. The Plaintiff adds that the Defendant agreed under the terms of the Bonds that:

   The Republic has in the Fiscal Agency Agreement irrevocably submitted to the jurisdiction of any New York state or federal court sitting in the Borough of Manhattan, The City of New York and the courts of the Republic of Argentina (the "Specified Courts") over any suit, action, or proceeding against it or its properties, assets or revenues with respect to the Securities of this Series or the Fiscal Agency Agreement (a "Related Proceeding") except with respect to any actions brought under the United States federal securities laws. The Republic has in the Fiscal Agency Agreement waived any objection to Related Proceedings in such courts whether on the grounds of venue, residence or domicile or on the ground that the Related Proceedings have been brought in an inconvenient forum. The Republic agrees that a final non-appealable judgment in any such Related Proceeding (the "Related Judgment") shall be conclusive and binding upon it and may be enforced in any Specified Court or in any other court to the jurisdiction of which the Republic is or may be subject (the "Other Courts"), by a suit upon such judgment.

9. The Plaintiff states that on 11th May 2006, the United States District Court for the Southern District of New York (the "District Court") granted the Plaintiff's motion for summary judgment in respect of the sums due and payable to the Plaintiff from the Defendant under the Bonds.

10. The Plaintiff states that on 18th December 2006, judgment was entered in the New York Action in favour of the Plaintiff in the sum of US$284,184,632.30 (comprising US$180,652,105.58 for unpaid principal, unpaid contractual interest and full statutory interest due in respect of the 10.25% Bonds; and US$103,532,526.72 for unpaid principal, unpaid contractual interest and further statutory interest due in respect of the 12% Bonds) (the "New York Judgment.")

11. The Plaintiff states that interest on the New York Judgment continues to run from 18th December 2006 at a rate of 4.95% per annum compounded annually pursuant to Title 28 of the United States Code Section 1961 and that as at 1st October 2012, the amount of interest that had accrued on the judgment sum was US$91,784,681.30.
12. The Plaintiff states that the District Court had jurisdiction to determine the matter and that the proceedings took place in accordance with both the state laws of New York and the federal laws of the United States.

13. The Plaintiff adds that the New York Judgment is a final judgment and is enforceable.

14. The Plaintiff states that by the terms of the Bonds the Defendant waived and agreed not to plead any immunity in respect of proceedings brought for the purposes of enforcing or executing any Related Judgment.

15. The Plaintiff states that, in any event, the FAA and the issuance of the Bonds were transactions for which the Defendant cannot claim, and does not enjoy, state immunity.


17. The Plaintiff states that on 2nd April 2008, the English High Court granted the Plaintiff leave to serve the proceedings on the Defendant out of the jurisdiction.

18. The Plaintiff states that the Defendant applied to set aside the order on the grounds that the Defendant enjoyed state immunity and that the English Courts did not have jurisdiction in the proceedings.

19. The Plaintiff states that the dispute between the parties as to state immunity and as to the jurisdiction of the English Courts to hear the action was heard by the English High Court and then on appeal by the Court of Appeal and the United Kingdom Supreme Court.

20. The Plaintiff states that on appeal to the United Kingdom Supreme Court, following objections that the Defendant raised regarding state immunity and jurisdiction, the Court by its judgment dated 6th July 2011 held that the Defendant did not enjoy state immunity and that the English Courts had jurisdiction.

21. The Plaintiff states that ultimately, in its Defence filed on 22nd August 2011, the Defendant admitted the sum of US$284,184,632.30 as owing to the Plaintiff.

22. The Plaintiff states that on 5th December 2011, the Defendant consented to judgment being entered against it in the principal sum of US$284,184,632.30 and interest of US$48,095,940.91 (not including post-judgment interest) (the “English Consent Order”).
23. The Plaintiff states that despite numerous requests made by it to the Defendant to satisfy the New York Judgment debt, the Defendant has failed and/or refused to pay any of the said judgment debt and has publicly admitted to organising its affairs so as to evade enforcement of judgment debts generally.

24. The Plaintiff states that the Defendant is the owner of a vessel named *ARA Libertad*, which berthed at location B 11 in the commercial port at the Port of Tema on 1st October 2012.

25. The Plaintiff contends that the *ARA Libertad* is an asset of the Defendant within the jurisdiction available to be enforced against.

WHEREFORE the Plaintiff claims against the Defendant as follows:

i. The sum of US$284,184,632.30 being the amount of the judgment awarded by the United States District Court for the Southern District of New York;

ii. Interest on the sum of US$284,184,632.30 at the rate of 4.95% per annum (compounded annually) and amounting to US$91,784,681.30 as at 1st October 2012;

iii. Continuing interest at the rate of 4.95% per annum (compounded annually) currently amounting to US$49,071.03 per day from 1st October 2012 until judgment or sooner payment; or

iv. Alternatively, interest on the said amount at the prevailing commercial bank rate from 18th December 2006 to the date of final payment.

Dated in Accra this 2nd day of October 2012

Licence No.: 05482/12 dated 23rd April 2012

The Registrar
High Court (Commercial Division)
Accra

And to the above named Defendant
ANNEX 4
IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE ACCRA COMMERCIAL DIVISION, HELD ON THURSDAY THE 11TH DAY OF OCTOBER, 2012. BEFORE HIS LORDSHIP JUSTICE RICHARD ADJEI-FRIMPONG.

=================================

SUIT NO. RPC/343/12

NML CAPITAL LIMITED - PLAINTIFF/APPLICANT

VRS

THE REPUBLIC OF ARGENTINA - DEFENDANT/RESPONDENT

PARTIES:  PLAINTIFF REPRESENTED BY MICHAEL FIELDS - PRESENT

DEFENDANT REPRESENTED BY SUSANA PATARO - PRESENT

COUNSEL:  ACE ANAN ANKOMAH FOR PLAINTIFF/RESPONDENT

APPEARING WITH HIM KWEKU AGGREY ORLEANS - PRESENT

LARRY OTOO FOR DEFENDANT/APPLICANT APPEARING WITH HIM OPOKU AMPONSAH AND NII ODOI ODOTEY - PRESENT
RULING

It will be extremely useful, I suppose, in determining the instant application, to recount the background events that resulted in the commencement of this suit, in particular to explain how the Plaintiff, a foreign corporate body and the defendant a foreign state are before the High Court of Ghana.

Sometime in October 1994, the Defendant/Applicant entered into a Fiscal Agency Agreement ("FAA") with the BANKERS TRUST COMPANY, New York banking corporation under which agreement the Defendant/Applicant issued securities and bonds for purchase by the public.

The Plaintiff purchased two series of the bonds issued by the Defendant/Applicant namely 12% Global Bonds CUSIP No. 040114FB1 ("the 12% bond") authenticated on 3rd February 2000 and 10:25% Global Bonds CUSIP No. 040114GBO ("the 10:25% Bonds") also authenticated on 21st July 2000. The Plaintiff thus became the beneficial owner of the interest in the bonds.

When the Defendant/Applicant defaulted on the bond the Plaintiff subsequently sued and obtained judgment in the United States District Court for the Southern District of New York against the Defendant/Applicant to recover the sums due. The Defendant/Applicant did not settle the debt.

On the 15th of May 2005, the Plaintiff commenced an action in the English High Court suing on the simple debt obligation imposed on the Defendant/Applicant by the New York Judgment.
Significantly, in its commencement of the two aforesaid actions and of course the present one, the Plaintiff had relied on a particular provision in the Fiscal Agency Agreement (FAA) and in the bonds as the impetus for invoking the jurisdiction of those and this court. I shall refer to this provision in extenso soon hereafter. But from the facts available the Defendant/Applicant raised an objection to the suit in the U. K. High Court on the ground that it enjoyed state immunity under English law and that the English court had no jurisdiction to entertain the matter. This question went before the Supreme Court of the United Kingdom which held that the defendant did not enjoy state immunity and that the English Court had jurisdiction to entertain the suit.

In the subsequent proceedings in the English High Court, the Defendant/Applicant submitted to judgment and that court made a consent order against the Defendant/Applicant and in favour of the Plaintiff for the payment of the principal sum of US$284,184,632.30 and interest of US$48,095,940.91.

Though that judgment was a consent judgment, the Defendant/Applicant did not pay any part of the sum awarded.

The records available before me speak of various attempts by the Plaintiff to execute the judgment with of course a corresponding strong resistance on the part of the judgment debtor who from all indications is not in the prospect of paying the debt.
Then on or about 1st October 2012, the vessel “ARA Libertad” (hereinafter called the vessel) belonging to the Defendant/Applicant entered Ghana’s territorial waters and docked at the port of Tema. The Plaintiff thus with the leave of the court commenced the instant suit in this court claiming as follows:

a. The sum of US$284,184,632 being the amount of the judgment awarded by the United States District Court for the Southern District of New York.

b. Interest on the sum of US$284,184,632.30 at the rate of 4.95% per annum (compounded annually) and amounting to US$91,784,681.30 as at October 1st 2012.

c. Continuing interest at the rate of 4.9% per annum (compounded annually) currently amounting to US$49,071.03 per day from 1st October 21012 until judgment on sooner payment or

d. Alternatively, interest on the amount at the prevailing commercial bank rate from 18th December 2006 to date of final payment.

Having filed the claim the Plaintiff obtained in this court an Exparte limited order of interlocutory injunction in effect restraining the movement from the port of Tema, the vessel and the interim preservation of same.

It is this order the Defendant/Applicant seeks to set aside by the instant motion. The grounds for this relief have been set out in an affidavit sworn to by Lawrence Otoo Esquire Counsel for the Defendant/Applicant which affidavit has quite a number of annexures.
The application has been vehemently opposed. The first issue I think I should deal with is jurisdictional in nature. I consider it fundamental not just relative to the application but to the action itself. It was argued on behalf of the Defendant/Applicant that the laws of Ghana do not permit this court to entertain proceedings to execute a judgment from the court of the United States of America i.e. the New York Judgment. Reference was made to Section 81 of the Courts Act 1993, Act 459 and its pursuant instrument, THE FOREIGN JUDGMENTS AND MAINTENANCE ORDERS (RECIPROCAL ENFORCEMENT) INSTRUMENT 1993 LI 1575. The argument on behalf of the Defendant/Applicant is that since United States of America and for that matter the State of New York has not been listed in the schedule to the instrument as one of the states recognized for reciprocal enforcement of judgments, this court wrongfully entertained the Plaintiff's action and on that wrongful footing granted the interlocutory orders.

I do agree that the provisions in the whole of part 5 of the Courts Act and the LI 1575 provide a regime of reciprocal enforcement of foreign judgments. The mode of enforcement in those provisions is by registration of the judgment. And I do not find any controversy about the fact that the United States of America or any of its states has not been listed for reciprocal enforcement of judgments under that regime.

Clearly therefore the New York judgment is not registrable under the law and hence unenforceable under that. But then the qualm about the Defendant/Applicant’s argument lies in the suggestion that every foreign judgment must necessarily go through the regime of registration under the
provisions of part 5 of the courts Act and LI 1575 before a court in Ghana can entertain an action in relation to its enforcement.

That is not my understanding of the law. I am of the view that the common law regime which permits the filing of a fresh action founded on a foreign judgment for purposes of enforcement is still applicable in Ghana. Under English law where specific statutory provisions are available for registration of foreign judgments for reciprocal enforcement, there is still the avenue outside the statutes to maintain a cause of action to enforce foreign judgments. The rationale behind that avenue is that the foreign judgment creates an enforceable contract between the parties which can found an action at common law. The English position finds explanation in Halsbury Laws of England Vol. 8 4th edition paragraph 997.

Thus:

"ENFORCEMENT OF FOREIGN JUDGMENTS BY ACTION AT COMMON LAW".

"Actions on foreign judgments: Subject to certain qualifications, a judgment in personam of a foreign court of competent jurisdiction is capable of recognition and enforcement in England.

Apart from statute, it will not be enforced directly by execution or any other process, but will be regarded as creating a debt between the parties to it; the debtor's liability arising on an implied promise to pay the amount of the foreign judgment. The debt created is a simple contract debt and not a specialty debt and is subject to the appropriate limitation period ...."
Whilst there is paucity of local authorities on the applicability of the common
law regime in the jurisdiction. I find what should be Ghana’s position on the
matter summed up by the Learned Author of CIVIL PROCEDURE, A
PRACTICAL APPROACH (S. KWAME TETTEH) at page 690 as follows:

"A foreign judgment not registrable under LI 1575 may be enforced by
fresh action. The basis of the action for enforcement is that the
judgment constitutes a simple contract debt between the parties to the
judgment, the judgment debtor impliedly promising to pay the
judgment debt. The relative limitation period is applicable. The
Plaintiff may apply for summary judgment on ground that the defendant
had no defence to the action. The judgment in such action would be the
judgment of the domestic court and capable of enforcement as such”.

Now, at common law, the general rule is that a party who has obtained
judgment against a Defendant is barred from suing again on the original cause
of action. The original cause of action is said to have merged in the judgment
— “transit in rem judicatam” and therefore is extinguished. The authorities
however suggest that this is not the rule relative to foreign judgments. A
foreign judgment does not occasion a merger of the original cause of action
and therefore the Plaintiff has the option either to resort to the original
ground of action or to sue on the judgment obtained.

See SMITH VS NIGOLLS (1839) 3 SIM 438.
If I have understood the Plaintiff’s action and not misformulated it, this suit
was commenced on the basis of the latter option. The judgment of the New
York was not registrable under the law and so the Plaintiff chose to sue on the
judgment and I am satisfied that that was permissible under Ghana law. One should not be lured into thinking that the provisions in part 5 of the Court’s Act and LI 1575 cannot coexist with the common law position. Indeed a careful reading of Section 86 of the Court’s Act will reveal that the provision envisages a situation where an action could be commenced and proceeded with other than by registration strictly as a procedure.

The Head note of Section 86 reads
“GENERAL EFFECT OF CERTAIN FOREIGN JUDGMENTS” and
Subsection 1 states:

“Subject to this section, a foreign judgment to which this Act applies or would have applied if a sum of money had been payable under it, shall be recognized in a court as conclusive between the parties to it in proceedings founded on the same cause of action and may be relied upon as a defence or counterclaim in those proceedings”.

Subsection 2 is also relevant:

"Subsection 1 applies whether the foreign judgment is registered, can be registered or it not registered”.

Having said that, the next immediate question is whether in suing on the New York Judgment, the Plaintiff properly invoked the jurisdiction of this court. When the Plaintiff sought leave of this court to issue a notice of a writ and service out of the jurisdiction, it relied on Order 8 of the (High Court) Civil Procedure Rules 2004 CI 47. The defendant is without doubt a foreign entity. The general rule is that courts exercise jurisdiction only over persons who are
within the territorial limits of their jurisdiction. It therefore requires a special statutory power for the court to order a defendant beyond its jurisdiction to appear before it either by a writ, a notice of writ or any other originating process.

See RE BUSHFIELD (1886) 32 CHD 123. That statutory Power to assume that jurisdiction in my opinion is what is contained in Order 8 of the CI 47. The Plaintiff therefore had to show that it could come within any of the specific provisions stated under subrules 1 (a) to (m) of rule 3 of Order 8.

The Plaintiff relied on subrule 1 (m) which provides as follows:

“3. (1) Service out of jurisdiction of notice of a writ may be effected with leave of the court in the following cases:

(m) If the action begun by writ is in respect of a contract which contains a term to the effect that the court shall have jurisdiction to hear and determine any action in respect of the contract”.

The contract in the question is the Fiscal Agency Agreement (FAA). The particular term in contention is contained in clause 22 and same is repeated in the two bonds in question.

The Fiscal Agency Agreement is annexed to the Plaintiff’s affidavit in opposition to the motion as Exhibit KAO 1 whilst the two bonds are annexed as Exhibits KAO 2 and KOA 3.
The term in contention reads as follows:

"The Republic has in the Fiscal Agency Agreement irrevocably submitted to the jurisdiction of any New York State or Federal Court sitting in the borough of Manhattan, the City of New York and the Courts of the Republic of Argentine ("the specified Courts") over any suit, action or proceeding against it or its properties assets or revenues with respect to the securities of this series or the fiscal Agency Agreement (a "Related Proceeding") except with respect to any actions brought under the United States Federal security laws. The Republic has in the fiscal Agency Agreement waived any objection to the Related proceedings in such courts whether on the grounds of venue, residence or domicile or on the ground that the Related proceedings have been brought in an inconvenient forum. The Republic agrees that a final non-appealable Judgment in any such Related proceeding (i.e. "Related Judgment") shall be conclusive and binding upon it and may be enforced in any specified Court or in any other courts to the jurisdiction of which the Republic is or may be subject (the other courts") by a suit upon such a judgment....

To the extent that the Republic or any of its revenues, assets or properties shall be entitled, in any jurisdiction in which any specified court is located, in which any related proceeding may at any time be brought against it or any of its revenues, assets or properties or in any jurisdiction in which any specified court or other court is located in which any suit action or proceedings may at any time be brought solely for the purpose of enforcing or executing any Related Judgment, to any immunity from suit from the jurisdiction of any such court, from set off from attachment prior
to judgment, from attachment in aid of execution of judgment, from execution of a judgment or from any other legal or judicial process or remedy and to the extent that in any such jurisdiction there shall be attributed such an immunity, the Republic has irrevocably agreed not to claim and has irrevocably waived such immunity to the fullest extent permitted by the laws of such jurisdiction...."

Counsel for the Plaintiff submitted whilst invoking the jurisdiction of this court for leave to issue and serve the notice of the writ and has re submitted in arguing the instant motion that, this court is perfectly within the description of the designation “other courts” specified in the term of the agreement. He argues that once an asset of the Defendant/Applicant being the vessel has found itself in the territorial waters of Ghana which asset being the property of the Judgment Debtor is liable to be attached in aid of execution of the Plaintiff’s subsisting Judgment, the Ghana court becomes one of the “other courts” envisaged by the term and since the judgment constitutes a civil contract under common law, Order 8 rule 3 subrule 1 (m) operates to property invoke the jurisdiction of this court.

I find the logic in the argument sound just as I did when the court was invited to assume jurisdiction over the matter. My appreciation of Order 8 rule 3 subrule 1 (m) is that it is anticipatory in nature ready to embrace whichever parties have left their jurisdictional demand open in their contract as the parties herein did in the FAA and the bonds.
As noted earlier, the argument of Counsel for the Defendant/Applicant on this jurisdiction question is mainly founded on the provisions in the courts Act and the LI 1575 about which I have already expressed my opinion, I do not find sufficient basis to come to a conclusion that this court wrongfully assumed jurisdiction over the matter.

The opinion of the court on this question is just as it was in the beginning. The jurisdiction of this court was validly invoked.

But almost inseparably linked to the foregone issue is the question of sovereign immunity being raised by the Defendant/Applicant in the instant motion. The argument simply is that the Defendant is a sovereign state and is entitled to immunity.

I think of no question about the Defendant/Applicant’s status of a sovereign state and its immunity to the court’s jurisdiction.

The Plaintiff did not argue that and I find no need to cite authorities for it. Neither do I think of any question about the universally recognized right of sovereign state to waive immunity.

The question arises out of the assertion the Plaintiff makes that the Defendant/Applicant waived its immunity under the Fiscal Agency Agreement and the bonds.
Nation states' historical enjoyment of absolute immunity from adjudication by foreign courts has given way to the common law restrictive immunity approach whereby a claim to state immunity would not be upheld in disputes arising out of transactions entered into between states and entities which were of commercial or private law nature. Various states have varied legal regimes on the restrictive immunity approach. E.g. The U. K. has the state immunity act 1978 whilst the US has the Foreign Sovereignty Immunity Act of 1976.

It is also universally recognized that states may irrevocably waive immunity by express contract.

PHILIP R. WOOD in his work LAW AND PRACTICE OF INTERNATIONAL FINANCE (1995) at page 88-89 writes on principles of waiver clauses as follows:

"It appears to be universally recognized in most industrialized state that a state may irrevocably waive immunity by express contract in advance and there is some support for the principle that a waiver from jurisdiction is not a waiver from enforcement".

I agree with this view. So has the Defendant/Applicant waived its sovereign immunity to the jurisdiction of this court?

Reading and re-reading the waiver provision in the Fiscal Agency Agreement and the bonds which I have already cited, my understanding is that not only did the Defendant/Applicant waive its sovereign immunity to the specified
courts", but it did so to the “other courts” of which in the opinion of this court once again it is one.

Aside my understanding of the provision, the record before me shows that the prime issue before the U. K. Supreme Court when the case travelled there was whether the Defendant/Applicant has waived its immunity to the jurisdiction of the U. K. High Court which to my understanding was one of the “other courts”.

In the decision of the U. K. Supreme Court which is now reported in the (2011) 4 ALL ER 1191, holding 3 of the head note reads:

“The bonds contained a submission to the jurisdiction of the English Court; Argentina had unambiguously agreed that a final judgment on the bonds in New York should be enforceable against Argentina in other courts in which it might be amenable to a suit on the judgment ....”

In construing the provision in the bond Lord PHILIPS P delivered himself at page 1210 to 1211 as follows:

“... if a state waives immunity it does no more than place itself on the same footing as any other person. A waiver of immunity does not cover jurisdiction where, in the case of another Defendant it would not exist. If however state immunity is the only bar to jurisdiction, an agreement to waive is tantamount to a submission to the jurisdiction.

In this case Argentine agreed that the New York Judgment could be enforced by a suit upon the judgment in any court to its jurisdiction of which absent immunity, Argentina would be subject. It was both an agreement to waive immunity and an express agreement that the New
York Judgment could be sued on it any country that state immunity apart would have jurisdiction. England is such a country .... The provision in the first paragraph constituted a submission to the jurisdiction of the English court. If consideration of the first paragraph alone left any doubt that the terms of the bonds included a submission to this jurisdiction, this would be dispelled by the second paragraph ....”

“The words ‘may at any time be brought’ which I have emphasized once again constitute Argentina’s agreement that the waiver of immunity applies respect of any country where immunity apart there is jurisdiction to bring a suit for the purpose of enforcing a judgment on the bonds. England is such a jurisdiction. Both jointly and severally the two paragraphs amount to an agreement on the part of Argentina to submit to the jurisdiction of the English Court (no doubt among other) courts”.

Lord Collins SCJ also said at page 1225 to 1226 thus:

“The New York Judgment was in any view a “Related Judgment”. Argentina agreed that it could be enforced in any other courts to the jurisdiction of which the Republic is or may be subject”. This was the clearest possible waiver of immunity because Argentina was or might be subject to the jurisdiction of the English Court since the English Court had a discretion to exercise jurisdiction in an action or the New York Judgment by virtue of CPR 6.20 (9) (Now CPR P.D 6B para. 3)”

And so the opinions went on and on. But what is the effect of this decision on this issue of waiver of sovereign immunity?
I am of the view that since the issue was determined as between the same parties by a court of competent jurisdiction, the question of waiver of immunity is res judicata and the Defendant/Applicant is estopped from relitigating the same issue before this court.

In effect on this question of waiver of immunity, my own reading of the provision leads me to the conclusion that the defendant waived it. The decision of the U. K. Supreme Court which is of persuasive effect reinforces my conclusion. And the same issue by virtue of the U. K. Supreme Court’s decision is res judicata. From all that has been said, I hold that the Defendant/Applicant is properly before this court as a defendant in the present action and is unless otherwise ordered amenable to all the orders of this court.

The next issue is about the vessel Libertad itself. The vessel has been described as a military vessel or a warship used by the Argentine Navy for training and other military activities. It has been urged on this court to note that by the status of the vessel it is immuned to the judicial process of this court.

Before considering the strong arguments made on this issue, it is important foremost to establish that status of the vessel on record. Fortunately Counsel on both sides agree on the definition of warship under Article 29 of the law of the sea convention. I have also read the affidavit sworn to by Mr. Auturo Puricelli the Minister of Defence of the Republic of Argentina about the envious profile of the vessel. From the various documentations made
available on record and given also that Counsel for the Plaintiff did not contest the status of the vessel in any resolute manner, I hold that the vessel Libertad is a military asset of the Republic of Argentina the Defendant/Applicant.

The following depositions in the affidavit of Lawrence Otoo Esquire in support of the application are at the core of the Defendant/Applicant's argument.


"8. That I am informed and verily believe the same to be true that the principle of exclusion of military equipment and assets from attachment or constraint is a customary international law."

"9. That the United States District Court for the Southern District of New York in granting an order for attachment of the Defendant's assets in New York in respect of the same suit excluded at page 5 of the order, military assets pursuant to the said customary international law inspite of the Defendant's waiver of immunity regarding the enforcement of the debt ...."

The Plaintiff's response to these depositions are contained in a number of paragraphs of the affidavit of Kweku Aggrey Orleans which I have attempted to summarize as follows:
1. That the United Nations Conventions which recognize the immunity of warships as principle of customary international law equally permit the waiver of the immunity.

2. That while the Convention on Jurisdictional Immunities of State and their property 2004 has not been ratified by both Ghana and Argentina and has not even come to force, it recognizes immunity of warship just as it recognizes the right to waive it including by contract.

3. That if the defendant claims that itself and the vessel are entitled to immunity under international law then it should be deemed to accept that the immunity can be waived.

4. That the defendant has irrevocably waived the immunity claimed to be attached to the vessel by the terms of the contract exhibited as Exhibit KA02 and KA03.

5. That the effect of the defendant’s undertaking not to assert the immunity and the irrevocable waiver of same is that both the defendant and the vessel do not enjoy any immunity under customary international law.

6. That the order contained in the order of attachment by the New York was directed to its Marshall and has no application or relevance to and not binding on this Court. In any case that order was made pursuant to and in line with the U.S. statutory law namely Foreign Sovereign Immunity Act which specifically forbids the detention of assets or properties used in connection with military activity, or of military character or under the control of a military authority or defence agency.
From these specific assertions and the responses delivered which of course formed the basis of the strong arguments made before this Court I think the questions to answer are simply as follow:

1. Is it a rule of customary international law that warships enjoy immunity from judicial processes?
2. Can that immunity be waived under international law?
3. If it can be waived how can the waiver be done and
4. Has the Defendant/Applicant in this case waived the immunity?

In the first question learned Counsel for the Defendant/Applicant in his submission referred to a number of authorities including judicial decisions text writers and international treaties and argued that immunity of warships is now recognized as a rule of customary international law.

Counsel for the Plaintiff did not seem to contest that but has stuck to the position that the same international customary law which his friend alludes to also recognizes the right to waive the immunity. That should have ended the controversy but I think I need to comment that it will be too sweeping a conclusion to state that there is a clear rule of customary international law on the matter even though one should concede to a predominant practice towards the attainment of that. Indeed the fact that the 2004 convention has not taken effect for the main reason that many states have not ratified it should buttress the view being expressed. And if this specie of immunity is considered as a component of the whole regime of sovereignty in international law then it is difficult to talk of a clear cut rule of customary international law.
In the "American Journal of International Law," vol.75 James Crawford at page 82 has noted:

"The extent to which foreign sovereigns are entitled to immunity in municipal courts has attracted a vast literature in recent years especially the majority view now seems to be that immunity need not extend to commercial transactions entered into by the state although the precise scope of this "exception" remains unsettled, and the role of international law in "extending" or "withholding" immunity has not yet perhaps been clearly analyzed. Indeed, it has been denied that there is any international law rule at all on the subject, a view that would presumably leave each state free to formulate or negotiate its own rule."

But let me refer to one authority which for me represents the international thinking of the issue. The Court in the case of In Re REPUBLIC OF THE PHILIPPINES 46 B ver FGE (1977) after examining several authorities on the subject conclude:

"There is no sufficient general practice, supported by the necessary opinion juris, to establish a general rule of customary international law prohibiting the state of the forum absolutely from compulsory execution against assets of a foreign state situated in the state of the forum. A number of states in their judgment, legislation or treaty practice do not exclude security and execution measures against foreign states, at least not when such measures are based upon activities of the foreign state which are iure gestiones, and when such measures are taken against assets which do not serve governmental purposes. The attitudes of these states are of sure weight that there can be no question of a general practice
pursuant to international law which prohibits compulsory execution, whatever the requirement of generality of a practice before it can become the basis of a rule of customary international law”.

This court shares in the opinion expressed by the court and if I should answer the first question I posed, I will say that though there is no well established customary international law that warships enjoy immunity, the view in support of it is widespread.

Can the immunity be waived? If immunity in whatever form is understood as a right exerciseable by state entity then it is difficult for anyone to convince me that immunity enjoyed by warships can never be waived. Indeed as one example in the United Nations Convention on jurisdictional Immunities of States and their property 2004 which the Defendant/Applicant relies on a principle representing a rule of customary international law, waiver is permissible.

Under both Articles 18 at 19 which respectively deal with State Immunity from pre judgment measures of constraint and post judgment measures of constraint, waiver is permitted by the means of international agreement, or by an arbitration agreement or in a written contract or by a declaration before the court or by a written communication after a dispute between the parties has arisen.

I think it would have required of the Defendant/Applicant to provide strong authorities to support its position that waiver is not permissible. This is because its own recent conduct does not indicate so. It has been
demonstrated in this court that in the Defendant/Applicant's recent issuance of new securities filed with the United States Security Exchange Commission governed by Trust Indenture dated 5th June 205 (copies of which have been annexed to the affidavit of ERIC C. KIRSCH, Attorney the New York firm of Dechert LLP), the Defendant/Applicant has inserted limitations with respect to its military assets and properties. The logical inference is that if Defendant/Applicant believes strongly in its view of the immutability of the waiver, there would not have been any need to insert that limitation because in that case whether it is there or not the law should recognize it.

On the whole I think a stronger case has been demonstrated for me to come to the conclusion that the immunity can be waived and if the provisions in the 2004 convention do represent the rule of customary international law as Counsel on both sides seem to agree then the waiver may be done by the processes specified under articles 18 and 19 i.e. by international agreement; arbitration agreement; written contract; Declaration before the court or a written communication after the dispute between the parties has arisen.

Final question is did the Defendant/Applicant waive the immunity?

In answering this question I am compelled to sacrifice brevity and at the risk of being repetitive re state the second bit of the term in the FAA and the bonds on which the Plaintiff relies to clam waiver. The second part is what directly relates to assets. It states:

"To the extent the Republic or any of its assets or properties shall be entitled in any jurisdiction in which any specified court is located, in which
any related proceeding may at any time be brought against it or any of its revenues, assets or properties, or in any jurisdiction in which any specified court or other court is located in which any suit action or proceeding may at any time be brought solely for the purpose of enforcing or executing any Related Judgment, to any immunity from suit, from the jurisdiction of any such court, from set-off, from attachment prior to judgment, from attachment in aid of execution of judgment, from execution of a Judgment or from any other such legal or judicial process or remedy and to the extent that in any such jurisdiction there shall be attributed such as immunity, the Republic has irrevocably agreed not to claim and has irrevocably waived such immunity to the fullest extent permitted by the laws of such jurisdiction ...."

It was not for nothing that Lord Collins of the U. K. Supreme Court describes the provision as "the clearest possible waiver" of immunity Argentina could have given.

What is essential to note is that the Defendant/Applicant gives a proviso and proceeds to list a number of things which the immunity does not cover. Even there the Defendant/Applicant names another category of courts as the "Republic's Courts" and places the list within the purview of those courts.

Learned Counsel for the Defendant/Applicant has argued that the courts of the United States of America where the judgment was given has failed to recognize the inclusion of military assets in those properties that could be attached. I do agree that the U.S Court have done so. But what I think Counsel
fails to recognize is the aspect of the provision which subjects the threshold of
the assets attachable to the municipal law of the court exacting the
attachment. The relevant portion reads:

"... the Republic has irrevocably agreed not to claim and has irrevocably
waived such immunity to the fullest extent permitted by the laws of such
jurisdiction".

So that if under U. S law, it is not permissible to attach military assets, then
that is the U. S. Law not Ghana law.

In fact it has been shown that the U. S. has a specified legal regime under the
Foreign Sovereign Immunities Act which specifically forbids the detention of
assets or properties used in connection with a military activity or of military
character or under the control of a military authority or defence agency.

I do not know of any such legal regime in Ghana. The closest I think Counsel
could come to any such regime was his reference to Section 392 of Ghana
Shipping Act.

The Section provides:

"Non Commercial Cargoes owned by a state and entitled at the time of
salvage operations to sovereign immunity under recognized principles
of public international law are not subject to seizure, arrest or detention
by legal process or to an action in rem without the express consent of
the state owner of the Cargo".
As it can be seen the whole of part 12 of the Act under which Section 392 falls is on salvage. The vessel Libertad is not on salvage in Ghana. In any case, the same provision recognizes waiver because of the phrase:

"without the express consent of the state owner of the Cargo".

Having examined the arguments from both sides, and upon reading the parties own agreement, I find that the Defendant/ Applicant has in clear terms waived the immunity attributed to the vessel Libertad through the mode of a written contract which made is recognized by the rules of international law.

CONCLUSION

In the end I come to the conclusion that no sufficient basis has been demonstrated by the Defendant/Applicant for me to set aside the order I gave on the 2nd October 2012. The order was properly and validly made. It gave the Republic of Argentina the option of providing security and taking away the ship.

If that option is unattractive for whatever reason, so be the order of the Court. The motion is accordingly dismissed.

(SGD)
RICHARD ADJEI-FRIMPONG
JUSTICE OF THE HIGH COURT
ANNEX 5
Judge Elsa Kelly

Member of the Tribunal since 1 October 2011

Born: Buenos Aires, Argentina, 28 February 1939.

Education: Lawyer, School of Law and Social Sciences, University of Buenos Aires (1960); postgraduate studies in jurisprudence, University of Buenos Aires (1968-1969) Fellow (scholarship), Center for International Affairs, Harvard University (1977-1978).

Academic Activities Professor of International Law, Foreign Service Institute, Ministry for Foreign Affairs (1967-1970, 2009-2011); University of Buenos Aires, School of Law and Social Sciences: Professor of Philosophy and History of Philosophical Ideas (Assistant, 1970-1973); Full Professor of Public International Law (1984).


Member: Inter-American Commission of Human Rights, Organization of American States (1985-1989); Argentine Council for International Relations (CARI); Foundation for the New Human Rights (Fundación Nuevos Derechos del Hombre).

Publications: Author of many articles, monographs and papers on public international law, law of the sea, nuclear non-proliferation and other related issues.

Distinctions: Decorations from Mexico, Ecuador and France (Palmes Académique).
ANNEX B

Report “Frigate ARA Libertad” by the Argentine Navy to the Ministry of Foreign Affairs and Worship. Updated review of the history of the Frigate ARA Libertad.
FRAGATA ARA “LIBERTAD”

INFORMACIÓN PARA CANCELLERÍA

1- RESEÑA ACTUALIZADA DE LA HISTORIA DE LA FRLI

La construcción del buque escuela a vela, encarada en el astillero Río Santiago del AFNE (Astilleros y Fábricas Navales del Estado), llegó a su fin el 18 de mayo de 1963 con la entrega oficial a la Armada Argentina de la Fragata ARA “LIBERTAD” (Característica “Q-2” como buque de guerra de la Armada Argentina), que relevó de su tarea al Crucero ARA “LA ARGENTINA” y a la legendaria Fragata ARA “PRESIDENTE SARMIENTO”.

El primer remache de su quilla fue puesto el 11 de diciembre de 1953. Entre 1954 y 1955 se produjeron variaciones en el proyecto original y la configuración de la nave.

Por Decreto Nº 7.922, del 27 de abril de 1956, se le impuso el nombre LIBERTAD. Su casco fue botado el 30 de mayo de ese año, los trabajos prosiguieron en los siguientes años con diversas modificaciones en el aparejo, que finalmente quedó como fragata de tres palos en agosto de 1956. Las pruebas de mar comenzaron recién a fines de 1961.

La afirmación del pabellón tuvo lugar el 28 de mayo del año 1963 y el 19 de junio de ese mismo año, aún sin colocarle el “mascarón de proa”, zarpar del puerto de Buenos Aires en su primer viaje de instrucción de los cadetes de la Escuela Naval Militar al mando del Capitán de Fragata Horacio FERRARI. El mascarón de proa fue esculpido por el escultor Carlos GARCÍA GONZÁLEZ, nacido en España.

En 1964 participó por primera vez en una regata oceánica para grandes veleros entre los puertos de Lisboa (Portugal) y Hamilton (Bermudas), y poco tiempo más tarde en la “Operation Sail” que se llevó a cabo en el Río Hudson. En 1982, participó de la "Gran Regata Colón 92" que se realizó en conmemoración de los 500 años del descubrimiento de América.

Fue declarada por Decreto Nº 727/2001 del Poder Ejecutivo Nacional (PEN) Embajada de la República Argentina con carácter de distinción honorífica.

En el año 2004 se inició, nuevamente en el mismo Astillero que la vio nacer, un completo proceso de modernización de media vida, que finalizó el 2 de marzo de 2007. La remodelación del Buque Escuela incluyó el reemplazo del sistema propulsor, la mejoría de la planta eléctrica, el sistema central de aire acondicionado, el cambio de la cubierta y la reparación integral de toda la estructura. También incluyó una reforma en los solados (dormitorios) de los guardiamarinas para poder incluir comodidades para las nuevas generaciones de mujeres que cursan en la Escuela Naval Militar.

En el viaje de instrucción del año 2007 embarcaron, por primera vez, cadetes femeninos de la Escuela Naval, aprovechando la nueva disposición de solados que se efectuó en la modernización de media vida entre finales de 2004 y principios de 2007 en el astillero Río Santiago.
Fue protagonista de la Regata Bicentenario Velas Sudamérica 2010, junto a sus pares de Sudamérica y otros países.

En el año 2012 realiza el 43° Viaje de Instrucción incluyendo puertos de América, Europa y África.

Desde su entrega la Fragata ha recorrido más de 800.000 millas náuticas alrededor del mundo y fuera de su apostadero ha pasado el equivalente a 17 años en el mar.

Por sus cubiertas han pasado y se han formado alrededor de 11.000 marinos de la Armada Argentina.

PREMIOS RECIBIDOS

- BOSTON TEAPOT TROPHY Y GRAN MEDALLA

En 1996, durante, su cuarto viaje de instrucción, al mando del Capitán de Fragata Ricardo Guillermo FRANKE, participó en la "Travesía del Atlántico Norte a Vela" compitiendo por la "BOSTON TEAPOT TROPHY" (tercera edición), cuyo premio es entregado por la Sail Training Association a la embarcación que, con más del 50% de su dotación en instrucción, recorre la máxima distancia en 124 horas de navegación a vela.

La Fragata ARA “LIBERTAD” obtiene "La Gran Medalla" al llegar en primer lugar en su categoría y establecer el récord mundial de velocidad en el cruce del Atlántico Norte a vela, cubriendo 2.058 millas desde Cabo Race (Canadá) hasta la línea de Dublín / Liverpool, en solo 8 días y 12 horas. Este récord aún no ha sido batido al día de la fecha. En esa ocasión, el trofeo TEAPOT fue entregado al Capitán R. G. FRANKE por el Príncipe PHILIP, Duque de Edimburgo, en nombre de la Reina ELIZABETH II.


- En 1998 ganó el primer puesto en la regata entre SAVANNAH Y GREEN PORT (ESTADOS UNIDOS DE AMÉRICA).

2- FUNCIÓN COMO BUQUE ESCUELA

El Viaje de Instrucción en el Buque Escuela Fragata ARA “LIBERTAD” cumple tres funciones a destacar:

a) El objetivo fundamental es completar dentro del plan de estudios la Formación Profesional de los Guardiamarinhas “en Comisión” (GUCOM), que son los Cadetes del quinto y último año de la Escuela Naval Militar, contribuyendo a la misión principal del Instrumento Militar Argentino, antes de su incorporación al cuadro de oficiales de la Armada.
b) Brindar una formación complementaria a los GUCOM, al permitirles compartir esta etapa de formación con invitados de otras fuerzas armadas y de seguridad nacional y de marinas de otros países, así como el contacto en países extranjeros con una importante diversidad social y cultural.

c) Representar a nuestro país en aquellos puertos que resultan de interés a la política exterior de la Nación.

En relación con lo indicado en a), el Plan de Estudios de la Escuela Naval Militar prevé la materia Práctica Profesional en Buque Escuela, cuya carga es de 960 horas, lo cual implica 120 días de navegación (se asumen 8 hs. diarias de actividad y no se incluyen los días de puerto).

Esta materia impone distintos contenidos, que hacen necesario para su dictado el realizar actividades supervisadas por los oficiales de a bordo, tales como desempeño en servicios de cargos y divisiones, y guardias de máquinas, puente y cubiertas bajas. Para esta función el Buque Escuela cuenta, además de la organización tipo de una unidad de la Armada, con un Departamento Estudios que planifica, supervisa, evalúa y registra estas actividades no tradicionales en otros buques.

En relación con la instrucción náutica específicamente, el hecho que la Fragata ARA "LIBERTAD" sea un buque de vela suma, a las características enunciadas en el párrafo anterior, una especial forma de trabajo en su cubierta, no presente hoy en día en ninguna otra unidad de la Armada, que contribuye significativamente a la formación de los Guardiamarinas en Comisión, al fomentar cualidades y aptitudes consideradas de suma importancia en esta etapa de formación profesional, como son el trabajo en equipo y la fundamental interdependencia existente entre el velero, el mar y la meteorología.

De no disponerse de la Fragata ARA "LIBERTAD", la tarea de Buque Escuela debería ser asumida por una o más Unidades Navales, que además de necesitar adaptaciones orgánicas y no contar con la capacidad de trasladar a todos los guardiamarinas al mismo tiempo, implicará mayores costos logísticos, fundamentalmente combustible, perdiéndose la particular experiencia de la navegación a vela. Esto conllevará a que esas unidades de reemplazo no puedan cumplir durante ese tiempo su misión principal como unidades de combate de la Flota de Mar.

En relación con el punto b), las plazas disponibles para invitados serán menores y con respecto al punto c), sólo la Fragata ARA "LIBERTAD" puede brindar la representatividad que ella ha logrado a lo largo de sus múltiples Viajes de Instrucción en razón de haber sido diseñada, construida y modernizada íntegramente en astilleros argentinos.

3- CARACTERÍSTICAS PRINCIPALES

Es un Buque Escuela del tipo Fragata de tres palos (trinquete, mayor y mesana), con gavías dobles (cinco vergas por palo).
Tiene 27 velas de dacron (15 cuadras, 5 foques, 6 cuchillas y 1 cangreja), con una superficie total de 2652 m².

La altura máxima del palo mayor es de 49,8 m y tiene seis guinches eléctricos para maniobra de velas.

- **DESPLAZAMIENTO**: 3375 Tn. a plena carga.
- **MANGA MÁXIMA**: 14,31 Mts.
- **ESLORA MÁXIMA**: 103,75 Mts. (incluyendo el bauprés).
- **PUNTAL EN LA SECCIÓN MAESTRA**: 11,00 Mts.
- **CALADO**: 6,70 Mts.
- **CAÑONES**: 4 Cañones HOTCHKISS de 47 mm. como batería de saludo.
- **PROPULSIÓN**: 2 Motores MAN modelo 6L23/30A y una hélice de paso controlable.
- **GENERACIÓN ELÉCTRICA**: 2 Generadores principales MTU y 1 auxiliar.
- **TRIPULACIÓN**: 26 oficiales y 192 suboficiales.
- **CADETES**: Hasta 114 guardiamarinas en comisión.
- **EMBARCACIONES MENORES**: 3 lanchas y un bote semirrígido.
- **ANCLAS**: 2 tipo Hall.

**4- IMPEDIMENTOS / INCONVENIENTES PARA EL ESTADO ARGENTINO COMO CONSECUENCIA DE LA DETENCIÓN ILÍCITA DE LA FRAGATA**

4.1- Obtener la provisión continua de los siguientes servicios básicos e insumos en el puerto de Tema:

- Agua
- Energía eléctrica
- Combustible
- Recolección de residuos
- Viveres

4.2- A partir del 7 de noviembre reina una situación altamente tensa e inestable con las autoridades y la seguridad portuaria, que motiva una continua situación de hostigamiento, más adecuado a un escenario de confrontación que a uno de visita y cortesía.

4.3- Efectuar el apropiado mantenimiento preventivo a todos los equipos y sistemas de a bordo en razón del reducido personal embarcado, con el consecuente:

- Riesgo para la seguridad del buque, su tripulación y terceros, tanto en puerto como en navegación
- Deterioro de mecanismos y superestructura
NOTA: La prolongación de la estadía en puerto y consiguiente degradación del adiestramiento y alistamiento de sistemas, disminuye progresivamente la capacidad operativa del buque para su pronta zarpada y segura navegación, una vez liberada la unidad.

4.4- Completar la formación general y profesional, incrementar la experiencia naval y marítima, mejorar el acervo cultural y propender a una mejor integración institucional de:

- 68 oficiales alumnos argentinos.
- 1 oficial alumno becario panameño.
- 15 oficiales extranjeros de la Armada de Chile.
- 8 oficiales extranjeros de la Armada de Uruguay.
- Oficiales invitados de las Armadas de Perú, Bolivia, Sudáfrica, Venezuela, Brasil, Paraguay.
- Oficiales invitados nacionales del Ejército Argentino, Fuerza Aérea Argentina, Prefectura Naval Argentina y Liceos Navales.
- Oficiales invitados nacionales de la Escuela Nacional de Náutica y la Escuela Nacional Fluvial.

4.5- Efectuar contrataciones en Tema, dada la situación judicial particular del buque que motiva que los proveedores no ofrezcan sus servicios. Por otra parte, los pocos oferentes que pueden presentarse imponen condiciones más onerosas que la media del mercado.

4.6- Efectuar las visitas oficiales y representar protocolarmente a la República Argentina y la Armada Argentina en particular en los puertos de:

- Luanda (Angola)
- Walvis Bay (Namibia)
- Ciudad del Cabo (Sudáfrica)
- Rio de Janeiro (Brasil)
- Montevideo (Uruguay)

4.7- El arribo posterior al 8 de diciembre compromete las previsiones de mantenimiento programado en Argentina, previo a realizar su próximo viaje de instrucción en el año 2013. Esta situación podría derivar en la necesidad de designar otras unidades de reemplazo de la Flota de Mar con las consecuencias indicadas en el punto 2.

4.8- Necesidad de relevo de la tripulación embarcada, a más tardar, antes de fin del año 2012.
4.9- Afectación en la programación y cumplimiento de los traslados anuales del personal de la Armada, que impacta no solamente en la Fragata, sino también en otros organismos y unidades de la Institución.

5- ESTIMACIÓN A LA FECHA (12 NOV) DE LOS RECURSOS COMPROMETIDOS COMO CONSECUENCIA DEL EMBARGO

EN GHANA

<table>
<thead>
<tr>
<th>CONCEPTO</th>
<th>GASTO DIARIO</th>
<th>CANTIDAD DÍAS</th>
<th>TOTAL ESTADÍA GHANA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensación por mayor costo de vida en el extranjero de la tripulación hasta el 24/10/12</td>
<td>U$S 6.193</td>
<td>21</td>
<td>U$S 130.053</td>
</tr>
<tr>
<td>Viáticos en el extranjero de la tripulación remanente a partir del 25/10/12</td>
<td>U$S 1.850</td>
<td>19</td>
<td>U$S 35.150</td>
</tr>
<tr>
<td>Gastos totales a partir del 04/10/12 al 24/10/12 en el puerto de Tema – Ghana, sin generador de tierra con 326 tripulantes</td>
<td>U$S 14.200</td>
<td>20</td>
<td>U$S 284.000</td>
</tr>
<tr>
<td>Gastos totales a partir del 25/10/12 en el puerto de Tema – Ghana, sin generador de tierra con 44 tripulantes</td>
<td>U$S 7.600</td>
<td>5</td>
<td>U$S 38.000</td>
</tr>
<tr>
<td>Gastos totales desde el momento en que se empezó a utilizar el generador en tierra</td>
<td>U$S 5.300</td>
<td>9</td>
<td>U$S 47.700</td>
</tr>
<tr>
<td>Gastos totales a partir del día 07/11/12 en el puerto de Tema – Ghana, por usar generador de a bordo</td>
<td>U$S 7.600</td>
<td>5</td>
<td>U$S 38.000</td>
</tr>
<tr>
<td>Punitórios por no cargar combustible en Tema (Ghana) antes del 24/11/12</td>
<td></td>
<td></td>
<td>U$S 12.600</td>
</tr>
<tr>
<td><strong>TOTAL GASTOS DERIVADOS GHANA</strong></td>
<td><strong>U$S 585.503</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**OBSERVACIONES:** No hay recursos comprometidos que deriven del embargo, en los puertos siguientes al itinerario previsto inicialmente.

Buenos Aires, 12 de noviembre de 2012
FRIGATE “ARA FRAGATA LIBERTAD”

INFORMATION FOR THE MINISTRY OF FOREIGN AFFAIRS

1- UPDATED REVIEW OF THE HISTORY OF FRIGATE “ARA FRAGATA LIBERTAD”

The building of the training rigged-vessel at the Rio Santiago Shipyard, owned by AFNE (Astilleros y Fábricas Navales del Estado), was completed on 18 May 1963, when “ARA Fragata Libertad” (Q2 warship of the Argentine Navy) was officially delivered to the Argentine Navy, taking the place of the cruiser “ARA La Argentina” and of the legendary training ship “ARA Presidente Sarmiento”.

The first rivet was driven into her keel on 11 December 1953. Between 1954 and 1955, changes were introduced into the original project and configuration of the ship.

Decree No. 7922 of 27 April 1956 gave her the name Libertad (freedom). Her hull was launched on 30 May of the same year, and works continued during the following years. After various changes in her rigging, the ship was finished as a three-masted frigate in 1956. Sea trials started only in late 1961.

The Argentine flag was hoisted on it on 28 May 1963. On 19 June of the same year, still without her figurehead, the ship set sail from the port of Buenos Aires for its first training voyage with the cadets of the Naval Academy, led by Frigate Captain Horacio Ferrari. Her figurehead was sculpted by Carlos Garcia González, a sculptor born in Spain.

In 1964, the ship participated for the first time in a sea regatta for large sailing ships, which started in Lisbon, Portugal, and finished in Hamilton, Bermuda. Later, the ship took part in the Operation Sail events held on the Hudson River. In 1992, the ship also participated in the Grand Regatta Columbus 1992, organized to mark the 500th anniversary of the discovery of America.

Presidential Decree No. 727/2001 designated the frigate an Honorary Embassy of the Argentine Republic.

In 2004, back at the shipyard where she was built, the frigate underwent a complete mid-life overhaul, which was finished on 2 March 2007. The modernization process of the Training Ship included the replacement of the propulsion system, the improvement of the power generator, a central air conditioning system, the replacement of the deck and a complete repair of the entire structure. The modifications also included reforms in the messdeck of the midshipmen, in order to include facilities for the new generations of female officers studying at the Naval Academy.
On the 2007 training voyage, female cadets of the Naval Academy boarded the frigate for the first time, benefiting from the new design of the messdeck that resulted from the mid-life reforms conducted from late 2004 to early 2007 in the Rio Santiago shipyard.

The frigate took part in the “Sails South America 2010” Bicentennial Regatta, together with its counterparts from South America and other countries.

In 2012, the frigate made its 43rd training voyage, stopping at ports in the Americas, Europe and Africa.

Since her delivery, the frigate has sailed more than 800,000 nautical miles around the world and, out of her station, she has spent an equivalent of 17 years at sea.

Approximately 11,000 naval officers of the Argentine Navy have walked her deck and received their training on board.

AWARDS

- BOSTON TEAPOT TROPHY AND GREAT MEDAL

In 1966, during her fourth training voyage, and led by Commander Ricardo Guillermo Franke, the frigate participated in the North Atlantic Sail Crossing, competing for the Boston Teapot Trophy (third edition), which is presented by the Sail Training Association to the sailing vessel with a crew that is more than 50% under training and covers the greatest distance in a period of 124 hours.

The frigate “ARA Fragata Libertad” was awarded the “Great Medal” after arriving in the first place for its category, setting the world speed record for the North Atlantic Sail Crossing. The frigate completed the journey between Cape Race (Canada) and the Dublin-Liverpool line in only 8 days and 12 hours. This record remains unbroken to date. On that occasion, the Teapot Trophy was presented to Commander R.G. Franke by Prince Phillip, Duke of Edinburgh, in the name of Queen Elizabeth II.


- In 1998, the frigate obtained the first place in the Savannah-Greenport Regatta (USA).

2 – TRAINING SHIP

Training voyages on board the “ARA Fragata Libertad” training ship have three main functions:

a) Their main objective is to complete the professional training programme for commissioned midshipmen, who are senior 4th and 5th year cadets of the Naval
Academy, contributing to the core mission of the Argentine Armed Forces before they become part of the Navy Officers Corps.

b) To provide additional training to commissioned midshipmen by allowing them to share this stage of their training with guests from the armed forces, national security forces and navies of other countries, as well as to introduce them to the social and cultural diversity of foreign countries.

c) To represent our country in ports that are of foreign policy interest to our Nation.

In connection with a) above, the curriculum of the Naval Academy includes the subject "Professional Practice in Training Ship", with a total of 960 hours, i.e. 120 days at sea (based on 8 hours of activity a day, port days excluded).

The subject covers various topics which require students to engage in activities supervised by the officers on board, such as handling tasks of different ranks and divisions and doing machinery, bridge and lower decks shifts. For this purpose, and in addition to the standard organization of a naval unit, the training ship has a Teaching Division, which is in charge of planning, supervising, assessing and recording these non-traditional ship activities.

With respect to specific nautical training, the fact that ARA Fragata Libertad is a rigged-vessel adds to the characteristics described above a particular working method, which is no longer seen in any other unit of the Navy, and which significantly contributes to the training of the commissioned midshipmen by promoting skills and abilities that are considered to be of great importance at this professional training stage, such as teamwork and the essential interdependence between the ship, the sea and the weather.

In the absence of the ARA Fragata Libertad, the functions performed by this training ship would have to be undertaken by one or more naval units which would require structural modifications and would not have sufficient capacity to carry all the midshipmen at the same time. This would entail higher logistics costs – mainly fuel costs – and the missing of the unique experience of rig sailing. In addition, this would prevent the replacement ships from performing their main mission as combat units of the Maritime Fleet in the meantime.

In relation to b) above, places available for guests would be fewer and, finally, with respect to c), it should be noted that ARA Fragata Libertad has been uniquely representative during its many training voyages because it has been designed, built and overhauled entirely in Argentine shipyards.

3- MAIN CHARACTERISTICS

It is a Training Frigate with three masts (foremast, mainmast and mizzen mast) and double topsails (five yardarms per mast).

It has 27 Dacron sails (15 square sails, 5 jibs, 6 staysails and 1 spanker) and a total surface of 2652 m².
The maximum height of the mainmast is 49.8 m and it has six electric winches to manage the sails.

- DISPLACEMENT: 3375 tons at full load.
- MAXIMUM BEAM: 14.31 m.
- MAXIMUM LENGTH: 103.75 m (including bowsprit).
- DEPTH: 11.00 Mts.
- DRAFT: 6.70 Mts.
- CANNONS: 4 HOTCHKISS 47 mm cannons, used as a salute battery.
- PROPULSION: 2 MAN 6L23/30A Engines and a controllable pitch propeller.
- POWER GENERATION: 2 Main MTU generators and 1 auxiliary generator.
- CREW: 26 officers and 192 non-commissioned officers.
- CADETS: Up to 114 commissioned midshipmen.
- SMALLER BOATS: 3 motorboats and 1 semi-rigid boat.
- ANCHORS: 2 Hall anchors.

4- OBSTACLES / DIFFICULTIES FOR THE ARGENTINE STATE AS A RESULT OF THE UNLAWFUL DETENTION OF THE FRIGATE

4.1- Obtaining the continuous supply of the following basic services and products at Tema port:
   - Water
   - Electric power
   - Fuel
   - Garbage collection
   - Supplies

4.2- As from 7 November, there has been a very tense and awkward interaction with port authorities and security personnel. This has given rise to continuous harassment, which better suits a context of confrontation than that of a visit and a situation of courtesy.

4.3- Carrying out adequate preventive maintenance of all on-board equipment and systems, due to the small crew on board, which results in:
   - Risk to the safety of the ship, its crew and third parties, both at the port and during navigation
   - Deterioration of mechanisms and superstructure

NOTE: The continuation of the stay at the port and the resulting degradation of training and preparedness of systems progressively reduce the operational capacity of the ship for it to swiftly weigh anchor and navigate safely upon its release.

4 - 6
4.4- Completing general and professional training, increasing naval and maritime experience, improving general knowledge and securing better institutional integration of:
- 68 Argentine student officers.
- 1 Panamanian student officer holding a scholarship.
- 15 foreign officers of the Chilean Navy.
- 8 foreign officers of the Uruguayan Navy.
- Guest officers of the Peruvian, Bolivian, South African, Venezuelan, Brazilian and Paraguayan Navies.
- Guest officers of the Argentine Army, the Argentine Air Force, the Argentine Coast Guard and Argentine Naval Schools.
- Guest officers of the Argentine Nautical School (Escuela Nacional de Náutica) and the Argentine River Navigation School (Escuela Nacional Fluvial).

4.5- Hiring and buying in Tema, since the special legal situation of the ship causes suppliers not to offer their services. Furthermore, the few suppliers offering products or services set higher prices than the average market price.

4.6- Making official visits and officially representing the Argentine Republic and the Argentine Navy, especially at the following ports:
- Luanda (Angola)
- Walvis Bay (Namibia)
- Cape Town (South Africa)
- Rio de Janeiro (Brazil)
- Montevideo (Uruguay)

4.7- Arrival after 8 December jeopardizes the scheduled maintenance arrangements in Argentina before the next training voyage in 2013. This situation could result in the need to designate other replacement units from the Maritime Fleet, which would give rise to the consequences listed in paragraph 2.

4.8- Need to relieve the crew on board by the end of 2012.

4.9- Disruption of the schedule and the annual transfers of Navy personnel, which has an impact not only on the Frigate, but also on other Navy agencies and units.

5- ESTIMATE OF THE COSTS ARISING FROM THE DETENTION IN GHANA AS OF THIS DATE (12 NOV)

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DAILY COST</th>
<th>NUMBER OF DAYS</th>
<th>TOTAL STAY IN GHANA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payment to the crew for higher cost of living abroad until 24/10/12</td>
<td>USD 6,193</td>
<td>21</td>
<td>USD 130,053</td>
</tr>
<tr>
<td>Description</td>
<td>Cost 1</td>
<td>Quantity</td>
<td>Cost 2</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------------</td>
<td>-----------</td>
<td>----------</td>
<td>----------</td>
</tr>
<tr>
<td>Travel expenses abroad for the remaining crew as from 25/10/12</td>
<td>USD 1,850</td>
<td>19</td>
<td>USD 35,150</td>
</tr>
<tr>
<td>Total costs from 04/10/12 to 24/10/12 at Tema port – Ghana, without land</td>
<td>USD 14,200</td>
<td>20</td>
<td>USD 284,000</td>
</tr>
<tr>
<td>generator, with 326 crew members</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total costs as from 25/10/12 at Tema port – Ghana, without land generator,</td>
<td>USD 7,600</td>
<td>5</td>
<td>USD 38,000</td>
</tr>
<tr>
<td>with 44 crew members</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total costs from the moment when the land generator began to be used</td>
<td>USD 5,300</td>
<td>9</td>
<td>USD 47,700</td>
</tr>
<tr>
<td>Total costs as from 07/11/12 at Tema port - Ghana, for using the on-board</td>
<td>USD 7,600</td>
<td>5</td>
<td>USD 38,000</td>
</tr>
<tr>
<td>generator</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Penalty interest for not refuelling at Tema (Ghana) before 24/11/12</td>
<td>USD 12,600</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL COSTS - GHANA</strong></td>
<td>USD 585,503</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**COMMENTS:** No costs arise from the detention at the following ports contained in the original itinerary.

Buenos Aires, 12 November 2012
ANNEX C

Submission on behalf of the Republic of Argentina and Supplementary Submission on behalf of the Republic of Argentina.
IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
(COMMERCIAL DIVISION)
ACCRA – A.D. 2012

SUIT NO. MISC/58/12

PLAINTIFF

NMI CAPITAL LIMITED
Huntlaw Corporate Services
The Huntlaw Buildings
75 Fort Street
Grand Cayman
Cayman Islands

VERSUS

DEFENDANT

THE REPUBLIC OF ARGENTINA
Ministry of Foreign Affairs & Worship
Esmeralda 1212
C1007 ABR
Buenos Aires
Argentina

SUBMISSION ON BEHALF OF THE
REPUBLIC OF ARGENTINA

Introduction

1. Defendant the Republic of Argentina (the “Republic” or “Argentina”), a foreign state, makes this submission in connection with its emergency application to set aside the October 2, 2012 Order for Interlocutory Injunction and Interim Preservation of the “ARA Libertad” (the “Injunction”).

2. As detailed in the affidavit of Argentine Minister of Defence Arturo Puricelli, the vessel ARA Libertad – or the Fragata Libertad, as it is known in the Argentine
military and worldwide – is a military vessel of the Argentine Navy. The *Fragata Libertad* serves the purpose of training navy officers and cadets and represents the Republic outside of its borders. It is a cultural icon and an Argentine symbol of important historical and cultural significance. It is not used for any commercial purpose by the Republic. When the *Fragata Libertad* entered the Port of Tema, Ghana, on October 1, 2012, it did so as part of its 43rd naval training voyage, pursuant to an official invitation from the government of Ghana.

3. The Injunction restraining the *Fragata Libertad* obtained by Plaintiff NML Capital, Ltd. ("NML"), a hedge fund creditor that speculates in the defaulted debt of foreign states, is in aid of execution of NML’s *New York* judgment against Argentina, and is therefore patently improper under the law of Ghana, which does not permit the enforcement of U.S. judgments, as well as under clear international and domestic law governing foreign state immunity, which unambiguously provides immunity to State military vessels such as the *Fragata Libertad*.

4. NML’s improper Injunction is causing severe daily harm to the Republic by impairing Argentina’s ability to conduct its scheduled military training operations and by negatively impacting the Republic’s diplomatic relations with the countries that have agreed on a strict schedule for receiving the *Fragata Libertad* in their ports and the countries whose crew members are currently aboard the ship.

5. The Republic respectfully requests that the Court immediately set aside the Injunction because it plainly violates international and domestic law, is a blatant attempt to

---

1 Affidavit of Arturo Puricelli, dated Oct. 3, 2012 ("Puricelli Aff."), para. 3.
2 *Id.* paras. 4, 8.
3 *Id.* para. 7.
4 *Id.* para. 4.
5 *Id.* para. 6.
6 *Id.* para. 8.
harass and intimidate a friendly foreign State, and harms the Republic and the public interest as long as it is in place.

**NML's New York Judgment and Its Prior Attempts to Seize Immune Sovereign Property**

6. NML obtained its judgment in the amount of $284,184,632.30 in the United States District Court for the Southern District of New York on December 18, 2006.\(^7\) NML’s New York judgment was domesticated in the United Kingdom by Order dated December 5, 2011.\(^8\)

7. NML’s New York judgment is based on its ownership of defaulted Republic debt. NML acquired its interests in this debt at a deep discount both immediately before, and well after, the Republic suspended payments on its unsustainable external debt as a consequence of the worst economic crisis of its modern history.\(^9\) By the end of 2001, this crisis made it impossible for the Republic to service its overwhelming debt burden – some $80 billion in public external debt alone – while maintaining basic governmental services necessary for the health, welfare, and safety of the Argentine populace.\(^10\) Unable to service its debt, the Republic was forced to defer interest and principal payments to debt holders and to seek a voluntary restructuring of its debt burden.

8. NML, like other so-called “vulture funds” that speculate in defaulted debt of developing countries,\(^11\) has sought to take advantage of the absence of a bankruptcy

---


\(^8\) Order of Mr Justice Field, dated 5 December 2011, between NML Capital Limited and The Republic of Argentina.


regime for sovereign states by buying discounted Republic debt that is at or near default, bringing lawsuits against the Republic for the full face value of that debt, obtaining judgments and aggressively trying to execute on them. In accordance with its business strategy, NML refused to participate in the Republic’s 2005 and 2010 voluntary, global debt exchange offers, which together resulted in the successful restructuring of approximately 92% of the Republic’s non-performing debt.\textsuperscript{12}

9. Instead, NML has aggressively pursued execution efforts against the Republic, the vast majority of which have failed and are on their face designed to harass rather than enforce any legally cognizable theory of recovery. For example:

a. \textit{United States.} In the United States, NML tried, unsuccessfully, to disrupt the Republic’s 2005 debt restructuring,\textsuperscript{13} to seize social security funds invested for Argentine pensioners in the United States and managed by third party fund administrators,\textsuperscript{14} to derail the launch of a scientific satellite by the Argentine space agency and the space agencies of other countries,\textsuperscript{15} and to attach the reserves of the Central Bank of Argentina.\textsuperscript{16} NML has also unsuccessfully targeted diplomatic and military properties immune from execution in the United States, including the headquarters of the Argentine Naval Attaché and property of the Argentine Ministry of Defence in the U.S. capital of Washington, D.C.\textsuperscript{17}


\textsuperscript{13} \textit{EM Ltd. v. Republic of Argentina}, 131 F. App’x 745 (2d Cir. 2005).


\textsuperscript{16} \textit{NML Capital, Ltd. v. Banco Central de la Republica Argentina}, 652 F.3d 172 (2d Cir. 2011); \textit{EM Ltd. v. Republic of Argentina}, 473 F.3d 463 (2d Cir. 2007).

b. France. Appeals courts in France have repeatedly affirmed vacaturrs of NML’s attachments of bank accounts related to the Argentine Embassy, because the funds were immune diplomatic property,\textsuperscript{18} taxes owed to the Republic by nonparty companies such as BNP Paribas\textsuperscript{19} because taxes are not assets in use for a private activity but pertain to a state’s sovereignty, and assets of the Argentine state-owned airline, Aerolíneas Argentinas, because it is not an \textit{émanation} of the Republic liable for its debts.

c. Switzerland. The highest court in Switzerland has rejected NML’s attempts to attach property held at the Bank of International Settlements, which is entitled to immunity under Swiss law.\textsuperscript{20}

10. Vulture funds such as NML aim to capitalise from the misfortunes of the world’s financially distressed and often poorest countries, even when doing so would divert scarce resources from critical state functions in the debtor nations and potentially disrupt the global economy. The practice of extracting “extortionate amounts from poor countries” by harassing them in foreign courts and thus bringing all manner of international activity to a standstill is considered so vexatious to African nations in particular that the African Development Bank has established a Legal Support Facility focused on combating it.\textsuperscript{21} According to the African Legal Support Facility, “over seventy percent of the nearly one billion United States Dollars in judgments awarded [to] vulture funds have been against [African Development Bank Regional

\textsuperscript{18} \textit{NML Capital, Ltd. v. Republic of Argentina,} Cour d’appel [CA] [regional court of appeal] Paris, 4e pôle 8e ch., Oct. 1, 2009, No. 09/14114 (Fr.).

\textsuperscript{19} \textit{NML Capital, Ltd. v. Republic of Argentina,} Cour d’appel [CA] [regional court of appeal] Paris, 4e pôle 8e ch., Dec. 9, 2010, No. 10/00390 (Fr.) (appeal pending to the Cour de Cassation [French Supreme Court]).


Member Countries." This threatens debt relief efforts, which according to United Nations Independent Expert on foreign debt and civil rights, Dr. Cephas Lumina, "provide[]] heavily indebted poor countries fiscal space to increase spending on basic social services such as health and education... and the achievement of the Millenium Development Goals."  

11. Many countries have sought to prevent these "aggressive creditors" from using domestic courts to exploit highly indebted foreign sovereigns. In 2010, the United Kingdom passed the Debt Relief (Developing Countries) Act, which aims to stop vulture funds from using UK courts to "extract harsh and inequitable payments from poor countries for debts that the companies may in some cases have bought for a fraction of the cost." Dr. Lumina called upon the international community to follow the UK's example and "ensure that the billions of dollars committed to debt relief for the world's poorest countries will not be diverted to satisfy the greed of unscrupulous companies."  

12. The United States also supports a policy of "orderly and consensual restructuring of sovereign debt" when a nation cannot meet its debt obligations. It accordingly has opposed enforcement efforts by vulture funds, like NML, that it has described as rendering restructuring efforts "substantially more difficult, if not impossible." The United States has also cautioned that improper injunctions obtained by NML will likely raise "foreign relations tensions."

---

22 Id.

23 United Nations News Centre.

24 Id.; African Legal Support Facility.


26 United Nations News Centre.


28 Id. at 29.
13. Affiliates of Elliott Management Corporation, including NML, are the most aggressive of these vulture funds, having brought suit against more than a half dozen nations, including Argentina, Ecuador, Ivory Coast, Panama, Peru, the Democratic Republic of Congo, and Russia. Elliott’s actions in bringing these suits have been roundly condemned by the international community. Anne Krueger, the former First Deputy Managing Director of the International Monetary Fund, described a suit by Elliott against Peru as having “in effect held a country to ransom, threatening to bring it into default with other bondholders unless the holdout was repaid.” In a speech to the United Nations in 2007, then UK Chancellor Gordon Brown described this tactic as “morally outrageous” and stressed the need to “do everything we can to stop this shameful practice.”

NML’s Improper Injunction Restraining the Fragata Libertad

14. On October 2, 2012, NML obtained an ex parte Injunction that, inter alia, restrains the Fragata Libertad from leaving the Port of Tema for a minimum of 10 days and thereafter does not expire unless the Republic provides security; requires Ghanaian officials to board the vessel; and requires the immediate surrender of the vessel’s mandatory documents.

15. As detailed in the accompanying declaration of Minister of Defence Arturo Puricelli, the Fragata Libertad is a training ship of the Argentine Navy and a representative of the country of Argentina worldwide. The vessel fulfills critical military and foreign relations purposes and is a symbol of historical and cultural value and significance.

---


32 Puricelli Aff. paras. 4, 5, 7, 8.

33 Id. para. 7.
The Fragata Libertad is outfitted as a military ship for the Argentine Navy, is operated by navy personnel, and bears the external marks of Argentine military status.\textsuperscript{34} The ship is not a commercial vessel and is not used for commercial purposes. The Fragata Libertad arrived in Ghana – after being officially invited by the Ghanaian government – as part of a training voyage pursuant to a strict schedule and involving a total of thirteen countries.\textsuperscript{35} The Fragata Libertad’s crew is comprised not only of members of the Argentine navy, but also the military personnel of Bolivia, Paraguay, Peru, South Africa, Suriname, Venezuela, Uruguay and Chile.\textsuperscript{36} Any delay in the schedule negatively impacts not only the training voyage itself, but the Republic’s diplomatic relations with the nations that agreed to receive the Fragata Libertad and the numerous nations whose military personnel are currently aboard.\textsuperscript{37}

\textbf{ARGUMENT}

\textbf{Point I. The Injunction Must Be Set Aside Immediately Because the Law of the Republic of Ghana Does Not Permit the Enforcement of U.S. Judgments in Ghana}

16. The Injunction must be set aside immediately because Ghana law does not permit the enforcement of U.S. judgments, such as NML’s New York judgment, in Ghana.

17. Under the law of Ghana, judgments are recognised under the Courts Act, 1993 (Act 459) (the “Courts Act”). The statutory scheme for recognition of judgments under the Courts Act, however, only applies to those countries listed in the Foreign Judgments and Maintenance Orders (Reciprocal Enforcement) Instrument, 1993 ("L.I. 1575"). The Superior Courts of Ghana have not been given the power under the First Schedule of L.I. 1575 to recognise judgments of the United States in

\textsuperscript{34} Id. para. 5.

\textsuperscript{35} Puricelli Aff. para. 8.

\textsuperscript{36} Id. para. 8.

\textsuperscript{37} L.I. 1575, First Schedule.
Ghana. Rather, only judgments from Brazil, France, Israel, Italy, Japan, Lebanon, Senegal, Spain, the United Arab Emirates, and the United Kingdom are enforceable under L.I. 1575 and the Courts Act. NML is therefore barred under Ghanaian law from enforcing its New York judgment against the Republic of Argentina in Ghana, and the Injunction must be set aside on this ground alone.

18. NML cannot avoid this fatal procedural flaw by attempting to characterise the judgment underlying the Injunction as having been issued in the United Kingdom, rather than the United States. This action is based upon an attempt to enforce a money judgment issued against the Republic in the United States, and in particular the state of New York. Moreover, in order for an English court judgment to be enforceable in Ghana it must be duly registered with the High Court of Ghana, and both Ghanaian law and English law specifically prohibit the registration of a “judgment on a judgment,” such as the so-called “English Consent Order” cited by NML and entered based upon the New York judgment. In any event, even if Ghanaian law permitted NML to register the English order – and, again, it does not – there is no evidence that NML attempted to do so prior to obtaining the Injunction.

38 Id.; see also U.S. Dept of State, 2011 Investment Climate Statement, Ghana – Dispute Settlement, available at http://www.state.gov/e/eb/rls/othr/ics/2011/157283.htm (“Enforcement of foreign judgments in Ghana is based on the doctrine of reciprocity. On this basis, judgments from Brazil, France, Israel, Italy, Japan, Lebanon, Senegal, Spain, the United Arab Emirates, and the United Kingdom are enforceable. Judgments from American courts are not currently enforceable in Ghana”) (emphasis added).


41 NML Statement of Claim para. 22.

42 Section 1(2A) Foreign Judgments (Reciprocal Enforcement) Act 1933 (prohibits registration of a judgment given by a recognised court “in proceedings founded on a judgment of a court in another country and having as their object the enforcement of that judgment”). “Double exequatur” is likewise prohibited throughout the European regime (see e.g. Chapter III Brussels I Regulation, which governs the recognition and enforcement of judgments of one state by the courts of another, and only applies to “judgments,” the meaning of which does not encompass a decision by a court in a Member State that the judgment of a court of a non-Member State is entitled to recognition in the Member State concerned, see also Owens Bank Limited v Bracco v-129/92 [1994] QB. 509 at 522-532 and Briggs and Rees, Civil Jurisdiction and Judgment, 5th ed. (2009), at para. 7.06 and 7.59).
19. These procedural obstacles are dispositive in their own right with respect to the instant dispute concerning the validity of the Injunction. They are also particularly critical here, where the Republic has not waived immunity from suit in Ghana. The bonds that serve as the basis for NML’s money claims include a waiver of the Republic’s jurisdictional immunity from suit only with respect to actions brought against the Republic in New York and Argentina, and not Ghana. See, e.g., Global Note for Global Bond bearing ISIN US040114GB00, 10.25% Global bonds due July 21, 2030, at A-11 (providing that Argentina waived sovereign immunity from suit only “in any New York state or federal court sitting in the Borough of Manhattan, The City of New York and the courts of the Republic of Argentina (the ‘Specified Courts’).”). Because NML cannot enforce a New York judgment in Ghana, NML would be required to initiate new merits proceedings in Ghana before seeking any relief against Argentina in this Court. NML, of course, did not do so here, and the Injunction should be immediately set aside on this ground alone. But even if NML were to initiate new proceedings in Ghana in the future, Argentina would be immune from any such suit because the Republic has not waived its jurisdictional immunity from suit in Ghana.

20. Put simply, Ghana law prohibits NML from enforcing its New York judgment against Argentina, and Argentina is immune from any future proceedings that NML might seek to initiate against Argentina in this Court.

Point II. The Injunction Must Be Set Aside Because The Fragata Libertad Is Immune from Creditor Process Under Settled International Law, Which Is Binding Under the Law of Ghana

21. The Injunction must be set aside because it also violates binding customary international law that expressly immunises from seizure, arrest, and other creditor process state vessels such as the Fragata Libertad that are not being used by the state for a commercial purpose.
22. Ghana is constitutionally required to adhere to accepted principles of customary international law. Under article 73 of the Constitution of the Republic of Ghana, "The Government of Ghana shall conduct its international affairs in consonance with the accepted principles of public international law and diplomacy in a manner consistent with the national interest of Ghana." Article 40(e) of the Constitution also states that the "The Government of Ghana shall... promote respect for international law, treaty obligations and the settlement of international disputes by peaceful means." Moreover, Article 38(1)(b) of the Statute of the International Court of Justice – a treaty to which the Republics of Argentina and Ghana are both parties and which is "generally regarded as a complete statement of the sources of international law" – expressly recognises international custom as a binding source of law.

23. At least two treaties codify the widely recognised customary international law prohibition on the arrest of military and other state vessels used for government, non-commercial service:

   a. Article 3 of the 1926 International Convention for the Unification of Certain Rules Concerning the Immunity of State-Owned Ships (also known as the "1926 Brussels Convention") expressly provides that, "State owned yachts, patrol vessels, hospital ships, fleet auxiliaries, supply ships and other vessels owned or operated by a State and employed exclusively at the time when the cause of action arises on Government and non-commercial service... shall not be subject to seizure, arrest or detention by any legal process, nor to any proceedings in rem."

---

43 Constitution of the Republic of Ghana, 28 April 1992, art. 73.
44 Id., art. 40(e).
b. Article 16.2 of the 2004 United Nations Convention on Jurisdictional Immunities of States and Their Property, which codifies existing international custom, expressly provides that a state may invoke immunity from jurisdiction for proceedings related to “warships, or naval auxiliaries . . . [and] vessels owned or operated by a State and used, for the time being, only on government non-commercial service.” 48 Article 19 of the Convention further states that “No post-judgment measures of constraint, such as attachment, arrest or execution, against property of a State” may be taken unless certain exceptions apply – including, for example, that the property is used for other than a government, non-commercial purpose. As discussed above, that is not the case here; the Fragata Libertad is used strictly for military and diplomatic, and not commercial, service. Article 21.1(b) of the Convention further provides that “property of a military character or used or intended for use in the performance of military functions” – like the Fragata Libertad – is not considered to be used for “other than government non-commercial purposes.”

24. The principles enshrined in the two treaties discussed above are binding on Ghana, as they are elsewhere in anglophone Africa, where, since the application of English law during the colonial period, “the failure or refusal of a government to sign and ratify an international instrument does not prevent any principles contained in that instrument from forming part of the national constitutional law provided these principles have crystallised into customary international law.” 49 Indeed, “the dominant principle, normally characterised as the doctrine of incorporation, is that customary rules are to be considered part of the law of the land and enforced as such, with the qualification

that they are incorporated only insofar as is not inconsistent with Acts of Parliament or prior judicial decisions of final authority.\textsuperscript{50}

25. The domestic law of Ghana in fact expressly recognises the binding customary international law immunity of vessels such as the \textit{Fragata Libertad} that are owned or operated by foreign states and not used for commercial purposes. Article 392 of the Ghana Shipping Act of 2003, which concerns salvage of state-owned cargoes, states that “[n]on-commercial cargoes owned by a state and entitled at the time of salvage operations, to sovereign immunity under recognised principles of public international law, are not subject to seizure, arrest or detention by legal process, or to an action in rem without the express consent of the State owner of the cargo.”\textsuperscript{51} Similarly, Article 372 states that “[t]his Part [of the Act, concerning salvage] does not apply to warships or any other non-commercial vessels owned or operated by a foreign State and entitled at the time of salvage operations to sovereign immunity under generally recognised principles of public international law.”\textsuperscript{52}

26. Likewise, the United Nations Convention on the Law of the Sea, to which Ghana and Argentina are signatories, specifically and repeatedly acknowledges immunity for military vessels such as the \textit{Fragata Libertad}. Article 32 of the Convention expressly provides that “nothing in this Convention affects the immunities of warships and other government ships operated for non-commercial purposes.”\textsuperscript{53} Article 29 defines a “warship” as “a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the

\textsuperscript{50} Ian Brownlie, \textit{Principles of Public International Law} 41 (7th ed. 2008). See also Hazel Fox CMG QC, \textit{The Law of State Immunity} (2nd ed. 2008), p. 645 (“A modern application of the immunity of warships is the refusal by the District Court of Amsterdam of leave to attach a Peruvian warship in order to recover the salvage money for assistance rendered during sea trials. \textit{Although the 1926 Brussels Convention did not apply because Peru was not a party, the court held that no attachment may be levied on a vessel belonging to a foreign power which is intended for use in the public service”} (emphasis added)).

\textsuperscript{51} Act 645, Ghana Shipping Act of 2003, Art. 392 (emphasis added).

\textsuperscript{52} \textit{Id}., Art. 372 (emphasis added).

appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline" — all of which criteria are met by the *Fragata Libertad*. The Ghanaian Ministry of Defence and Ministry for Foreign Affairs have expressly acknowledged that the *Fragata Libertad* is a warship.55

27. The Injunction is also contrary to the English common law, which this Court may view as persuasive authority. The English common law reflects the "restrictive doctrine" of state immunity under customary international law. As stated by Lord Justice Hoffmann (as he then was) in *Littrell v USA (No 2)*, "the common law of England... now distinguishes between acts *jure imperii* in respect of which the foreign sovereign is still entitled to immunity and acts *jure gestionis* in respect of which he is not."56 Lord Justice Hoffmann's judgment reflects the House of Lords' decision in *I Congresso del Partido*, which sets out the English common law on state immunity. In that case, Lord Wilberforce held that the English common law, in

---

54 *id.* Art. 29; see also James Crawford, *Execution of Judgments and Foreign Sovereign Immunity*, 75 AJIL 820 (1981) at 862 ("Warships and Other Public Ships. . . . [T]he immunity from civil arrest or execution of warships and other (noncommercial) public ships is well established."); Hazel Fox CMG QC, *The Law of State Immunity* (2nd ed. 2008) at 635-636 ("The categories of property which came first to be located in another State's territory, warships and property of an accredited diplomatic envoy, were unquestionably in use for public purposes or in the exercise of sovereign authority. . . . There is continued acceptance today that such categories must be protected from enforcement relating to commercial debts, and indeed some willingness to introduce new categories as immune."); Peter Tobias Still, *State Immunity, F(5(g)-(h)) in Max Planck Encyclopedia of International Law* (last updated April 2011) ("Military activities are clearly non-commercial and, accordingly, any related property is considered immune from enforcement. . . . The same holds true for warships which, however, have been the subject to more specific rules for a long time. The immunity of warships had been recognised from the 18th century onwards, or even earlier, and became the subject of a specific instrument—the 1926 Brussels Convention and its 1934 Protocol."); Christoph H. Schreuer, *State Immunity: Some Recent Developments* (1988) at 146 (noting that "military equipment including warships" enjoy[] undisputed immunity from enforcement measures"); August Reinach, *European Court Practice Concerning State Immunity from Enforcement Measures, 17 EJIL* 803 (2006) at 825-26 ("Warships and other military equipment are generally regarded as not available for enforcement measures."); Susan C. Breau, Gerhard Hafner and Marcel Kohen, *Ships Owned or Operated by a State, State Practice Regarding State Immunities* (2006) at 126 ("It has been a long standing rule of international law that warships are immune from the legal process, execution or other jurisdictional measures of foreign authorities."); *Wijermuller Salvage BV v. ADM Naval Services, District Court of Amsterdam of The Netherlands, November 19, 1987. 20 Netherlands Yearbook of International Law 294* (holding that Peruvian warship was immune from attachment because it was intended for use in public service).

55 See Memoranda of the Ministries of Defence and Foreign Affairs, dated Oct. 3, 2012 (Exhibit A4 to the Affidavit of Lawrence Otoo).

56 *Littrell v USA (No 2)* [1994] 4 All ER 2003 per Hoffmann LJ at 214.
accordance with customary international law, applied the restrictive doctrine of immunity and therefore held that a court:

... must consider the whole context in which the claim against the state is made, with a view to deciding whether the relevant act(s) on which the claim is based should, in that context, be considered as fairly within an area of activity, trading or commercial or otherwise of a private law character, in which the state has chosen to engage or whether the relevant act(s) should be considered as having been done outside that area and within the sphere of governmental or sovereign activity. 57

28. Following Lord Wilberforce’s guidance, it is clear that the Injunction is based on a claim for execution against property within “the sphere of governmental or sovereign activity” and cannot fall within the commercial exception to immunity under the English common law and customary international law. As discussed above, in no sense was the Fragata Libertad in use or intended to be used for commercial purposes in Ghana, nor can NML establish otherwise. Accordingly, the English common law immunises the Fragata Libertad from creditor process and requires that the Injunction be set aside. The House of Lords has in fact indirectly considered the immunity of military vessels in Compania Naviera Vascongada v Steamship “Christina,” stating that, with respect to “ships of war or other notoriously public

57 1 Congreso del Partido [1981] 2 All ER 1064 at 1074, [1983] 1 AC 244 at 267 per Lord Wilberforce. In 1978, the United Kingdom incorporated the State Immunity Act (the “SIA”), which was enacted to codify into English law the “restrictive” theory of State immunity under international law “by means of a number of detailed exceptions to a general rule of state immunity.” 1 Congreso del Partido [1981] 2 All ER 1064 at 1074, [1983] 1 AC 244 at 260. The SIA does not replace the English common law of State immunity in its entirety. Holland v Lampen-Wolfe [2000] 3 All ER 833, 841; per Lord Hope of Craighead at 835. Moreover, prior to the enactment of the SIA, the common law had incorporated, through customary international law, modern developments in sovereign immunity, and this trend has continued since the SIA was adopted. The Philippine Admiral [1977] A.C. 373 (applying the “restrictive doctrine” to an action in rem against a state-owned trading vessel); Trendex Trading Corporation Ltd v Central Bank of Nigeria [1977] Q.B. 529 (establishing that, as a matter of contemporary international law, the restrictive theory should be generally applied). In any event, as no legislation analogous to the SIA has been enacted in Ghana, the English common law, and not the statutory interpretation of the SIA, is relevant for purposes of the instant dispute. Indeed, in a case decided after the SIA was enacted but which applied the common law only, the English Court of Appeal explained that “in the absence of statutory enactment, it is the common law including the incorporated rules of customary international law, which identifies and defines the extent of sovereign immunity.” Littrell v USA (No 2) [1994] 4 All ER 2003 per Rose J at 210-211.
vessels"58. "It was no doubt in regard to armed ships of war that the immunity of ships was first recognized" and "it was not in dispute that ships of war belonging to a foreign Government are exempt from our jurisdiction."59

29. In applying the common law, English courts "act[] so far as possible in accordance with, international law."60 As set out at paragraph [23] above, customary international law requires that the Injunction be set aside. This submission is directly supported by English authorities. Hazel Fox QC, who has been widely cited with approval in the leading House of Lords and UK Supreme Court cases as an expert on the law of sovereign immunity,61 has stated categorically that under international law "[s]hips of war and vessels exclusively in government non-commercial service remain a category of State property exempt from execution."62 This statement reflects not only customary international law, but also the UN Convention on Jurisdictional Immunities of States and Their Property, which has been acknowledged by the English courts as "powerfully demonstrat[ing] international thinking on this point."63


59 Id at 510, 518. While this case predates the development of the restrictive view of sovereign immunity under both customary international law and English law, it remains good law on that point and demonstrates that the English courts have never recognised execution against a military vessel of a foreign state. No development since then, under English law (including, by way of emphasis, under the SIA) or public international law, alters the conclusion of the House of Lords in that case that military vessels have always benefited from sovereign immunity.


62 H. Fox CMG QC, The Law of State Immunity (2nd ed. 2008) page 645 (emphasis added). Fox also references at page 645 a note verbale made by the UK government to Spain as evidence that "[t]he exemption for warships extends to war planes and [has been] applied by the UK."

Point III. The Republic Has Not Waived the Immunity of Its Military Property in the Bond Documentation

30. The Republic’s waiver of immunity relating to enforcement proceedings only applies in proceedings to enforce judgments rendered in New York or Argentina, not judgments rendered in the United Kingdom, and accordingly it cannot apply in these proceedings under any interpretation. But even if the waiver did apply (which it does not), it does not specifically waive the immunity of the Republic’s military and diplomatic property and thus is not effective to waive the immunity of such specially protected property.

31. As an initial matter, the relevant portion of the Republic’s waiver in the terms governing the bonds provides:

To the extent that the Republic or any of its revenues, assets or properties shall be entitled... in any jurisdiction in which any [court that may have jurisdiction over the Republic] is located, in which any suit, action or proceeding may at any time be brought solely for the purpose of enforcing or executing any Related Judgment [defined as a final non-appealable judgment rendered by a “state or federal court sitting in the Borough of Manhattan, The City of New York [or] the courts of the Republic of Argentina”], to any immunity from suit... the Republic has irrevocably agreed not to claim and has irrevocably waived such immunity to the fullest extent permitted by the laws of such jurisdiction.64

32. The Republic’s waiver thus applies only to proceedings to enforce a final judgment issued by the courts of New York or Argentina – not to proceedings to enforce an English judgment, which is what NML claims it is trying to do (though it is in fact prohibited from registering and enforcing the English judgment at all – and it is also prohibited from registering and enforcing the New York judgment, as explained in

---

64 See, e.g., Global Note for Global Bond bearing ISIN US040114GB00, 10.25% Global bonds due July 21, 2030, at A-12.
Part I, supra). The Republic thus clearly did not waive the immunity for itself and its property in these proceedings.

33. In addition, even if the waiver somehow did apply to these proceedings – which it does not – the waiver is ineffective to waive the immunity of the Republic’s specially protected military property. There is no support in international or domestic law for the proposition that a general, non-specific waiver in bond documentation waives the immunity of state military property; rather, a strict and explicit waiver for such property is required. The Republic did not explicitly waive the immunity of military property in its bond documentation, and accordingly the Fragada Libertad is immune from injunction in Ghana.

34. The United Nations International Law Commission states the point clearly. That Commission, which was established by the United Nations General Assembly in 1948 for the promotion and codification of international law, adopted the Draft Articles on Jurisdictional Immunities of the States (the “Draft Articles”) (the Draft Articles were adopted in 1986,65 and again in 1991 on a second reading66). The Draft Articles were presented to the U.N. General Assembly and were the basis for the 2004 United Nations Convention on Jurisdictional Immunities of States and Their Property, discussed supra, which codifies existing international customary law that is binding in Ghana.

35. Article 23 of the first reading of the Draft Articles, and the substantially identical Article 19 of the second reading of the Draft Articles, provide that the waiver exception to the international law immunity of military (and other specially protected) property only applies when the foreign state “has specifically consented to the taking of measures of constraint in respect of that category of its property” (emphasis added).67 The relevant Commentary states that this language “reinforces the

protection of these specific categories of property by requiring a stricter and more explicit waiver of immunity,\(^{68}\) and that "[a] general waiver or a waiver in respect of all property in the territory of the State of the forum, without mention of any specific categories, would not be sufficient to allow measures of constraint against [specially protected property, including military property]."\(^{69}\)

36. Indeed, in *Lydia Scheck v. The Republic of Argentina*, the German Federal Constitutional Court, following the customary international law discussed above, expressly concluded that the Republic’s waiver of immunity in its defaulted debt did not specifically reach assets that enjoy a special protection under international law, such as the Republic’s immune diplomatic, consular or military assets.\(^{70}\)

37. Moreover, and critically, even if the Republic had provided specific written consent in the bond documentation to an injunction of its otherwise immune military property in Ghana – which it did not – such a waiver would in any event be invalid. English law has never recognised a waiver of sovereign immunity as applying to non-commercial diplomatic, consular or military property.\(^{71}\)

38. The Republic wishes it to be a matter of record that the relief sought by NML in this matter is also contrary to the sovereign immunity law of the United States, where the judgment was originally rendered. The bonds at issue are governed by the law of the state of New York, part of the United States, and that law includes the U.S. Foreign

---

\(^{68}\) Yearbook of the International Law Commission 1986 vol. II pt. 2 p. 20, § 7 (emphasis added).

\(^{69}\) Yearbook of the International Law Commission 1991 vol. II pt. 2 p. 59 (emphasis added).


\(^{71}\) See, e.g., *Alcom Ltd. v. Republic of Colombia* [1984] 2 All ER 6; Hazel Fox CMG QC, *The Law of State Immunity* (2nd ed. 2008), p.263 ("It is doubtful whether the waiver provisions in the [SIA] relating to adjudication and enforcement apply to proceedings relating to the property of a diplomatic mission."). Indeed, the English Court of Appeal in *Kahan v. Pakistan Federation* [1951] 2 KB 1003, applying English common law, held that notwithstanding the existence of a contractual waiver, the foreign state could not be held to have waived immunity to suit absent an express submission before the court. *See also Baccus SRL v. Servicio Nacional del Trigo* [1957] 1 QB 438 at 473.
Sovereign Immunities Act ("FSIA"). It is clear under U.S. law that the Republic did not intend to, and did not in fact, waive immunity from execution of military property under the terms of the waiver at issue here; indeed, the FSIA does not permit a waiver of immunity for property that is used in connection with a military activity. In fact, the New York court in which NML's judgment was rendered has expressly recognised that the Republic's waiver does not reach its military property; orders issued by the New York judge in cases brought by NML have specifically excepted military property from attachment. And in Colella v. Republic of Argentina, 2007 WL 1545204, at *7-8 (N.D. Cal. 2007), the United States District Court for the District of Northern California set aside an ex parte attachment of Argentina's military aircraft notwithstanding the very same general waiver language that is at issue in this matter, noting that "[i]f held otherwise would frustrate foreign policy and open up the possibility that a foreign state might permit execution on military property of the United States abroad under a reciprocal application of the [FSIA]."

Thus, under the law governing the waiver upon which NML relies, it is beyond dispute that a naval ship of the Republic would be immune from attachment if at port in the United States. There is no basis in law or logic for NML's apparent position that the same waiver was intended to, or does in fact, subject the same property to restraint or seizure elsewhere.

---

72 See Argentine Republic v. Amerada Hess Shipping Corp., 488 U.S. 428, 439 (1989) ("The FSIA provides the sole basis for obtaining jurisdiction over a foreign state in federal court."); EM Ltd. v. Republic of Argentina, 473 F.3d 463, 481 n.19 (2d Cir. 2007) ("Even when a foreign state completely waives its immunity from execution, courts in the U.S. may execute only against property that meets [the FSIA's] statutory criteria.") (citation omitted).

73 See 28 U.S.C. § 1611(b)(2) (FSIA) (providing that "[n]otwithstanding [exceptions to immunity, including waiver], the property of a foreign state shall be immune from attachment and from execution" if it "is, or is intended to be, used in connection with a military activity and (A) is of a military character, or (B) is under the control of a military authority or defense agency"); see also H.R. Rep. 94-1487 at 31 (1976), reprinted in 1976 U.S.C.C.A.N. 6604, 6630 (legislative history of the FSIA stating that military property is exempt from exceptions to immunity from attachment or execution, including waiver); Aero Union Corp. v. Aircraft Deconstructions Intern., LLC, 2012 WL 3679627, *7 (D. Me. 2012) (finding that if "the foreign state has waived immunity, it could recover immunity from attachment if the aircraft qualifies as military property").

74 See, e.g., Order of Attachment dated Sept. 12, 2008, at 5 (order in NML cases excluding from attachment, inter alia, any "property that is, or is intended to be, used in connection with a military activity, and is of a military character or is under the control of a military or defense agency.") (Exhibit A6 to Affidavit of Lawrence Otoo).
Point IV. The Injunction Must Be Set Aside Because It Is Contrary to the Public Interest

40. The Injunction must also be set aside because it is indisputably against the public interest.

41. Under the High Court (Civil Procedure) Rules, 2004, a Court may grant an injunction if it would be “just” to do so. Here, the public interests are so against the Injunction that it is manifestly unjust. The delays caused by the Injunction, which compound daily, are harming the Republic’s mission and derailing the schedule agreed upon by over a dozen countries involved in the voyage of the Fragata Libertad. The Injunction must be set aside in light of (1) the evident harm to the Republic’s military training regimen, the foreign states (including Ghana) that agreed to receive the Fragata Libertad and/or whose crew are currently aboard the Fragata Libertad, and the Republic’s relations with these foreign states, and (2) the strong probability that any continuing injunctive relief will frustrate and perhaps even prevent similar missions in the future.

42. This is not the first time that NML has sought to improperly restrain property used for a governmental purpose in direct contravention of the public interest. For example, when NML tried in 2011 to attach a scientific satellite to be launched into space by Argentina’s space agency and the space agencies of several other countries, and where the satellite was not to be used for any commercial purpose but rather to gather important environmental data, the U.S. federal court in the state of California denied the injunction as against the public interest:

There are countless reasons why the issuance of [n] [injunction] would be against the public interest... [n] [injunction] would adversely affect other parties involved in the [mission].... The amount of damage that will be inflicted upon the United States’ national aerospace program is breathtakingly staggering... [I]ssuing an [injunction] will [also] impair the relationship between the United States and its foreign partners on space exploration and other scientific
collaborative projects. Enjoining the launch of the [satellite] at this late stage, after national space agencies from France, Italy, Canada, and Argentina have contributed much resources and time, will undoubtedly frustrate current and future joint programs. . . . This unnecessary and dangerous interference with foreign affairs is precisely the reason why Congress and the Supreme Court adopted a “restrictive theory” on the execution of foreign property in the United States.\textsuperscript{75}

43. These factors also apply here. Interference with a military training mission of a friendly foreign state is not in the public interest. This is particularly true when that mission includes scheduled meetings of good will among the friendly state and numerous other states, including Ghana. Permitting the unlawful Injunction to continue harms the general welfare and security of Argentina and threatens to impair the friendly relationships among Argentina, Ghana, and the many countries that have taken part in this training mission and/or whose crew are on the ship. The Injunction directly threatens Ghana’s own relationship with all of these countries – indeed, despite the law, these countries may well refuse to grant reciprocal military and diplomatic immunity to Ghana in the future if the Injunction is not set aside.

44. The public interest weighs strongly against the Injunction, which accordingly must be set aside immediately.

\textbf{Point V. NML Cannot Require the Republic to Post Security}

45. Finally, NML cannot require Argentina to post any security in these proceedings in light of the fact that NML’s judgment cannot be enforced in Ghana and the clear immunity of Argentina’s military property under all applicable law. Any attempt to require Argentina to post security would be a patently improper attempt to evade its sovereign immunity altogether, and should be rejected. The portion of the Injunction

stating that it shall not lapse “unless the defendant provides sufficient security”\footnote{Order for Interlocutory Injunction and Interim Preservation of the “ARA Libertad,” dated Oct. 2, 2012.} must therefore be set aside along with the remainder of the Injunction.

Conclusion

46. For these reasons, the Court should grant the Republic’s emergency application and immediately set aside the Injunction.
Supplemental Submission on Behalf of the Republic of Argentina

1. Defendant the Republic of Argentina (the “Republic” or “Argentina”) makes this supplemental submission following the October 9, 2012 hearing in connection with its emergency application to set aside the October 2, 2012 Order for Interlocutory Injunction and Interim Preservation of the “ARA Libertad” (the “Injunction”).

2. During the October 9 hearing, counsel for plaintiff NML Capital, Ltd. (“NML”) for the first time relied on Chung Chi Cheung v R [1939] A.C. 160, for the proposition that the waiver in the Republic’s bond documentation – which does not refer to specifically protected military property – strips the warship Fragata Libertad of its
recognised immunity. Cheung does not support NML’s position and is irrelevant to this case.

3. Chung Chi Cheung concerned criminal jurisdiction over a British crew member aboard a Chinese ship, not a ship’s immunity from restraint in civil proceedings. The crew member had been tried and sentenced in Hong Kong for the murder of the captain while the ship was in Hong Kong waters. The Privy Council held that the Hong Kong court had jurisdiction over the appellant because the Chinese government had specifically consented to Hong Kong’s jurisdiction for this particular prosecution, id. at 177, as evidenced by, inter alia, (1) the Chinese government’s lack of any objection to the trial in Hong Kong; (2) the Chinese government giving permission to four members of the military service to give evidence before the court of Hong Kong in aid of the prosecution; (3) that the evidence – including the bullets used for the murder – was left entirely in the hands of the Hong Kong police without objection from the Chinese government; (4) and that the acting chief officer of the ship specifically directed the boat to proceed to Hong Kong “at full speed [to] hail the police launch,” because he wanted “help to arrest the accused from the Hong Kong police.” Id. at 166. On the basis of these facts, the Privy Council held the Chinese government had consented to the jurisdiction of the Hong Kong courts in connection with the criminal prosecution of the crew member. Id. at 177.

4. Chung Chi Cheung bears no resemblance to this case. First, the Privy Council specifically considered an individual’s immunity from criminal arrest, id. at 163, 165, not a foreign state’s immunity from the restraint of its military property. Second, the case does not suggest that immunity had been waived with respect to the ship, but only as to the accused crew member. Id. at 162. Third, the Privy Council found waiver on the grounds of consent given the Chinese government’s action specifically in connection with the ship: “where the visiting ship agrees to the Courts of the host State exercising jurisdiction in respect of offences committed within territorial waters, those Courts have jurisdiction.” Id. at 164 (emphasis added). Here, apart from the fact that this case has nothing to do with jurisdiction concerning
“offences committed” on a ship, Argentina, unlike China in Chung Chi Cheung, has not at any point consented to the Injunction of the Fragata Libertad but rather strenuously opposed that Injunction in this Court.

5. Nor does Chung Chi Cheung stand for the proposition that the Republic “implicitly” waived immunity to enforcement against its military property through the general waiver language upon which NML relies. Such a holding would be unprecedented and would directly conflict with customary international law binding in Ghana, see Submission of the Republic of Argentina dated October 8, 2011 (the “Submission”), paras. 21-29, and the decisions of the highest courts of France and Germany.

6. The Cour de Cassation in France, construing the exact same waiver language at issue in this case, held that the Republic’s specially protected diplomatic property remains immune from enforcement:

[W]hereas, according to customary international law, the diplomatic missions of foreign States benefit... from autonomous immunity from execution that can only be waived expressly and specially... so that, barring any special and express waiver of this immunity, the Argentine Republic’s waiver, with respect to the creditor, of States’ immunity from execution was ineffective...


7. Likewise, the German Federal Constitutional Court, analyzing the Republic’s waiver and applying international law, held that “a general waiver cannot suffice to set aside the diplomatic immunity of objects and assets, which is especially strictly protected
by public international law,” and noted further that the universe of strictly protected property also includes “government vessels and aircraft or materials of the armed forces.” *Lydia Scheck v. Republic of Argentina*, 2 BvM 9/03 (German Federal Constitutional Court Dec. 6, 2006) available at http://www.bverfg.de/entscheidungen/ms20061206_2bvm000903.html (emphasis added). The same international law that formed the basis of the German Federal Constitutional Court’s ruling (and the ruling of the French *Cour de Cassation*) is binding and dispositive here.

8. Contrary to NML’s suggestion, English common law is bound by these same principles of international law. As the English Court of Appeal explained in *Littrell v USA (No 2)* [1994] 4 All ER 2003 per Rose LJ at 210-211, “in the absence of statutory enactment, it is the common law including the incorporated rules of customary international law, which identifies and defines the extent of sovereign immunity.” English common law has never recognised a waiver of sovereign immunity as applying to noncommercial diplomatic, consular or military property. See Submission, para. 37.

9. The UK Supreme Court’s decision in *NML Capital Limited v Republic of Argentina* [2011] UKSC 31, does not change this analysis, and certainly does not constitute res judicata as to any matter in the instant proceedings. First, whether the general waiver language contained in the Republic’s bonds reaches military property was never at issue in England. In fact, the closest that any court has come to resolving that specific issue was in the French proceedings brought by NML against Argentina in which the highest court in France expressly rejected NML’s position that the same general waiver language constituted a waiver with respect to specially protected property such as diplomatic property, as discussed above. Thus, if any party is subject to res judicata in this matter it is NML, not Argentina.

10. In fact, the English proceedings concerned only whether an English court had jurisdiction to recognise NML’s New York judgment, not whether military property,
or indeed any type of property at all, was amenable to execution. Not to distinguish “immunity from jurisdiction” and “immunity from execution,” a distinction which “reflects the particular sensitivities of states in face of measures of forcible execution directed against their assets, and measures of execution wary laws to serious disputes at the diplomatic level.” Ian Brownlie, *Principles of Modern International Law* 346-347 (5th ed. 1998); see also *Jurisdictional Immunities of States and Their Property (Germany v. Italy)* (International Court of Justice Feb. 2012), para. 11 (providing that rules of customary international law governing immunity from enforcement and those governing jurisdictional immunity... are distinct, and must be applied separately). That there existed jurisdiction over Argentina in England for the sole purpose of recognising the New York judgment in England is not relevant here; the fact that jurisdiction existed “does not involve an implicit waiver of the separate immunity from measures of execution.” *Id.* at 347.

11. Nor does the *NML Capital Limited v Republic of Argentina, [2011] UKSC 5* prevent Argentina from invoking jurisdictional immunity in Ghana or relying on law precluding the enforcement of U.S. judgments. The Republic enjoyed *jurisdictional* immunity from suit only with respect to actions brought against it in Republic in New York and Argentina. *See* Submission, para. 19. *NML* asserted and obtained a judgment from a *New York* court. The UK Supreme Court concluded that NML’s New York judgment could be recognised and enforced in the UK, subject to the laws of that jurisdiction (which undisputably preclude recognition of military property). But under Ghana law, the same New York judgment was not recognised or enforced in Ghana at all. *See* *Id.*, paras. 16-17. Nor can NML register or enforce the so-called “English Consent Order” because Ghana law prohibits registration of a “judgment on a judgment.” *See* *Id.*, paras. 18-19.

Conclusion

12. For these reasons and the reasons stated in the Republic’s Submission, the Court should immediately set aside the Injunction.

5
ANNEX D

Proceedings “In the Superior Court of Judicature in the Commercial Division of the High Court Justice Accra held on Tuesday, 9 October 2012 before his Lordship Justice Richard Adjei-Frimpong.” Statement by Mr. Ebenezer Apraku, Director of the Legal and Consular Bureau of the Ministry of Foreign Affairs and Regional Integration of Ghana.
IN THE SUPERIOR COURT OF JUDICATURE IN THE COMMERCIAL DIVISION OF THE HIGH COURT OF JUSTICE ACCRA HELD ON TUESDAY 9TH OCTOBER, 2012 BEFORE HIS LORD SHIP JUSTICE RICHARD ADJEI-FRIMPONG

NML CAPITAL LTD. PLAINTIFF

VRS.

THE REPUBLIC OF ARGENTINA DEFENDANT

PARTIES: PLAINTIFF REPRESENTED BY DENNIS HRANISTSKY.

DEFENDANT REPRESENTED BY SUSANA PATARO (AMBASSADOR OF ARGENTINA IN GHANA) - PRESENT.

COUNSEL: ACE ANAN ANKOMAH WITH GOLDA DENYO AND KWAKU AGGREY ORLEANS FOR THE PLAINITIFF/RESPONDENT - PRESENT.

LARRY OTOO WITH OPOKU AMPONSAH AND NII ODODI ODOTWE FOR THE DEFENDANT/APPLICANT - PRESENT.

MRS. GRACE EOYOK SRN. STATE ATTORNEY LED BY MR. EBENEZER APRAKU DIRECTOR OF LEGAL AND CONSULAR BUREAU OF THE MINISTRY OF FOREIGN AFFAIRS - PRESENT.

I have seen an affidavit in opposition to the application. Mr. Otoo have you been served?
MR. APRAKU:

First of there are two levels in this matter one has to do with the jurisdiction of the court for the Republic of Argentina subject to the jurisdiction of the courts of Ghana. The second has to do with the status of the warship and on both count as the department responsible for the conduct of our relations we want to ride on the established principles that we need the express waiver of a foreign government to subject that government to your foreign jurisdiction, not even the American courts will entertain an exercise of jurisdiction over the Republic of Argentina in breach of the principle of the sovereign immunity of a foreign state in a foreign court. The second part is the vessel, the warship. As has been deposed by counsel for Argentina, the foreign ministry advised the Attorney Generals Department that the vessel is a warship and on that point I want to refer to a ruling by a U.S. Court in the case of Ex-parte Republic of Peru in which Chief Justice Stone in ruling upon Peru's claim of sovereign immunities stated that the department of state has allowed the claim of immunity and caused it actions to be certified to the District Court through the appropriate channels. The certification and the request that the vessel the warship be declared immunity must be accepted by a court as a conclusive determination by the political arm of government that the continued retention of the vessel interferes with the proper conduct of our foreign relations. Upon the submission of this certification to the court (in this case our letter which is attached to the affidavit filed by counsel). Upon certification to the court (in this case this honourable court) it became the court's duty in conformity to established principles to release the vessel and to proceed no
further in the course. I recognize that this is of persuasive authority.

JUDGE: What is the citation?

MR. APRAKU:


JUDGE: Is that all?

MR. APRAKU: Yes my lord. Thank you.

ACE ANAN ANKOMAH FOR THE PLAINTIFF/RESPONDENT:

My lord, it is critical in responding to this application and the submissions this morning to go through what the facts of this matter really are.

My lord, the Defendants entered into an agreement, which is referred to as the Fiscal Agency Agreement, 19th October, 1994 with a US bank called Bankers Trust. My lord, the agreement which we call FAA is annexed as Exhibit "KA01". That agreement contained a form, which is what was called the form of Reverse Security. And what the agreement was saying is that the Defendant, The Republic of Argentina, would issue bonds (securities) for the general public to purchase and so between the Defendants and Bankers Trust Company, the form of the bond was agreed upon.
ANNEX E

Motion on Notice for Variation of Order of Injunction by Ghana Ports and Harbour Authority.
IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
(COMMERCIAL DIVISION)
ACCRA – A.D. 2012

NML CAPITAL LIMITED
HUNTLAW CORPORATE SERVICE
THE HUNTLAW BUILDING
75 FOR STREET, GRAND CAYMAN
CAYMAN ISLANDS

VRS

THE REPUBLIC OF ARGENTINA
MINISTRY OF FOREIGN AFFAIRS
& WORSHIP ESMEERALDA
BUENOS AIRES, ARGENTINA

GHANA PORTS & HARBOURS AUTHORITY ...
TEMA.

SUIT NO. RPC/343/12

PALINTIFF

DEFENDANT

APPLICANT

MOTION ON NOTICE FOR VARIATION OF ORDER OF INJUNCTION

PLEASE TAKE NOTICE that this Honourable Court will be moved by Counsel for and on behalf of the Applicant herein for an order for variation of the order of interlocutory injunction granted by this Honourable Court on the 2nd day of October 2012 and for leave to be granted the Applicant herein to move the Vessel “Ara Libertad” from its present position at Berth 11 and to have the same moored at Anchorage upon grounds stated in the accompanying affidavit and for such further or other orders as this Honourable Court may deem fit and just.

Court to be moved on the ____ day of October 2012 at 9 o'clock in the forenoon or so soon thereafter as Counsel may be heard.

DATE AT TEMPA THIS 15TH DAY OF OCTOBER 2012.

THE REGISTRAR
HIGH COURT
COMMERCIAL DIVISION
ACCRA.

Solicitor for
YAW DARKO ASARE
BEULAH CHAMBERS
P. O. BOX CO 1455
TEMA
TEL: 0244 352 000

And to the above-named Plaintiff or its Solicitor Ato Ankuah Bonsu, and the Defendant or its Solicitors Larry

81 (04939)

22-10-12
IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
(COMMERCIAL DIVISION)
ACCRA – A.D. 2012

NML CAPITAL LIMITED
HUNTLAW CORPORATE SERVICE
THE HUNTLAW BUILDING
75 FOR STREET, GRAND CAYMAN
CAYMAN ISLANDS

VRS

THE REPUBLIC OF ARGENTINA
MINISTRY OF FOREIGN AFFAIRS
& WORSHIP ESMERALDA
BUENOS AIRES, ARGENTINA

GHANA PORTS & HARBOURS AUTHORITY ...
TEMA.

SUITE NO. RPC/343/12

PALINTIFF

DEFENDANT

APPLICANT

AFFIDAVIT IN SUPPORT

1. MRS MARGARET CAMPELL of H/No. 1, Halcrow Road Community 2, Tema, do make oath and say as follows:-

1. That I am the Deponent herein and the General Manager, Legal/Insurance of the Ghana Ports & Harbours Authority, whose authority I have to deposes to this affidavit.

2. That the matters deposed to herein are within my personal knowledge, information and belief.

3. That on the 23rd day of October 2012, this Honourable Court granted an order of interlocutory injunction in favour of the Plaintiff herein and for the interim preservation and detention of the vessel M/V “Ara Libertad” now lying at the Port of Tema.

4. That in making the afore-mentioned injunctive and preservation orders, this Honourable Court specifically ordered the Harbour Master of the Ghana Ports & Harbours Authority to preserve the presence of the “Ara Libertad” in Ghana and, among other things, essentially prevent the said vessel “Ara Libertad” departing from its berth. I herewith attach a Certified True Copy of the said Order as Exhibit “MC1”
5. That the result of the order of this Honourable Court dated the 2nd of October 2012 was to have the vessel Ara Libertad specifically detained at Berth #11, at the port of Tema without any option of being moved anywhere else within the Port.

6. That meanwhile, the said Berth #11 is one of the busiest and most commercially utilized berths at the Port, vital for the country’s cement and steel supplies.

7. That for instance all vessels carrying clinker for Ghacem and all cement imported by GreenView Ltd., the manufacturers of Dangote cement are assigned to be berthed at the same Berth #11.

8. That Ghacem Bulk Carriers take about three days to discharge their clinker, whilst vessels carrying GreenView cement products stay at the same berth for at least an average of about six days, and on some occasions, these vessels have been made to wait in queues for a day or two to enable the port to work vessels carrying steel, fish, thereby creating a constant situation where this Berth #11 is always occupied back to back.

9. That prior to the arrival of the “Ara Libertad”, the Ghana Ports & Harbours Authority at the specific request of the Ghana Navy, gave a special dispensation to have the vessel berthed at Berth #11 on the clear understanding that she would depart from the territorial waters of Ghana on the 4th of October 2012.

10. That with the continued detention of the vessel at Berth #11, the Ghana Ports & Harbours Authority has been unable to grant access to any of the vessels that were due to berth at the said Berth #11 and this is creating a very serious and alarming state of congestion and traffic at the Port.

11. That again, with the taking over of Berth 11, the port has been compelled to divert cement clinker vessels to berth 12, the general cargo berth, with the result that vessels for Berth 12 have ended up in queues at the port.

12. That vessels carrying Christmas cargo have now started arriving at the port of Tema and most of these vessels, together with shipments for the nation’s oil industry, have been queuing up at anchorage, which queues are getting longer each passing day, thereby threatening to turn away other vessels to ports of neighbouring countries and in the end, harming the reputation of the ports of Ghana.

13. That since the order was issued by this Honourable Court for the detention of the vessel “Ara Libertad”, the number of vessels which daily queue at the anchorage have increased dramatically and presently there are about sixteen to eighteen vessels now lying at the anchorage waiting for space at the port.

14. That the situation has adversely affected the Port’s turn-around time and this is seriously undermining the efficiency of the GPHA to handle vessels expeditiously as the country’s import trade heads into its peak period before Christmas, and this is in
turn threatening to erode the very favourable image built over the years by the GPHA within the international maritime community as a safe and efficient port.

15. That by reason of the matters afore-said, the continued detention of the “Ara Libertad” at Berth #11 in compliance with the strict orders of this Honourable Court is not only causing serious chaos and crippling disruptions to the operations of the Ghana Ports and Harbours Authority but is also occasioning considerable and substantial hardship and financial losses to the Authority.

16. That for instance, the continued detention of the “Ara Libertad” deprives the Ghana Ports & Harbours Authority, a statutory corporation set up as a commercial venture, of much needed revenue as it charges an amount of US$21,910.00 for a period of six days for the use of its Berth #11.

17. That the resultant congestion following the detention of the vessel “Ara Libertad” at Berth #11 would further have adverse consequences on the national economy as shipping lines are likely to impose congestion surcharges on cargo bound for the port which charges will eventually trickle down to affect the prices of goods imported into the country.

18. That to date the Defendant has refused and/or neglected to post appropriate security for the release of the said “Ara Libertad” from detention and there is no likelihood that the said vessel will be released from detention anytime soon. Indeed the judgment debt itself for which the “Ara Libertad” was arrested has been due and owing for quite a long time now without the Defendant showing any positive willingness of settling same.

19. That there is therefore every likelihood that this purely private commercial dispute between the Plaintiff and the Defendant may linger on for a long time and the Ghana Ports & Harbours Authority cannot be saddled with the burden and inconvenience of preserving the subject matter of the said dispute, to wit, the vessel “Ara Libertad”.

20. That by reason of the matters afore-said, I am advised and verily believe same to be true that this Honourable Court has an inherent jurisdiction to allow the Ghana Ports & Harbours Authority to intervene in these proceedings and seek appropriate reliefs for the variation of the said order of injunction and preservation dated the 2nd of October 2012 by granting the Ghana Ports & Harbours Authority leave to remove the “Ara Libertad” from its present position at Berth #11 to be moored at anchorage.

21. That the Ghana Ports & Harbours Authority further prays for the appropriate orders to be issued by this Honourable Court directed at the Registrar or the Admiralty Marshall to ensure the settlement of all costs and expenses already incurred or to be incurred by the Authority as a direct result of the afore-mentioned order of injunction and preservation.

22. Wherefore I swear to this affidavit in support.
ANNEX F

Note of 31 October 2012 from the Argentine Ambassador in Ghana, Ms. Susana Pataro, to the Minister of Foreign Affairs of Ghana.
Embassy of the

Argentine Republic

N°10/12

Accra, 31 October 2012

Excellency,

Upon express instructions of my Government, I am writing to refer to the situation created by the unlawful detention of the frigate “ARA Fragata Libertad” in the port of Tema, which has led to the commencement of an arbitral procedure and to a request for provisional measures in accordance with the United Nations Convention on the Law of the Sea (UNCLOS), pursuant to my letter dated 29 October 2012.

It has come to the notice of the Argentine Republic that the Ghana Ports & Harbours Authority has requested the Judge of the Superior Court of Judicature of Ghana – Commercial Division— that ordered the unlawful seizure of the Argentine warship to give leave to such Authority to move and anchor the frigate outside the port of Tema. My Government formally protests against this new flagrant disregard for the immunities enjoyed by “ARA Fragata Libertad”.

In fact, no administrative or judicial authority of Ghana has jurisdiction to order an Argentine warship to implement such a measure, let alone move the vessel on its own initiative. Part II, Section 3, Subsection C of UNCLOS specifies all the prerogatives of the coastal State with respect to warships, which of course do not include the right to carry out an arbitrary detention as the one to which the aforementioned warship is currently subjected or the right to have it moved or anchored without the consent of the Argentine Republic. Any attempt to move “ARA Fragata Libertad” under such conditions would constitute a further and serious violation of the immunities enjoyed by the vessel.

My government again calls your government’s attention to its obligation to cease its unlawful conduct and requires it to refrain from implementing any measure that may aggravate the dispute pending before the arbitral tribunal to be constituted on the terms set out in my letter of 29 October. My government further reminds your government of
the term it has to grant the provisional measure requested in the said letter and that, in the event that your government should fail to adopt it, Argentina shall request the International Tribunal for the Law of the Sea to do so as a matter of urgency.

I avail myself of this opportunity to reiterate to Your Excellency the assurances of my highest consideration.

ACCRA, October 31st 2012.

[Signature]

Maria Susana Patrño
Ambassador Extraordinary and Plenipotentiary
of the Argentine Republic in Ghana

MINISTER OF FOREIGN AFFAIRS AND REGIONAL INTEGRATION
AL-HAJJI MUHAMMAD MUMUNI
ACCRA
ANNEX G

Ruling granting the motion on the relocation of the vessel, dated November 5, 2012.
IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE ACCRA COMMERCIAL DIVISION, HELD ON MONDAY THE 5TH DAY OF NOVEMBER, 2012. BEFORE HIS LORDSHIP JUSTICE RICHARD ADJEFI-FRIMPONG.

SUIT NO. RPC/343/12

NML CAPITAL LIMITED - PLAINTIFF

VRS

THE REPUBLIC OF ARGENTINA - DEFENDANT

GHANA PORTS & HARBOURS AUTHORITY - APPLICANT

PARTIES: PLAINTIFF REPRESENTED BY DENNIS HRANITZKY - PRESENT
DEFENDANT REPRESENTED BY SUSANA PATARO - PRESENT
MARGARET CAMPBELL REPT. THE APPLICANT (GPHA)

COUNSEL: THADEUS SORY FOR ACE ANKOMAH FOR PLAINTIFF/
RESPONDENT APPEARING WITH HIM GOLDA DENYO, KWEKU
AGGREY ORLEANS AND KOW ESSUMAN – PRESENT
KIZITO BEYUO APPEARING WITH HIM OPOKU AMPONSAH, IRIS
AGGREY ORLEANS BEING LED BY LARRY OTOO
ASARE DARKO FOR THE APPLICANT - PRESENT

CERTIFIED TRUE COPY

COMMERCIAL DIVISION OF THE HIGH COURT, ACCRA
RULING

In determining this application, I find it necessary to emphasize 2 facts on record;

1. The Ghana Ports and Harbours authority is not a party to this suit. It does not stand to benefit in any way from the trial.

2. The Government of Ghana is also not a party to this Suit. Similarly it does not stand to benefit in any way from this Suit.

The Suit is between two foreign entities; a foreign body corporate and a foreign state. The circumstances under which this court assumed jurisdiction over the two parties are already known and need not be rehearsed in this application.

The Ghana Ports and Harbours Authority is a creature of statute. Its power to regulate the use of the ports in Ghana and their facilities is conferred by statute.

Section 5 (1) (c) of the Act creating the authority (PNDC LAW 160) reads:

"The Authority shall plan, build, manage, maintain operate and control ports and in particular shall
c) regulate the use of a port and of the port facilities."
Ordinarily, it is not within the powers of this court to interfere with the exercise of that power. My understanding is that this court should be hesitant in meddling in the way the authority manages and wants to manage the ports unless there is a compelling reason to interfere.

Against this background in dealing with this application, two (2) factors weigh on the mind of the court.

1. The safety of the "Vessel Libertad", the safety of its crew and the safety of other Vessels and port facilities.
2. The compliance of this court's original order; i.e. how to ensure that the vessel whilst being relocated does not flee the port.

Having listened to the arguments on both sides, I am satisfied that the vessel could be relocated without the dangers talked about. The impression sought to be created that without the full compliments of the crew from Argentiña the vessel can never be moved safely sounds unconvincing. It was not demonstrated to the satisfaction of the court how harm or injury would necessarily be caused to the crew if the vessel is moved by “non Argentines”.

I am of the view that the economic loss being suffered by the authority and the Republic of Ghana which loss they will continue to suffer if this order is not granted clearly outweighs the imaginary fear being canvassed. In any case if the economic loss is not a serious factor to consider, what prevents the Argentine Government from posting just a bond in order to take the vessel away? So in effect they, who are judgment debtors should not lose
economically but Ghana and GPHA who are innocent third parties should lose economically.

I think I find sufficient reasons to grant the motion sought by GPHA.

The motion is therefore granted. Except to say that, given the information that the vessel and the crew would be safer at berth 6 than Anchorage I will grant the order that the vessel be moved to Berth 6 where it shall be detained under the same condition contained in the 2/10/12 Order. The vessel shall be so detained at Berth 6 until otherwise ordered.

The cost involved in the movement and relocation shall be borne by the Plaintiff in this action.

The GPHA shall file a written report on the relocation of the vessel within 3 days upon the carrying out of the exercise. Thereafter the GPHA shall file a weekly situational report to enable the court assess the situation and take decision on the future keeping of the vessel.

The suit is to take its normal course.

(SGD.)

RICHARD ADJEI-FRIMPONG

JUSTICE OF THE HIGH COURT
ANNEX H

Argentine’s presentation before the Ghana Ports & Harbours Authority, dated November 6, 2012.
6 November 2012

The Director General
Ghana Ports & Harbours Authority
Tema

Dear Sir

Suit No. RPC/343/12

NML CAPITAL LIMITED  PLAINTIFF/RESPONDENT/
AND
THE REPUBLIC OF ARGENTINA  DEFENDANT/APPELLANT/
AND
GHANA PORTS & HARBOURS AUTHORITY  APPLICANT/RESPONDENT

We write as solicitors of the defendant in the above matter.

As you no doubt know, the High Court, Commercial Division presided over by His Lordship Adjei-Frimpong on 5 November 2012 granted GPHA’s motion for a variation of the order of injunction granted in this matter on 2 October 2012. The court ordered that the defendant’s vessel, Fragata Libertad, currently at Berth 11, Tema Port be moved and kept at Berth 6.

The defendant has since appealed to the Court of Appeal against the decision of His Lordship Adjei-Frimpong. Enclosed is a copy of the Notice of Appeal.

By rule 27(3) of the Court of Appeal Rules CI 19, there is an automatic stay of execution of the order by His Lordship Adjei-Frimpong for a period of seven days immediately following the giving of the judgment or decision.

This letter is to draw your attention to the above provision in order that you do not take any steps in furtherance the order appealed against which will render our client’s appeal nugatory.

Yours faithfully

[Signature]

[Address]

Fountain Chambers, 153 South La Estates, Accra
P. O. Box CT2959, Cantonments, Accra – Ghana
Tel: 233 302 774 560 | 233 302 767 122 Fax: 233 302 769 580
E-mail: info@beyuojumu.com | www.beyuojumu.com
Kizito Beyuo

1. The Harbour Master, Tema Port, Tema
IN THE SUPERIOR COURT OF JUDICATURE
IN THE COURT OF APPEAL
ACCRA – A.D. 2012

SUIT NO. RPC/543/12

BETWEEN

NML CAPITAL LIMITED
Huntlaw Corporate Buildings
75 Fort Street, Grand Cayman
Cayman Islands

AND

THE REPUBLIC OF ARGENTINA
Ministry of Foreign Affairs & Worship
Esmeralda 1212, C1007 Abr
Buenos Aires, Argentina

AND

GHANA PORTS & HARBOURS AUTHORITY
Tema Port
Tema

APPLICANT/RESPONDENT

NOTICE OF APPEAL

TAKE NOTICE THAT the defendant/respondent/appellant herein, who is dissatisfied with the decision of the High Court, Commercial Division contained in the Ruling of His Lordship Richard Adjey-Frimpong J. dated 5th November, 2012, appeals to the Court of Appeal on the grounds set out in paragraph 2 herein and will at the hearing of the appeal seek the reliefs set out in paragraph 3 herein.

AND the defendant/respondent/appellant further states that the name and address for service of the persons directly affected by the appeal are set out in paragraph 4 herein.

1. Part of the ruling complained of:
   i. The whole ruling.

2. Grounds of appeal:
   i. The High Court Judge erred in ordering that the FRAGATA LIBERTAD be moved from its present position at Berth 11 at the Tema Port.
ii. Other grounds of appeal to be filed upon receipt of a copy of the record of proceedings.

3. Reliefs sought from the Court of Appeal:
   
i. An Order reversing the decision of the High Court dated 5th November, 2012, that the “ARA Libertad” be moved from its present position at Berth 11 at the Tema Port.

4. Person directly affected by this appeal:
   
1. NML Capital Limited
   Benst-Enoch Letsa & Ankoomah
   Teacher's Hall
   Education Loop
   Adabraka

2. GHANA PORTS AND HARBOURS AUTHORITY
   Tema Port
   Tema

DATED THIS 5TH DAY OF NOVEMBER 2012 AT BEYUO JUMU & CO. SOUTH LA.
ACCRA

KIZITO BEYUO
(SOLICITORS LICENCE NO. GAR/06967/12)
BEYUO JUMU & COMPANY
SOLICITORS FOR
DEFENDANT/RESPONDENT/APPELLANT

THE REGISTRAR
HIGH COURT
COMMERCIAL DIVISION
ACCRA

AND TO

1. THE ABOVE-NAMED PLAINTIFF/RESPONDENT/RESPONDENT
2. THE ABOVE NAMED APPLICANT/RESPONDENT
ANNEX I

Affidavit by Captain Lucio Salonio, Commander of the Frigate ARA Libertad.
DECLARACIÓN JURADA DEL COMANDANTE DE LA FRAGATA ARA “LIBERTAD”

Yo, PABLO LUCIO SALONIO (argentino, Documento Nacional de Identidad 14.526.462) DIGO lo siguiente:

I. Soy Capitán de Navío de la Armada Argentina (Matrícula Militar 009534-7), y me desempeño, actualmente, como Comandante del Buque Escuela Fragata ARA “Libertad”, desde el 13 de febrero de 2012.

II. Como Comandante, soy responsable absoluto de mi unidad dentro de las prescripciones legales, en particular, la conducción del buque, de sus servicios, de la correcta ejecución de las órdenes y las instrucciones recibidas, y del cumplimiento de la reglamentación en vigor.

III. La Fragata ARA “Libertad” depende de la Jefatura del Estado Mayor General de la Armada, bajo el control operativo del Comando de Adiestramiento y Alistamiento de la Armada.

Declaro, bajo juramento, que lo anteriormente expresado, así como lo que manifiesto a continuación, es verdadero y correcto.

1. Situación actual del buque comparada con la situación al momento de arribo al puerto de Tema, inclusive en lo que hace al combustible.

La Fragata ARA Libertad arribó al puerto de Tema en misión de buena voluntad procurando cumplir tres tareas fundamentales: 1) Lograr un acercamiento cultural con el pueblo de Ghana a los efectos de completar la formación de los Guardiamarinas en Comisión 2) Desarrollar actividades protocolares con la Armada de Ghana según previsiones programadas con esa Armada 3) Abrir las puertas de la Fragata Libertad a los efectos de que el pueblo de Ghana se acercara y tomara contacto con todo lo argentino que la Fragata simbólicamente representa. Esos objetivos han sido los mismos que la Fragata ARA Libertad tenía asignados respecto de todos los países cuyos puertos visitó o tenía previsto visitar en este viaje de instrucción.

Habiendo cumplido el segundo objetivo luego de haber sido recibido oficialmente por la Armada de Ghana y el Jefe Tradicional de la zona de Tema, sumado al haber completado exitosamente una recepción oficial a bordo con la concurrencia de numerosas autoridades locales civiles y militares, las demás actividades se vieron interrumpidas producto de la orden judicial del día 02 de octubre.

Luego de los sucesos del 02 de octubre la Unidad comenzó un progresivo deterioro de la capacidad para obtener las facilidades logísticas portuarias teniendo numerosos inconvenientes para asegurar la provisión de agua en el muelle sumado al hecho que nuestros proveedores de servicios se vieron desalentados, en sus dichos, de continuar operando con nosotros. Esto llevó a
la evacuación de 279 hombres y mujeres el 24 de octubre y al alquiler de un generador eléctrico en tierra a los efectos de no consumir nuestro combustible dado que la orden judicial impide su reabastecimiento.

Mediando aproximadamente el 25 de octubre, una solicitud de las autoridades portuarias efectuada ante el juez de mover el barco a fondeadero, esta Unidad explicó las razones de seguridad involucradas en no hacerlo dado su insuficiente personal para cubrir guardias reglamentarias de seguridad náutica, control de averías y siniestro en fondeadero. Posteriormente, las autoridades portuarias peticionaron ante el juez para mover el barco de sitio (11 al 6) recibiendo este Comandante la orden de Buenos Aires de no mover el barco por no encontrarse con la dotación de control averías reglamentaria para atender cualquier mínima contingencia.

El 07 de noviembre a primeras horas de la mañana el Director del Puerto Jakob Adorkor se aperció imponiendo a la Unidad que esta sería trasladada a la brevedad al sitio 6 en lugar del 11 donde actualmente se encuentra. Nuestro abogado el Sr. Ignacio Zapiola explicó a las autoridades portuarias la existencia de una apelación con suspensión de ejecución "automatic stay" de la decisión del juez de Ghana lo que fue desistido. Esto obligó por procedimiento a levantar la planchada (gangway) para evitar cualquier suceso de fuerza sobre una unidad militar.

Seguidamente se desencadenaron una serie de eventos graves como el corte de la provisión de agua sin permiso y luego el retiro por la fuerza y sin permiso de nuestro generador de electricidad que se encontraba en tierra, obligando al barco a poner en marcha los propios. Seguidamente, tras numerosas presiones y agresiones recibidas desde tierra tomando nuestras amarras, mostrando una escala para abordar el barco con la presunta intención de abordarlo, y colocados dos remolcadores al costado del barco, se procedió posteriormente a intentar abordar mediante una grúa y una plataforma con tres hombres sobre la cubierta de un barco de guerra, sin la autorización correspondiente, con la clara intención de hacerse cargo y moverlo ignorando la presencia de su Comandante y tripulación militar. Encontrándose esta situación prohibida por directivas de Buenos Aires y normas legales reglamentarias argentinas a tenor del significado soberano de un barco de guerra, fue necesario responder proporcionalmente haciendo demostración de armamento a los efectos de disuadir cualquier intento de vulnerar la integridad de la Unidad militar argentina. La tensión y escalada permanente duró desde las 0700 horas hasta aproximadamente las 1200 horas. Esta actitud fue posteriormente retomada horas después cuando el mismo Director de Puerto se negó al embarco de nuestra Embajador, amenazando no autorizarla hasta tanto depongamos nuestras armas.

Desde esa fecha reina una situación altamente tenso e inestable con las autoridades y seguridad portuaria habiéndose cortado el agua y poniendo inconvenientes para recuperar nuestra energía eléctrica inclusive amenazando solicitar una orden de "contempt of court" en la persona del Comandante por los hechos ocurridos el 07 de noviembre. Todo esto ha creado una situación de
2. Necesidades en cuanto a combustible para el funcionamiento del buque aun estando en puerto

Por previsiones del plan de viaje la Unidad se requiere disponer de una cantidad de combustible necesaria para cruzar el Océano Atlántico con un nivel de seguridad determinado. Actualmente las constantes dilaciones y perturbaciones a la natural obtención de energía eléctrica desde tierra ha requerido el uso de los generadores de a bordo comprometiendo su nivel de seguridad de combustible hasta el 35% de su valor reglamentario.

La necesidad de utilizar nuestros generadores en condición de bajo consumo genera carbonización innecesaria adicionalmente afectándolos respecto de las normas de mantenimiento en vigor.

3. Condiciones de vida, alimentación e higiene de la tripulación

El personal se encuentra cumpliendo sus tareas de mantenimiento y seguridad del barco aún con agua propia remanente y energía de a bordo. Esta situación sólo podrá mantenerse hasta aproximadamente el 15 de diciembre de mantenerse las actuales exigencias de consumo. Los víveres son recibidos cuando se solicitan pero las personas que los entregan reciben delante de nosotros y frente a la planchada del barco numerosas interpelaciones incómodas para todos los presentes. Esta circunstancia, sumada a las dilaciones, perturbaciones y hechos ocurridos al pasado 07 de noviembre han creado una situación de presión psicológica ante el constante riesgo o sensación de captura de la Unidad, u obstaculización al normal desenvolvimiento de los servicios por demás desagradable produciendo un hostigamiento más adecuado a un escenario de confrontación que a uno de visita y cortesía.

4. Necesidades en materia de seguridad

Tratándose de un buque militar de visita en un puerto extranjero se requiere un mínimo de garantías que la integridad física del barco y la de su personal será respetada. El antecedente de haber querido forzar el ingreso al buque e intentar forzar su movimiento pese a la voluntad de la República Argentina y las órdenes de su Comandante, sumado a la situación generalizada de
dilatar o impedir la provisión natural de servicios, han generado un ambiente de hostigamiento inaceptable a los parámetros mínimos de seguridad mencionados obligando a elevar el grado de alerta de la Unidad en pos de su seguridad y la de su personal.

5. Implicancias para el buque de esta permanencia indefinida en el puerto de Ghana

En lo inmediato media una degradación en el ciclo de mantenimiento preventivo de sus sistemas, comprometiendo progresivamente la seguridad del buque y condicionando su mantenimiento programado previsto al regreso a la Argentina, perjudicando los planes para el año 2013.

6. Funciones que el buque se ve privado de cumplir a raíz de su detención

Siendo un barco de naturaleza "delicada" (un tailship), ARA Libertad requiere un intenso proceso de mantenimiento previo a realizar su próximo viaje de instrucción. Toda fecha de arribo posterior al 08 de diciembre compromete las previsiones a su plan de mantenimiento programado sumando inconvenientes, por compromisos internacionales preexistentes, al desarrollo normal de su próximo Viaje de instrucción.

7. Condiciones creadas por el hostigamiento a la ARA Libertad

La urgencia central en asegurar la pronta partida de la Unidad del puerto de Tema reside en la gran presión puesta en el Comandante y su tripulación producto del hostigamiento mencionado, generando una escalada en el grado de alerta por defender la integridad de la Unidad y su personal pudiendo desencadenarse, involuntariamente, por cansancio o descuido un desenlace indeseado, con riesgo para la vida humana. El personal militar está en condiciones de agresión psicológica.

Cada vez que ha ocurrido un incidente o en previsión del mismo se ha conversado con la Armada de Ghana quien nos ha atendido amablemente pero pasado el instante de interceder por nuestras necesidades inmediatamente después, son retomadas las dilaciones y perturbaciones al normal desarrollo de los servicios logísticos.

La razón principal de urgencia de partida del barco es que encontrándose un buque de guerra detenido contra la voluntad de su país, cualquier situación que permita interpretar o percibir un riesgo a su integridad física o la seguridad de su personal puede generar una situación indeseable para ambas naciones. Frente a un escenario de hostigamiento y antecedentes de uso de la fuerza, la situación se encuentra sensibilizada e inestable incrementando los riesgos de un desenlace indeseado.
8. Descripción del incidente en el cual la Autoridad Portuaria de Ghana trató de mover la Fragata

_Aclaración:_ todas las horas se refieren al Huso Horario (0), hora oficial ghanesa.

**Día Martes 06 de noviembre**

A 2130 Z, se presentó en tierra una persona diciendo ser un funcionario del área operaciones de puerto de Tema, con la intención de informar al Sr. Comandante que era propósito de las Autoridades Portuarias en la mañana del día miércoles 07, a 06:00 Z, desplazar el buque del actual sitio de amarre Nº11 al Nº 6. El personal presente en la planchada comunicó que debía dirigirse a los representantes legales de la República Argentina. Sin respuesta a su requerimiento específico, el presunto funcionario se retiró.

Consecutivo, el Sr. Comandante procedió a informar la situación a la Sra. Embajador Pataro, Abogado Ignacio Zapiola (Firma Cleary&Asoc.) y al Sr. Jefe del Estado Mayor General de la Armada.

**Día Miércoles 07 de Noviembre**

A 0415Z horas embarcaron en la Unidad el Abogado Ignacio Zapiola y el Consejero Sebastián Zavalla.

A 0700Z horas, el funcionario del puerto de Tema denominado “Harbour Master” se presentó en la planchada del buque, expresando la necesidad de hablar con el Comandante, preguntado por la causa indicó: “para desplazar el buque al sitio Nº 6” (“SHIFTING THE SHIP”). Se informó la situación al Abogado Ignacio Zapiola quien se apersonó en tierra, comunicando al funcionario la naturaleza de buque de guerra de la ARA Libertad y la inmunidad de la que goza, así como que la República Argentina presentó una apelación de la decisión judicial de mover el buque, la cual fue aceptada en el juzgado interviniente, no pudiendo accederse a la petición en curso. Consecutivo el Abogado Ignacio Zapiola intentó entregar una copia del escrito a este funcionario, quien se negó rotundamente a aceptarlo, en la copia del documento se asentaron los teléfonos de los profesionales intervinientes en la apelación y la causa para conocimiento. Luego el Harbour Master indicó que su intención era a las 0830Z, embarcar en la Unidad acompañando por un Práctico para efectuar el desplazamiento de la Unidad, y que regresaría en breve.

A 0722 Z, se pidió asesoramiento al Abogado Sr. Kizito Beyuo, quien indicó que no existían inconvenientes en levantar la planchada de la Unidad.

Consecutivo se levantó planchada. En presencia del Harbour Master quien ya había regresado al sitio de amarre.

0736 Z, se hizo presente en el sitio de amarre el Director del Puerto de Tema Jacob Adorkor, quien exigió en forma ostensible que se accediera al movimiento del Buque, mantuvo
conversación (Buque-Muelle) con el Abogado Ignacio Zapiola, quien reiteró la Apelación presentada.

A 0744 Z, las Autoridades del Puerto, en la persona de su Director, acompañado por personal del puerto y bomberos, procedieron a cortar el suministro de agua y recoger las mangueras; luego pararon el generador ubicado en tierra, dejando a la Unidad sin energía eléctrica. Ambos cortes de suministro se realizaron de manera unilateral, sin el consentimiento del Comando.

0755 Z, con dos autoelevadores procedieron a retirar el generador, trasladándolo (según la orden escuchada) al Sitio N° 6. Los tres cables unipolares del buque quedaron extendidos en tierra. El buque arranca generadores de a bordo y procede a alimentar equipos con corriente propia.

0816 Z, Luego de la remoción y traslado del generador, un grupo de personas liderado por el Director de Puerto, Harbour Master y Abogado representante de las Autoridades de puerto, mantuvieron un diálogo con el Abogado Ignacio Zapiola, quien indicó nuevamente la existencia de la Apelación formulada, luego lanzó la copia del documento que fue tomada por el Director de Puerto Jacob Adorkor, quien con parte del grupo la leyeron, quedando finalmente en manos de la abogada, quien luego de leerla se retiró al interior de un vehículo en el muelle.

A 0817 Z, se hizo presente en el lugar el Oficial de Enlace de la Marina Ghanesa, Lieutenent Abraham Teye.

Partir 0839 Z, el personal del puerto de Tema retira el trincafiado (cabo o soga de unión de amarras) y quitan los guardarratas del buque, depositándolos en el muelle.

0840 Z, se arrancan ambos motores principales de propulsión a los efectos de otorgar al barco maniobrabilidad ante imprevistos.

0845 Z, por el espejo de agua (dársena) se aproximan a distancia de maniobra los remolcaores Sakumo Lagoon y Manhean.

0903 Z, personal del puerto trae una escalera extensible, depositándola en el muelle a la altura del centro del buque, generando una intención inicial de subir a la Fragata LIBERTAD por ese medio. Luego desistieron y la escalera fue depositada en un vehículo utilitario.

0915 Z, se aprecia desplazamiento desde el sector este hacia la salida de un tren de remolque de chatón propulsado por el remolcador "Jascon 29". El tren de remolque permanece por espacio de quince (15) minutos en el centro de la dársena, a una distancia aproximada de doscientos cincuenta (250) metros de la Unidad. El remolcador Manhean se destacó en aparente apoyo de esta maniobra, luego se retiró el Sakumo Lagoon. Ambos remolcaores permanecieron en el área portuaria asistiendo la entrada y salida de buques comerciales.
0920 Z, operarios del puerto cortan amarras del Buque Pesquero "CAP VERGA" en la misma bita que se ubican las amarras popeleras de la Unidad. Este buque pesquero había zarpar del sitio 11 el día domingo 28 de octubre pasado, en la maniobra de liberar el muelle el amarrador asignado no pudo remover las amarras y el capitán ordenó cortarlas, dejándolas abandonadas.

0930 Z, el tren de remolque continuó navegación de salida de Puerto, liberando el centro de la dársena.

0939 Z, se acerca una grúa rodante, el Director de Puerto en persona le indica que se posicione en el muelle a la altura del palo trinquete del buque, la grúa se asienta desplegando sus brazos hidráulicos y le colocan un canasto apto para izado de personal (hasta cuatro personas).

1000 Z, se presenta un práctico de puerto, luego tres operarios (supuestos amarradores) se suben al canasto e intentan el abordaje del buque.

1006 Z, habiendo pasado la barandilla de la unidad y posicionados sobre la vertical de la cubierta del buque sin haberla tocado, el brazo de la grúa se detuvo, y contrarió volviendo el canasto a tierra con el personal que se encontraba en su interior. Los operarios descendieron a tierra retirándose del lugar.

Luego se observó al Director de Puerto de Tema, funcionarios y personal de seguridad que realizaban llamadas telefónicas en forma continua, existiendo conversaciones entre ellos. Asimismo en oportunidades se retiraron en vehículos del lugar, regresando posteriormente.

1050 Z, se ordena apostar tres suboficiales con fusiles sin munición, dos en estación proa altura cabrestante y uno en toldilla altura estación secundaria de comando.

1458 Z, se hizo presente la Sra. Embajador Pataro, acompañada por el Consejero Nicolás Vidal y el Secretario Carlos Vallarino. En su arribo al Sitio 11 fue interceptada por el Director de puerto de Tema, quien según manifestó el Consejero Sebastián Zavalla le impedía embarcar al buque a los funcionarios argentinos. Ante la falta de garantías por parte de la autoridad portuaria se retuvo la orden de bajar planchada. Se cursó comunicación con el Comodoro Bonsu, quien informó su intención de presentarse de forma inmediata en el sitio de amarre. La Sra. Embajador Pataro y los funcionarios Vallarino y Vidal, dialogaron con funcionarios del puerto (ejecutivos y de seguridad), luego ingresaron al vehículo que los trasladó desde Accra, permaneciendo en el interior hasta el arribo del Comodoro Bonsu.

1530 Z, el Comodoro Bonsu se hizo presente junto al Oficial de Enlace Teniente Teye, de inmediato se acercó a dialogar con la Sra. Embajador Pataro, a la conversación se sumó el Director de Puerto. Luego se acercaron a la zona de embarque y el Comodoro Bonsu habló telefónicamente con el suscripto.

1548 Z, El Comodoro Bonsu requirió "personalmente" a la mayoría de los funcionarios ghaneses presentes que se retiraran de las proximidades del sector de embarque (planchada). Se ordenó
bajar planchada. Consecutivo embarcaron los tres funcionarios argentinos y se izó nuevamente la planchada.

1550 Z, se inicio reunión en la Cámara del Sr. Comandante con la Sra. Embajador Pataro, Consejero Sebastián Zavalla, Abogados Ignacio Zapiola (Cleary&Asoc.), Consejero Nicolás Vidal y el Secretario Carlos Vallarino.

1730 Z, se colocó planchada para el embarque del Comodoro Bonsu.

1735 Z, embarcó el Director Nacional de Seguridad de Puertos Coronel (Ret.) Ben Agudogo consecutivo se levantó planchada.

Sr. Comandante mantuvo reunión con Embajador Pataro, Comodoro Bonsu y Coronel Agudogo en toldilla.

1905 Z, desembarcaron autoridades locales.


1915 Z, se ordena levantar planchada, buque amarrado en sitio N° 11, sin planchada a tierra, con generador de a bordo y sin servicios portuarios (capacidad de embarque de agua desde muelle, residuos). Se dio retirada al personal apostado con armamento, se cubre guardia de rondín (sin armamento).

Consejero Sebastian Zavalla y Abogado Ignacio Zapiola (Cleary&Asoc.) pernoctan a bordo de la Unidad.

DADO EN EL PUERTO DE TEMA, REPÚBLICA DE GHANA, EL LUNES DOCE DE NOVIEMBRE DE DOS MIL DOCE.
TRANSLATION

AFFIDAVIT OF THE COMMANDER OF FRIGATE ARA "LIBERTAD"

I. PABLO LUCIO SALONIO (an Argentine national, holder of Argentine Identity Document No. 14,526,462) hereby DECLARE as follows:

I. I am a Captain in the Argentine Navy (Military Registration No. 009534-7) and I have worked as the Commander of Frigate ARA "Libertad", a training ship, since 13 February 2012.

II. As the Commander, I am in full charge of my unit pursuant to applicable law, especially, I am responsible for steering the ship, ensuring its services, properly executing any orders and instructions received and complying with the regulations in force.

III. Frigate ARA "Libertad" reports to the Office of the Navy Chief of Staff, under operational control of the Navy Training and Preparedness Command.

I hereby declare, under oath, that the above information and all statements included below are true and accurate.

1. Current situation of the vessel compared with the situation upon arrival at Tema port, including as regards fuel

Frigate ARA Libertad arrived at Tema port on a good will mission with a view to carrying out three main tasks: (i) Seeking closer cultural contacts with the people of Ghana in order to complete the training of commissioned midshipmen; (ii) Carrying out protocol-related activities with the Ghanaian Navy as previously agreed; (iii) Opening the doors of Frigate Libertad in order for the people of Ghana to approach it and get in touch with all aspects of Argentina that the Frigate symbolically represents. Such aims were the same as those assigned to ARA Libertad in all countries whose ports it had visited or planned to visit on this training voyage.

Having accomplished its second ask after the official welcome by the Army of Ghana and the Traditional Chief of the Tema area, in addition to the successful official reception on board, attended by a large number of local civilian and military authorities, the remaining activities were prevented from being completed as a result of the court order received on board on 2 October.

After the events of 2 October, the Unit began to undergo a progressive deterioration of its capacity to access port logistics facilities, experiencing numerous difficulties in securing the supply of water at the berth, coupled with the fact that our service providers -in their own words-, were discouraged from continuing to work with us. This led to the evacuation of 279 men and women on 24 October and to the lease of a new land power generator in order not to use up our fuel, since the court order prevents refuelling.

There being, on or around 25 October, a request filed by the port authorities with the court in order to move the ship to anchorage, this Unit explained the safety reasons for
not doing so, due to it having insufficient personnel to perform duties related to regulatory nautical safety and damage and loss inspection there. The port authorities then filed a petition with the court in order to move the ship from berth 11 to 6, whereupon this Commander received orders from Buenos Aires not to move the ship as she lacked the regulatory damage inspection crew to cover any contingency.

Early on the morning of 7 November, the Port Director, Jakob Adorkor, appeared to inform the Unit that it would be transferred shortly to berth 6 from berth 11 which is its current position. Our attorney, Ignacio Zapiola, explained to the port authorities that there was an appeal against the Ghanaian court decision which entailed an automatic stay, but this was ignored. This led to the need, in accordance with procedure, to lift the gangplank in order to avoid any act of force on the military unit.

A number of serious events then followed, such as the unauthorized disconnection of our water supply and the subsequent forcible and unauthorized removal of our land power generator, which forced the ship to start its own. After several pressures and aggressions received from land which involved touching our mooring ropes, showing a ladder to board the ship with the purported intention of actually doing so and placing two tugboats alongside the ship, an attempt was then made -using a crane and a platform with three men- to board a warship without authorization, with the clear intent to take it over and move it disregarding the presence of its Commander and military crew. This being prohibited by the guidelines from Buenos Aires and Argentine legal and regulatory provisions, regard being had to the sovereign status of a warship, a proportional response became necessary, which included exhibiting weapons, in order to discourage any attempt to violate the integrity of the Argentine military unit. The tension and constant escalation lasted from 7.00 am to approximately 12.00 pm. This attitude resumed hours later when the Port Director himself refused to let our Ambassador board the ship and even threatened not to allow her to do so until we put down our weapons.

Since that date, the situation has been highly tense and awkward vis-à-vis the port authorities and security, with water supply having been cut off and obstacles being created to hinder us in recovering our electric power, and even threats being made to request an order to declare the Commander to be in contempt of court as a result of the events of 7 November. All of this has created a situation that has left the personnel in a state of heightened alert and distress as they voluntarily refuse to leave the Unit in order to guarantee its protection in the event of such serious and unusual situations as the ones described above. This creates an unnecessary situation of growing tension in relation to a warship that, acting under the orders of its country, finds its physical integrity threatened, as well as the security of its personnel, through continuous harassment, which forces it to raise its readiness in accordance with instructions of its High Command in order to ensure the sovereign integrity, security and legal guarantees of the ship and its personnel.

2. Fuel needs for the operation of the vessel even while at the port

As anticipated for the purposes of the travel plan, the vessel requires the necessary amount of fuel for crossing the Atlantic Ocean at a certain safety level. The constant delays and disturbances to the natural ways of obtaining electric power from land have
led to the need to use on-board generators, thus compromising fuel safety levels up to 35% of the regulatory value.

The need to use our generators at low consumption levels gives rise to additional unnecessary carbonization, thus affecting them as far as the maintenance rules in force are concerned.

3. Crew living conditions, food and hygiene

Relying on the ship's own remaining water and on-board energy, the crew is fulfilling its vessel maintenance and security duties. This situation can only last until approximately 15 December if the current consumption needs remain the same. Food provisions are received when requested, but the people that deliver them receive in front of us and the vessel planks a number of uncomfortable approaches. This fact, in addition to the delays, disturbances and the occurrences of 7 November have exerted psychological pressure in the face of the constant risk or feeling that the vessel might be seized or that the ordinary provision of the services might be hindered, which is utterly unpleasant and constitutes a type of harassment that better suits a context of confrontation than that of a visit and a situation of courtesy.

4. Safety needs

Since the frigate is a military vessel visiting a foreign port, minimum guarantees are required that the physical integrity of the ship and its crew will be respected. The attempt to forcibly enter the vessel and force it to move contrary to Argentina’s intentions and the orders of its Commander, in addition to the general situation of trying to delay or prevent the ordinary provision of services, have generated an unacceptable climate of harassment inconsistent with the minimum safety guarantees referred to above, which leads to heightened alert with regard to the safety of the vessel and its crew.

5. Implications of an indefinite stay of the vessel in Ghana’s port

An immediate consequence would be the degradation of preventive maintenance of its systems, which progressively jeopardizes the safety of the vessel and the scheduled maintenance to be conducted upon its return to Argentina, thus adversely affecting plans for 2013.

6. Functions that the vessel cannot perform due to its detention

As it is a tall ship, ARA Libertad requires intensive maintenance prior to its next training voyage. An arrival date beyond 8 December compromises its scheduled maintenance plan, thus adversely affecting – in view of pre-existing international commitments – the ordinary course of its next Training Voyage.

7. Situation arising from the harassment of ARA Libertad

The key urgency in ensuring prompt departure of the vessel from Tema port relates to the enormous pressure put on the Commander and his crew, because of the harassment
referred to above, which generates an escalation in the degree of readiness to defend the integrity of the vessel and its crew. This may involuntarily - due to tiredness or neglect - lead to an undesired outcome entailing risk to human life. The military personnel is being subjected to psychological aggression.

Upon the occurrence or in anticipation of any incident, discussions were held with the Ghanaian Navy, which has always been very responsive, but after first attending to our immediate requirements, delays and disturbances in the ordinary provision of logistical services are resumed.

The main reason for the immediate departure of the vessel is that when a warship is detained against the will of its country, anything that may lead to interpreting or feeling that there is a risk against its physical integrity or the safety of its personnel may generate an undesirable situation for both nations. Faced with a scenario of harassment and previous use of force, the situation is most delicate and awkward, which increases the risks of an undesired outcome.

8. Description of the incident in which the Ghanaian Port Authority attempted to move the Frigate

Note: All hours cited are GMT + 0, Ghana official time.

Tuesday 6 November

2130: A person claiming to be an officer of the Operations Division of Tema Port appeared on land in order to inform the Commander of the Frigate that the Port Authorities had the intention to move the Frigate, at 0600 of Wednesday 7, from Berth 11 to Berth 6. The personnel present at the gangplank informed the person that they should address the legal representatives of the Argentine Republic. Without obtaining a response to their specific demand, the purported officer left.

Subsequently, the Commander informed Ambassador Pataro, attorney Ignacio Zapiola (from Cleary & Asoc.) and the Navy Chief of Staff about the situation.

Wednesday 7 November

0415: Attorney Ignacio Zapiola and Counsellor Sebastián Zavalla boarded the Unit.

0700: The Harbour Master of Tema Port appeared at the gangplank of the ship and stated that he needed to talk to the Commander. When asked for the reason, he answered "shifting the ship". The situation was communicated to Mr. Ignacio Zapiola, who disembarked to inform the officer of the warship status of ARA Libertad and its immunity as such and tell him that the Argentine Republic had filed an appeal against the court decision to move the ship, which had been granted by the relevant court. Mr. Zapiola added that, consequently, the Harbour Master’s request could not be accepted. Then, Attorney Zapiola tried to hand over a copy of the said appeal to the officer, who categorically refused to accept it. The copy included the telephone numbers of the professionals involved in the appeal and the case subject to review. The Harbour Master then stated that his intention was to board the Unit at 0830 together with a Pilot in order to move it and that he would return shortly.
0722: The attorney representing Argentina in the case, Mr. Kizito Beyou, was asked for advice and he said that there were no impediments to lifting the ship's gangplank.

Therefore, the gangplank was lifted in the presence of the Harbour Master, who had returned to the docking point.

0736: Jacob Adorkor, Director of Tema Port, appeared at the docking point and firmly demanded that the ship be moved. He also held a conversation (dock-to-ship) with Mr. Ignacio Zapiola, who once again referred to the Appeal filed.

0744: The Port Authorities, represented by their Director, jointly with port personnel and firemen, cut off the water supply and removed the hoses. Further, they stopped the land generator and left the Unit without electric power. Both supply interruptions were conducted unilaterally and without the consent of the Command.

0755: Using two forklifts, the generator was removed and placed – according to the order heard – on Berth 6. The three single-pole cables of the ship were left loose on land. The ship started its on-board generators in order to feed its equipment with its own energy.

0816: After the generator was removed and relocated, a group of people led by the Director of the Port, the Harbour Master and the lawyer representing the Port Authorities held a discussion with Attorney Ignacio Zapiola, who once again made reference to the Appeal filed and then threw a copy of the document. The copy was picked up by Jacob Adorkor, Director of the Port, who read it together with part of the group. The copy was finally taken by the lawyer, who read it too and then got into a car on the dock.

0817: The Liaison Officer of the Ghanaian Navy, Lieutenant Abraham Teye, appeared at the place.

As from 0839: Personnel of Tema Port removed the mooring ropes and lines tying the Frigate to the dock and left them on the dock.

0840: The two main propulsion engines were started with a view to allowing the ship to manoeuvre in case of unexpected events.

0845: From the inner harbour, tugboats Sakumo Lagoon and Manhean approached the ship at manoeuvring distance.

0903: Port personnel brought an extension ladder and left it on the dock, levelled with the middle of the ship, with the original intention of boarding Frigate LIBERTAD through the ladder. They subsequently desisted and placed the ladder on a utility vehicle.

0915: It was observed that a trailer propelled by tugboat Jascon 29 moved from the East side to the exit. The trailer remained for about fifteen (15) minutes in the centre of the inner harbour, at a distance of approximately two hundred and fifty (250) metres from the Unit. Tugboat Manhean appeared to support this manoeuvre and, then,
tugboat Sakumo Lagoon left. Both tugboats remained within the port area, assisting in the entrance and departure of commercial ships.

0920: Port operators cut the mooring ropes of fishing vessel “CAP VERGA”, tied to the same bitt to which the aft ropes of the Unit were connected. This fishing vessel had set sail from Berth 11 on 28 October, but during the dock-clearing manoeuvres, the designated mooring master could not remove the ropes, so the captain ordered to have them cut and they were left abandoned.

0930: The trailer sailed out of the port, clearing the centre of the inner harbour.

0939: A rolling crane approached the area and the Port Director personally ordered to have it placed on the deck facing the foremost of the ship. The crane was parked, its hydraulic arms were unfurled, and a basket to lift personnel (up to 4 people) was hooked to them.

1000: A port pilot appeared and then three operators (supposedly mooring masters) climbed into the crane basket and attempted to board the ship.

1006: After crossing over the railing of the ship and placing the basket above the vertical axis of the deck of the ship, without touching it, the arm of the crane stopped, turned back, and placed the basket with the personnel in it back on land. The operators climbed off the basket and left the place.

Next, the Director of Tema Port, officers and security personnel were seen making numerous telephone calls and holding conversations among themselves. Then, they got into vehicles and left the place, but only to return later.

1050: Two non-commissioned officers carrying rifles with no ammunition were stationed on the bow winches area, and one on the secondary command station in the wheelhouse.

1458: Ambassador Pataro, Counsellor Nicolás Vidal and Secretary Carlos Vallarino appeared at the site. Upon arriving at Berth 11, the Ambassador was intercepted by the Port Director who, according to Counsellor Sebastián Zavalla, prevented the Argentine officials from boarding the ship. Given the absence of guarantees on the part of the port authorities, the order to lower the gangplank was withheld. Commodore Bonsu was informed of the situation and he expressed his intention to appear immediately at the dock. Ambassador Pataro and officials Vallarino and Vidal talked to port officers (executives and security personnel) and then got into a vehicle that took them to Accra, where they remained until Commodore Bonsu arrived.

1530: Commodore Bonsu arrived with Liaison Officer, Lieutenant Teye, and immediately approached Ambassador Pataro to discuss the situation. They were joined by the Port Director. Afterwards, they approached the boarding area and Commodore Bonsu held a telephone conversation with the undersigned.

1548: Commodore Bonsu “personally” requested most of the Ghanaian officers present to clear the proximities of the boarding area (gangplank). The gangplank was ordered
to be lowered and the three Argentine officials boarded the ship. The gangplank was then lifted again.

1550: A meeting was held at the Chambers of the Commander between Ambassador Patara, Counsellor Sebastián Zavalla, Attorney Ignacio Zapiola (Cleary & Asoc.), Counsellor Nicolás Vidal and Secretary Carlos Vallarino.

1730: The gangplank was placed for Commodore Bonsu to board the ship.

1735: Lieutenant Colonel (Retd.) Ben Agudogo, National Director of Port Security, boarded the ship and the gangplank was lifted again.

The Commander held a meeting with Ambassador Patara, Commodore Bonsu and Lieutenant Colonel Agudogo in the wheelhouse.

1905: Local authorities disembarked.

1910: The Ambassador, the Officials and the Attorney disembarked.

1915: The gangplank was ordered to be lifted again. The ship remained moored at Berth 11, with gangplank lifted, on-board generator on and no port services (water boarding capacity from dock, garbage collection). Stationed armed personnel were released, and unarmed security guards were stationed.

Counsellor Sebastián Zavalla and Attorney Ignacio Zapiola (Cleary & Asoc.) spent the night on board the Unit.

GIVEN AT TEMPA PORT, REPUBLIC OF GHANA, ON MONDAY 12 NOVEMBER 2012.
ANNEX J

Photographs taken during the incidents of November 7, 2012, at the Port of Tema in and around the Frigate ARA Libertad.
Photographs 1 and 2: Attempts to forcibly board the Frigate ARA Libertad

Taken on October 7, 2012 between 10:00 am and 11:00 am from the ARA Libertad.
Photograph 3: Disconnection of the electric generator of the ARA Libertad carried out by officers of the Port Authority

Taken on October 7, 2012, from the Frigate ARA Libertad
Photograph 4: Tug boat around the Frigate ARA Libertad during the attempt to move it by the Port Authority of Ghana
ANNEX K

Note of 7 November from Mr. Hector Timerman, Minister of Foreign Affairs and Worship of Argentina to Mr. Alhaji Muhammad Mumuni, Minister of Foreign Affairs and Regional Integration of Ghana.
Ministro de Relaciones Exteriores y Culto

Buenos Aires, 7 de noviembre de 2012

Señor Ministro:

Me dirijo a usted en relación con el embargo y detención del buque de guerra de la Armada Argentina “ARA Libertad” en el puerto de Tema, en virtud de una orden librada por un juez de Ghana el 2 de octubre pasado, en manifiesta violación del derecho internacional aplicable por las razones a las que me referí en mi nota del pasado 30 de octubre.

El mismo juez, cuya vocación por ignorar el derecho internacional no parece satisfecha con el dictado del embargo de un buque de guerra, en una decisión adoptada el pasado lunes -además- ha autorizado un pedido de la administración portuaria de Tema para mover la ARA Libertad del muelle en que se encuentra a otro lugar en el mismo puerto. La Argentina se opone a que la ARA Libertad sea movida de su amarra actual no sólo en razón de su soberanía sobre ese buque de guerra, sino también porque ese movimiento amenaza la seguridad del buque y su tripulación. En ese contexto, la Argentina –aún cuando desconoce la pretensión del juez de Ghana de ejercer jurisdicción sobre uno de sus buques de guerra- ha apelado esa decisión judicial.

La conducta ilegítima de las autoridades de su país no parece detenerse en las decisiones judiciales mencionadas. Como usted debe seguramente conocer, alrededor de las 10:00 pm del día 6 de noviembre un funcionario de la autoridad portuaria en Tema, pretendiendo basarse en una decisión judicial que no se encuentra firme por haber sido apelada, intimó al Comandante de la ARA Libertad a desplazar al buque de su posición actual a otro lugar en ese puerto. La situación se agravó en el transcurso del día de la fecha a raíz de amenazas de usar la fuerza proferidas por funcionarios de la misma autoridad portuaria para mover el buque y empeoró aún más cuando esos funcionarios iniciaron maniobras intimidatorias contra el buque y su tripulación. Es de lamentar, además, la descortesía que caracterizó a la conducta de la autoridad portuaria hacia los funcionarios diplomáticos argentinos destacados en Ghana, en particular respecto de la Embajadora Susana Pataro.

AL SEÑOR
MINISTRO DE RELACIONES EXTERIORES E INTEGRACIÓN REGIONAL
REPÚBLICA DE GHANA
SR. ALHAJI MUHAMMAD MUMUNI
S. / D.
Ministerio de Relaciones Exteriores y Culto

A bordo de la ARA Libertad se aplica el orden jurídico argentino con exclusión de toda otra legislación, incluida la de la República de Ghana, y el Comandante de ese buque de guerra de la Armada Argentina se encuentra bajo instrucciones expresas del Gobierno argentino de no mover al buque del lugar donde se encuentra actualmente. El Gobierno argentino responsabiliza al Gobierno de Ghana por todas las consecuencias que se deriven de la situación generada por la conducta de sus autoridades.

La República Argentina repudia las provocaciones de autoridades de su Gobierno, las que no se compadecen con la conducta que cabe esperar de un Estado respetuoso del derecho internacional. En relación con los penosos incidentes que estamos viviendo, mi Gobierno se ha dirigido al suyo a través de múltiples notas, las que hasta la fecha no han tenido respuesta. Una de esas notas, del 30 de octubre de 2012, activa el proceso contencioso internacional ante el cual su país está obligado a comparecer en virtud de la Convención de las Naciones Unidas sobre el Derecho del Mar.

Mi Gobierno espera que mientras se encuentre pendiente el procedimiento arbitral entablado entre la República Argentina y Ghana, su Gobierno cumpla con la obligación de abstenerse de cualquier actitud susceptible de agravar la controversia ya existente, obligación que subsiste hasta el momento en que se pronuncie el tribunal arbitral que está llamado a resolverla.

Remito copias de la presente nota al Secretario del Tribunal Internacional del Derecho del Mar y, en el ámbito de las Naciones Unidas, al Secretario General, al Presidente del Consejo de Seguridad y al Presidente de la Asamblea General.

HECTOR TIMERMANN
Ministerio de Relaciones Exteriores y Culto
Your Excellency,

I am writing to you in connection with the seizure and detention of the Argentine Navy’s warship “ARA Libertad” at the port of Tema, under a warrant issued by a Ghanese judge on last October 2nd, in blatant violation of the applicable international law for the reasons to which I referred in my letter of October 30th.

The said judge, whose proclivity to ignore international law does not seem to be satisfied with the issuance of the seizure warrant against a warship, in a decision taken last Monday has also accepted a request from the Tema port authority to move the ARA Libertad from the pier where it is currently moored to another one in the same port. Argentina objects to the movement of the ARA Libertad from its current pier, not only because of its sovereignty over that warship, but also because that movement threatens the safety of the ship and its crew. In this context, Argentina –even though it does not consent to the Ghanese judge’s intent to exercise jurisdiction over one of its warships– has appealed that court’s ruling.

The unlawful conduct of your country’s authorities does not seem to end with the said court decisions. As you must surely be aware of, around 10:00 pm of November 6th, an official of the Tema port authority summoned the Commanding officer of the ARA Libertad to move the ship from its current location to another place on that port, allegedly on the basis of a judicial decision that is not final since it has been appealed. The situation worsened today due to threats uttered by officials of the same port authority to move the vessel by force, and deteriorated even further when those officials began intimidating maneuvers against the vessel and its crew. It is also regrettable the total lack of respect that characterized the conduct of the port authority officials towards Argentine diplomats stationed in Ghana, in particular towards Ambassador Susana Pataro.

On board of the ARA Libertad the Argentine legal order applies, to the exclusion of all other legislation, including that of the Republic of Ghana, and the Commanding officer of that Argentine Navy’s warship has precise instructions not to move the vessel from its current location. The Argentine Government holds the Government of Ghana responsible for all the consequences arising from the situation generated by the conduct of its authorities.

His Excellency
Minister of Foreign Affairs and Regional Integration
Republic of Ghana
Mr. Alhaji Muhammad Mumuni
The Argentine Republic repudiates the provocations by authorities of your Government, which are inconsistent with the behavior expected from a State that is respectful of international law. Regarding the distressing incidents that we are experiencing, my Government has contacted yours through multiple letters, which have not been responded to date. One of these letters, dated October 30th 2012, triggers the international legal procedure before which your country is compelled to appear under the United Nations Convention on the Law of the Sea.

My Government expects that while the arbitration procedure between Argentina and Ghana is pending, your Government meets its obligation to refrain from any action that might aggravate the existing dispute, obligation that persists up to the moment when the arbitration tribunal called to solve the dispute reaches a decision. I am sending copies of this letter to the Secretary of the International Tribunal for the Law of the Sea and, in the United Nations, to the Secretary General, the President of the Security Council and the President of the General Assembly.

I avail myself of this opportunity to convey to you the assurances of my highest consideration.

Héctor Timerman
Minister of Foreign Affairs and Worship