

Ministro de Relaciones Exteriores y Culto

Buenos Aires,

9/11/12

Dear Mr. Registrar,

I, Hector Timerman, Minister of Foreign Affairs and Worship of the Argentine Republic, hereby appoint Ambassador Susana Ruiz Cerutti and Ambassador Horacio A. Basabe pursuant to article 56 of the Rules respectively as Agent and Deputy Agent for the Argentine Republic in the request for provisional measures concerning the injunction of the ARA Fragata Libertad in Ghana instituted by the Government of the Argentine Republic against the Government of Ghana before the International Tribunal for the Law of the Sea.

I verify that the signature appearing on page 25 of the request for provisional measures submitted by the Government of the Argentine Republic is the signature of Ambassador Susana Ruiz Cerutti.

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



HECTOR TIMERMAN
Ministro de Relaciones Exteriores
y Culto

INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA
MR. PHILIPPE GAUTIER
HAMBURG

Ministro de Relaciones Exteriores y Culto

Buenos Aires, 9/11/12

Señor Secretario:

El suscrito, Héctor Timerman, Ministro de Relaciones Exteriores y Culto de la República Argentina, designa por el presente a la Embajador Susana Ruiz Cerutti y al Embajador Horacio A. Basabe de conformidad con el artículo 56 del Reglamento en calidad, respectivamente, de Agente y Agente alterno de la República Argentina en la solicitud de medidas cautelares en relación con el embargo de la ARA Fragata Libertad en Ghana iniciada por la República Argentina contra el Gobierno de Ghana ante el Tribunal Internacional del Derecho del Mar.

Declaro que la firma que aparece en la página 25 de la solicitud de medidas cautelares presentada por el Gobierno de la República Argentina es la firma de la Embajador Susana Ruiz Cerutti.

Aprovecho esta oportunidad para saludarlo con las seguridades de mi mayor consideración.



HECTOR TIMERMAN
Ministro de Relaciones Exteriores
y Culto

AL SEÑOR SECRETARIO DEL TRIBUNAL INTERNACIONAL
DEL DERECHO DEL MAR
D. PHILIPPE GAUTIER
HAMBURGO

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

“FRIGATE ARA LIBERTAD”

ARGENTINA v. GHANA
(Applicant) (Respondent)

**REQUEST FOR THE PRESCRIPTION OF PROVISIONAL MEASURES
UNDER ARTICLE 290, PARAGRAPH 5, OF THE UNITED NATIONS
CONVENTION ON THE LAW OF THE SEA**

14 NOVEMBER 2012

REQUEST FOR PROVISIONAL MEASURES UNDER ARTICLE 290,
PARAGRAPH 5, OF THE CONVENTION

CHAPTER 1
INTRODUCTION

1. Pursuant to Article 290, paragraph 5, of the United Nations Convention on the Law of the Sea ('UNCLOS'), Argentina requests that the International Tribunal for the Law of the Sea ('the Tribunal') prescribe the provisional measure specified below in the dispute between the Argentine Republic ('Argentina') and the Republic of Ghana ('Ghana') over the illegal detention by Ghana of the warship Frigate ARA Libertad and further measures of constraint taken by the Respondent against the said warship.

2. Argentina instituted proceedings against Ghana before an arbitral tribunal established under Annex VII of the Convention by a note dated 29 October 2012 and received on 30 October 2012. A certified copy of this note is annexed to this request (**Annex A**¹). This note included a Statement of Claim, the grounds upon which it is based in accordance to Annex VII, Article 1, and a request to Ghana to adopt the provisional measure to unconditionally enable the Argentine warship "Frigate ARA Libertad" to leave the Tema port and the jurisdictional waters of Ghana and to be resupplied to that end. The Respondent did not respond to this request. Rather, it took further measures of constraint against the warship. More than fourteen days have elapsed since this unfruitful request was made. Consequently, Argentina hereby submits a request for the prescription of a provisional measure to the Tribunal.

CHAPTER 2
STATEMENT OF FACTS

3. Frigate ARA Libertad is a warship of the Argentine Navy within the scope of Art. 29 of the UNCLOS. It is the flagship of the Argentine Navy and, as such, represents Argentina. It has been sailing the world's seas for more than 50 years, conveying a

¹ 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

message of peace and friendship with a view to consolidating relations between the Argentine Navy and its counterparts in third countries. Frigate ARA Libertad is used for navy cadet training trips. At the time of its detention by Ghana it was on its 43rd instruction voyage. The crew of the warship detained included guest officers from the Navies of Bolivia, Brazil, Chile, Paraguay, Peru, South Africa, Suriname, Uruguay and Venezuela (**Annex B**).

4. The Governments of Argentina and Ghana agreed on the visit of Frigate ARA Libertad to the port of Tema (Republic of Ghana). The Government of Ghana on 4 June 2012 authorized the visit and notified its decision to the Argentine Government through diplomatic channels, by means of notes exchanged between the respective representations in Abuja, Nigeria (**Annex 2 of Annex A**). The notes exchanged clearly indicate that Frigate ARA Libertad is a warship, state the official purpose of the visit and contain the relevant protocol arrangements between Argentina and Ghana. The final preparations for the visit by Frigate ARA Libertad to Ghana were agreed upon by Argentine diplomatic staff who have been in Ghana since 26 September 2012, and who established contact with the naval authorities of that country as required by the local Ghanaian Government.

5. Frigate ARA Libertad arrived on the scheduled date of 1 October 2012, 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. All these arrangements had been made in full compliance with the instructions received from the Ghanaian Government in previous communications and consultations.

6. At 8:00 pm on 2 October 2012, a person claiming to be an official of the Judicial Service of the Superior Court of Judicature of Ghana (Commercial Division) arrived at Frigate ARA Libertad, together with other persons, in order to deliver an official letter bearing the same date which contained an order by that Court, rendered by Judge Richard Adjei-Frimpong, requiring that Frigate ARA Libertad be held at the Tema Port (**Annex 3 of Annex A**).

7. In view of this situation, the Minister of Foreign Affairs and Worship of Argentina, Mr Héctor Timerman, held a telephone conversation with the Minister of Foreign Affairs and Regional Integration of Ghana, Mr Alhaji Muhammad Mumuni, on 3 October 2012, in which he expressed the deep concern of the Argentine Government about the measure taken against the Frigate ARA Libertad, which was contrary to international law and, in particular, a violation of the immunities enjoyed by warships. The Argentine Minister requested his counterpart to adopt urgently the necessary measures to put an end to this situation. The Argentine Minister recalled that the Frigate ARA Libertad was on official visit to Ghana, that among the crew there were officials of nine other States, and finally that the warship represents the history and values of the Argentine Republic.

8. Although contact between the Argentine and Ghanaian authorities had already been initiated, on 4 October 2012, a person claiming to represent the Ghana Ports & Harbours Authority ('Port Authority') appeared at the ship, together with a Maritime Agent, and requested to meet with the Commander of Frigate ARA Libertad for the purpose of taking possession of 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 rejected by the officers in charge of the ship.

9. On the same day, 4 October 2012, the Argentine Foreign Minister sent a note to his Ghanaian counterpart in which he reiterated the terms of his previous phone conversation. By this note, Argentina requested Ghana to adopt urgently the necessary measures to put an end to this situation (**Annex 1 of Annex A**).

10. Efforts to solve the situation and to obtain an official reply from the Ghanaian Government were also carried out by the Argentine Ambassador to that country. Nevertheless the Ghanaian Government did not answer these requests, the ARA Libertad could not leave the port of Tema on October 4 as previously agreed and the warship remained in that port because of the injunction.

11. In view of the attitude of the Ghanaian authorities, the Argentine Government requested the judge that had ordered the interlocutory measure against Frigate ARA Libertad to immediately set aside the injunction while informing him that he lacked jurisdiction as well as rejecting his attempts to take steps in connection with and against the Frigate ARA Libertad, as this entailed a violation of such ship's immunity (**Annex C**).

12. A hearing was called by the judge that was attended by the Ambassador of Argentina, Ms Susana Pataro, and Mr. Ebenezer Apraku, Director of the Legal and Consular Bureau of the Ministry of Foreign Affairs and Regional Integration of Ghana, as well as the plaintiff representatives. At that hearing, the legal advisor of the Ghanaian Ministry of Foreign Affairs expressed its full support to and recognition of Argentina's immunity from the jurisdiction of the Ghanaian Courts as well as the immunity and inviolability enjoyed by the ARA Libertad as a warship (**Annex D**).

13. In spite of clear precedents, the views expressed by the representative of the Ministry of Foreign Affairs of Ghana, and the unambiguous content of the applicable international rules giving rise to Ghana's international responsibility, the acting judge, Judge Frimpong, on 11 October 2012 confirmed his previous order for the seizure of Frigate ARA Libertad (**Annex 4 of Annex A**). This situation renders the ship unable to follow its program as agreed with the other States it had planned to visit (Angola, Namibia, South Africa, Brazil and Uruguay), as well as with the States whose officers were on board at the time of these events.

14. After the rendering of the abovementioned decision, the Ghanaian Government did not take any measure aimed at satisfying the Argentine Government's claims by fulfilling its obligations under international law.

15. Given this situation, with a view to resolving the dispute as swiftly as possible, and for the purpose of continuing without delay the exchange of views already initiated between the Foreign Ministers, pursuant to Article 283 of UNCLOS, the Argentine Government sent to Accra a high-level delegation comprising the Vice-Minister of Foreign Affairs, Ambassador Eduardo Zuain, and the Secretary of International Affairs

of the Ministry of Defence, Mr Alfredo Forti. From 16 to 19 October 2012, the delegation met three times with the Minister of Foreign Affairs, 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. Such exchanges of views and negotiations failed to resolve the dispute between the two States and the warship Frigate ARA Libertad has remained unlawfully detained and subject to measures of restraint in the port of Tema in flagrant violation of fundamental rules of international law until now.

16. Due to the interlocutory order by judge Frimpong, enforced by the Port Authority, the Frigate ARA Libertad is unable to refuel. The ship depends on fuel for the maintenance of its two electricity generators and a water distiller. As a result of this impossibility, the warship would shortly run out of fuel. Faced with this situation, on 24 October 2012 Argentina had to repatriate, at its own cost by charter flight, most of the warship'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 the Frigate ARA Libertad. The Argentine Government is also bearing all the costs arising from this involuntary stay imposed on it and its crew.

17. In turn, the Port Authority requested Judge Frimpong to authorise the removal of the Frigate ARA Libertad from its present position to be moored at anchorage, alleging that the presence of the warship was causing congestion at the port and a consequent loss of money (**Annex E**). Upon learning of this request by an organ exercising administrative functions, Argentina sent a note to Ghana on 31 October 2012 recalling that no administrative or judicial authority of Ghana has jurisdiction to order an Argentine warship to implement such a measure, much less to move the warship on its own initiative. The letter also stressed that Part II, Section 3, Subsection C of UNCLOS specifies all the prerogatives of the coastal State with respect to foreign warships, which of course do not include measures of constraint (**Annex F**). On 5 November 2012, and aware of the institution of arbitral proceedings by Argentina against Ghana and the request for the provisional measure mentioned above, Judge Frimpong authorised the Port Authority to move the warship (**Annex G**). Argentina – whilst continuing to invoke its immunity and the lack of jurisdiction of the Ghanaian tribunals – immediately appealed that decision. By letter dated 6 November 2012, local lawyers acting for

Argentina warned the Port Authority that by virtue of this appeal, by Rule 27(3) of the Court of Appeal Rules CI 19, there is an automatic stay of execution of the order of 5 November 2012, and consequently requested the Port Authority not to take any steps in this regard (**Annex H**). Despite this, on 7 November 2012, the Port Authority threatened to and attempted to board and move the warship, in contravention of the position of its Commander (See affidavit of the Commander in **Annex I**). This situation provoked extreme tension and the forcible boarding was only prevented when armed officers of the Frigate ARA Libertad were deployed on board the warship. The Argentine Ambassador accredited in Ghana, Ms Susana Pataro, who was initially denied access to the Port, was subsequently authorised to enter the Port but was prevented from coming on board. Finally, the Ambassador was allowed to gain access to the Frigate ARA Libertad. Photographs depicting these events are set out in **Annex J**. On the same day, 7 November 2012, Argentina sent a note to Ghana strongly protesting this new, serious breach of the immunity of the warship and the aggravation of the dispute pending arbitral proceedings (**Annex K**).

18. Since that date, the situation has remained highly tense, due to the conduct of the authorities of the Port and its security personnel. The Commander of the ARA Libertad has been threaten to be prosecuted from being in contempt of court as a result of the events of 7 November.

CHAPTER 3 JURISDICTION

19. Argentina and Ghana are parties to the UNCLOS. Upon ratification, Argentina declared, on the basis of Article 287, that it accepted the jurisdiction of the International Tribunal for the Law of the Sea first in order of preference of means for the settlement of disputes concerning the interpretation or application of UNCLOS.

20. For its part, Ghana has not chosen any means for the settlement of disputes. Consequently, since the parties have not chosen the same means of settlement, the dispute must be submitted to the arbitral procedure provided for in UNCLOS Annex VII, by virtue of Article 287 of the said Convention.

21. In a note dated 29 October 2012, and received on 30 October 2012 (**Annex A**), Argentina notified the Government of Ghana that the dispute referred to above had been submitted to the arbitral procedure, pursuant to Article 1 of Annex VII of UNCLOS.

22. None of the exceptions to the acceptance of the procedures of settlement of disputes provided for in Part XV, Section 2, of UNCLOS, by one side or the other, concerns the subject matter of the dispute submitted to the arbitral procedure.

23. The dispute between Argentina and Ghana concerns the interpretation and application of UNCLOS, in particular Articles 18, paragraph 1 (b), 32, 87, paragraph 1 (a), and 90.

24. Despite Argentina's efforts to resolve the dispute, the various State organs of Ghana have not only persisted in their conduct, but have also aggravated the dispute, in violation of international obligations recognized by the UNCLOS. The Ghanaian Government's reactions to all of Argentina's efforts to exchange views and settle the dispute can be characterised in this way. Ghana did not respond to any of the Argentine diplomatic notes related to the dispute. However, its Foreign Minister found necessary to state before the Ghanaian television that "Ghana has acted within the limits of international law in impounding the Argentine War Ship".²

25. From the above, it is evident that no settlement of the dispute existing between Argentina and Ghana on matters related to the interpretation or application of UNCLOS has been reached by recourse to Part XV, Section 1. Consequently, the condition required by Article 286 is met in the present case.³ Equally, since the parties have not accepted the same procedure for the settlement of the dispute and have not otherwise reached an agreement in this regard, arbitration in accordance with Annex VII is the procedure prescribed by Article 287, paragraph 5.

² 'Impounding Argentine ship was within limits of international law', Ghana News, 30 October 2012, available at :

<http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=254724>.

³ See : ITLOS, *Southern Bluefin Tuna Cases (New Zealand v. Japan; Australia v. Japan)*, Provisional measures, Order of 27 January 1999, List of cases n° 3 and 4, par. 60 ; *The Mox Plant Case (Ireland v. United Kingdom)*, Provisional measures, Provisional measures, order of 3 December 2001, List of cases n° 10, par. 60 ; *Case concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore)*, Provisional Measures, order of 8 October 2003, List of Cases n° 12, par. 47

26. Therefore, the condition required by Article 290, paragraph 5, according to which the Tribunal may prescribe provisional measures if it considers that *prima facie* the tribunal which is to be constituted would have jurisdiction,⁴ is clearly met in the present case.

CHAPTER 4 STATEMENT ON LEGAL GROUNDS

27. This chapter first recalls the provisional measure requested to the Tribunal (A). It proceeds to explain the reasons why this measure is requested (B), particularly the fact that the rights that Argentina invokes are more than plausible (a), that there is irreparable damage of these rights, and there is a concrete and serious risk that this damage will be aggravated (b). This chapter also sets out the possible consequences if the request of the provisional measure is not granted (C), as well as the urgency of the situation that precisely requires the granting of the requested provisional measure (D).

(A) PROVISIONAL MEASURE REQUESTED

28. Pending the constitution of the Arbitral Tribunal, as provided in Article 290, paragraph 5, of UNCLOS, Argentina requests the Tribunal to adopt the following provisional measure:

that Ghana unconditionally enables the Argentine warship Frigate ARA Libertad to leave the Tema port and the jurisdictional waters of Ghana, and be resupplied to that end.

(B) THE REASONS FOR WHICH THE MEASURE IS REQUESTED

⁴ ITLOS, *Request for the prescription of provisional measures pending the constitution of an arbitral tribunal in respect of the M/V "Saiga" (Saint Vincent and the Grenadines v. Guinea)*, Provisional measures, order of 20 January 1998, List of cases n° 2, par. 29 ; *The Mox Plant Case (Ireland v. United Kingdom)*, Provisional measures, Order of 3 December 2001, List of cases n° 10, paras. 51-53.

29. The principal reason for requesting the provisional measure is that Ghana's action is producing an irreparable damage to the Argentine rights in question, namely the immunity that the Frigate ARA Libertad enjoys, the exercise of its right to leave the territorial waters of Ghana, and its freedom of navigation more generally.

30. Unfortunately, the situation has aggravated following the institution of arbitral proceedings and the request addressed to Ghana to adopt the provisional measure mentioned above. On 5 November 2012, Judge Frimpong rendered an order allowing the Port Authority to move the warship. On 7 November 2012 the Port Authority attempted to unlawfully board and forcibly move the warship and proceeded to cut off the electricity and water supply to the warship. This grave and unprecedented situation risks further aggravating the irreparable damage already caused to the Argentine rights related to the Frigate ARA Libertad, and risks causing the disappearance of those rights altogether.

(a) THE RIGHTS THAT MUST BE PRESERVED ARE MORE THAN PLAUSIBLE

31. The rights that Argentina requests to be preserved are well established both in the UNCLOS and in customary international law. In its Statement of Claim included in the notification instituting arbitral proceedings, Argentina

“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.

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".⁵

32. In short, Argentina is invoking the right of immunity enjoyed by its warship, the right to leave the jurisdictional waters of Ghana, and consequently the enjoyment of the rights of passage and freedom of navigation of the Frigate ARA Libertad. The exercise of these rights is being prevented by the illegal detention of the Frigate ARA Libertad by Ghana.

(i) Immunity of warships

33. Since the celebrated *Schooner Exchange* case,⁶ it is clear that a warship enjoys immunity. Article 32 of the UNCLOS confirms a well-established rule of general international law. Ghana, which agreed to the visit of the Frigate ARA Libertad to its port, recognises the warship character of the Frigate ARA Libertad, as well as the immunity that this warship enjoys.

(ii) Right of passage, including the right to leave the port

34. The right of innocent passage in the territorial sea includes the right "to proceed to or from internal waters or a call at such roadstead or port facility" ('se rendre dans les eaux intérieures ou les quitter, ou faire escale dans une telle rade ou installation portuaire ou la quitter'), as declared by Article 18, paragraph 1 b) of the UNCLOS. This general right is coupled in the present case by a specific agreement between Ghana and Argentina by which the Frigate ARA Libertad would arrive at the port of Tema on 1 October 2012 and set sail on 4 October 2012, exiting the jurisdictional waters of Ghana on 5 October 2012, as is evident from the diplomatic exchanged between the two States, and reproduced in **Annex 2 of Annex A**.

⁵ Paragraphs 6 and 7, Annex A.

⁶ *The Exchange v. Mc Faddon*, 11 U.S. 116 (1812).

(iii) Freedom of navigation

35. By detaining the Frigate ARA Libertad, Ghana is not only violating the right to sail out and to passage through its territorial sea, but it is also preventing the exercise of the warship's freedom of navigation of the high seas and the performance of its navigational programme, which includes visits to other States.

36. Freedom of navigation is an elementary right acknowledged by the law of the sea of all nations. The UNCLOS has taken into account the fundamental need to guarantee the freedom of navigation of private vessels or vessels operated for commercial purposes,⁷ providing mechanisms for prompt release in this regard;⁸ and thus a warship has all the more reason to be able to exercise such a right promptly and without any condition or restriction that may apply to private vessels or vessels operated for commercial purposes.

(iv) There is no ground for disregarding the immunity of the Frigate ARA Libertad

37. The UNCLOS has not established any exclusion to the immunities of warships. The exceptions mentioned in Article 32 – in any event do not apply to the question at issue in the present case – are telling in this regard.⁹ Whereas the flag State bears responsibility for losses or damages caused by its warship to the coastal State, the latter State cannot take any measure against the warship.¹⁰ 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

38. Ghana is violating the abovementioned rights under the argument that, in its view, Argentina waived its immunity with regard to the Frigate ARA Libertad, and consequently it claims jurisdiction to execute a foreign judicial decision against Argentina. This is made in the context of a claim made by 'NML Capital Limited', a

⁷ For example, Articles 27 and 28 of UNCLOS.

⁸ Article 292 of UNCLOS.

⁹ See Bernard H. Oxman, 'The Regime of Warships Under the United Nations Convention on the Law of the Sea', *Virginia Journal of International Law*, 1983-1984, vol. 24 N°4, p. 809 at pp. 816-819.

¹⁰ Article 31 of UNCLOS.

¹¹ Article 30 of UNCLOS.

“vulture” private corporate fund registered in the Cayman Islands, against Argentina. Even assuming Ghana had such jurisdiction (*quod non*) – a matter that need not to be examined here –, the Respondent manifestly disregards international law by attempting to justify its decision by reference to the fact that Ghana legislation would not prohibit it from taking enforcement measures against a foreign warship.

39. In his appearance before Judge Frimpong, the Director of Legal and Consular Bureau of the Ministry of Foreign Affairs of Ghana, Mr Ebenezer Apraku, expressly recognised the immunity the ARA Libertad enjoys and the Judge’s duty to release this warship and to take no further action in the case against Argentina, in the following terms:

“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 immuned 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”¹².

40. In spite of the fact of this clear determination made by his Foreign Affairs’ Legal Counsel, Judge Frimpong, confirmed the injunction measure against the Frigate ARA Libertad in his ruling of 11 October 2012. Referring to the fact that the US District

¹² Annex D, at pp. 17-18.

Court for the Southern District of New York having dealt with the same corporate claim against Argentina and having granted an order for attachment of Argentina's assets in New York excluded military assets, Judge Frimpong stated: "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".¹³ Judge Frimpong fails to appreciate that the immunity of execution of foreign warships is not a matter governed by domestic law, but rather by international law, and the effect of national legislation existing in some States with regard to State immunity is to implement what is determined by international law and within the limits thereof.

41. Judge Frimpong interprets in an unreasonable and arbitrary manner the content of a waiver clause of an Argentine bond issued in 1994, virtually holding that Argentina would be a State that does not enjoy any kind of immunity. The consequences of such an extraordinary interpretation for the very functioning of a sovereign State need not be explained. For the purposes of this case it suffices to state that military property is either considered to be absolutely excluded from any kind of execution measure, or – even in the case in which it is considered that a State can waive its immunity of execution with regard to military assets –, this waiver should be explicit and specific to the related military asset at stake. In other words, a general waiver cannot effect any military or any diplomatic assets, no matter whether either a broad or strict approach is followed in this regard.¹⁴

42. The *Cour d'appel de Paris*, analysing a similar general clause of waiver, came to the following conclusion:

“Considérant que la seule mention, sans autre précision, dans le contexte des contrats litigieux, que « l'emprunteur renonce à tout droit d'immunité relativement à l'application de la sentence arbitrale rendue à son encontre en relation avec le présent contrat », ne manifeste pas la volonté non équivoque de l'Etat emprunteur de renoncer, en faveur de son cocontractant, personne morale

¹³ Annex 4 of Annex A at p. 24.

¹⁴ See Section 1611 of the United States' Foreign Sovereign Immunities Act, 28 USC Chapter 97, October 21, 1976, reprinted in *International Legal Materials*, 1976, vol. 15, p. 1391; Section 31 (4) of the Australian Foreign Sovereign Immunities Act 1985, April 1, 1986, reprinted in *International Legal Materials*, 1986, vol. 25, p. 721; Article 11 (3) of Canada's Act to Provide for State Immunity in Canadian Courts, 3rd June 1982, reprinted in *International Legal Materials*, 1982, vol. 21, p. 800. Other domestic legislations on State immunities declare the inapplicability of their provisions to foreign armed forces. See for instance, Point 16 (2) of the United Kingdom's State Immunity Act 1978, 20 July 1978, reprinted in *International Legal Materials*, 1978, vol. 17, p. 1127; Point 19 of Singapore's State Immunity Act 1985, reprinted in Andrew Dickinson, Rae Lindsay and James P. Loonam (eds.), *State Immunity: Selected Materials and Commentary*, Oxford, Oxford University Press, 2004, p. 512.

de droit privé, à se prévaloir de l'immunité diplomatique d'exécution et d'accepter que cette société commerciale puisse, le cas échéant, entraver le fonctionnement et l'action de ses ambassades et représentations à l'étranger..."¹⁵

43. The same conclusion with regard to diplomatic assets is applicable here with regard to military property, particularly the Frigate ARA Libertad. Like diplomatic assets, warships enjoy particular immunities in international law, which is the *lex specialis* in relation to State immunity. For instance, the ILC commentary to what became Article 21 of the UN Convention on the Jurisdictional Immunities of States and Their Property states that:

"Notwithstanding the provision of paragraph 1, the State may waive immunity in respect of any property belonging to one of the specific categories listed, or any part of such a category by either allocating or earmarking the property within the meaning of article 18 (b), paragraph 1, or by specifically consenting to the taking of measures of constraint in respect of that category of its property, or that part thereof, under article 18 (a), paragraph 1. A general waiver or a waiver in respect of all property in the territory of the State of the forum, without mention of any of the specific categories, would not be sufficient to allow measures of constraint against property in the categories listed in paragraph 1".¹⁶

44. The language of the clause concerned is in itself sufficient evidence that Argentina has not waived the immunities to which warships in general, and the Frigate ARA Libertad in particular, are entitled under international law.

45. Very recently, the International Court of Justice ('ICJ'), referring to measures of constraint taken against German property located on Italy, made the following general analysis:

"Indeed, it suffices for the Court to find that there is at least one condition that has to be satisfied before any measure of constraint may be taken against property belonging to a foreign State: that the property in

¹⁵ Chambre d'Appel de Paris, première chambre, Section A, 10 Août 2000, Affaire *Noga*, *Journal du droit international*, 2001, vol. 128, n°1, p. 121. English translation: "The simple statement in the contracts in dispute, without further detail, that "the borrower waives all rights of immunity with regard to the application of the arbitral award rendered against it in relation to this contract" does not manifest the unequivocal intention of the State borrower to waive, in favour of its contractual partner which is a legal body governed by private law, its right to rely on diplomatic immunity from execution and to accept that this commercial company may, if necessary, interfere with the functioning and action of its embassies and missions abroad." *Russian Federation v. Noga Import/Export Company, France*, Court of Appeal of Paris (First Chamber), 10 August 2000, *International Law Reports*, vol. 127, p. 160.

¹⁶ Draft articles on Jurisdictional Immunities of States and Their Property, with commentaries, Annex to Resolution A/46/10, *Yearbook of the International Law Commission*, 1991, vol. II, Part Two, p. 59, par. 8

question must be in use for an activity not pursuing government non-commercial purposes, or that the State which owns the property has expressly consented to the taking of a measure of constraint, or that that State has allocated the property in question for the satisfaction of a judicial claim (an illustration of this well-established practice is provided by the decision of the German Constitutional Court (*Bundesverfassungsgericht*) of 14 December 1977 (*BVerfGE*, Vol. 46, p. 342; *ILR*, Vol. 65, p. 146), by the judgment of the Swiss Federal Tribunal of 30 April 1986 in *Kingdom of Spain v. Société X* (*Annuaire suisse de droit international*, Vol. 43, 1987, p. 158; *ILR*, Vol. 82, p. 44), as well as the judgment of the House of Lords of 12 April 1984 in *Alcom Ltd v. Republic of Colombia* ([1984] 1 AC 580; *ILR*, Vol. 74, p. 170) and the judgment of the Spanish Constitutional Court of 1 July 1992 in *Abbott v. Republic of South Africa* (*Revista española de derecho internacional*, Vol. 44, 1992, p. 565; *ILR*, Vol. 113, p. 414)).”¹⁷

46. Applying this analysis to the case, the ICJ came to the conclusion that the property in question (Villa Vigoni) was used for governmental functions, and added: “Nor has Germany in any way expressly consented to the taking of a measure such as the legal charge in question, or allocated Villa Vigoni for the satisfaction of the judicial claims against it”.¹⁸ This reasoning can easily be applied to the instant case: like Germany which has not expressly consented to the taking of a measure against the Villa Vigoni, nor allocated it for the satisfaction of the judicial claims against it, Argentina has not consented to the taking of a measure against the Frigate ARA Libertad nor allocated it for the satisfaction of the judicial claims against it.

47. The most recent study published on State Immunity stresses the idea that “certain categories of property are regarded as so sensitive that they are under special protection and absolutely immune from execution; that is, they cannot be subjected to execution without express consent of the foreign State concerned.”¹⁹ Military property obviously falls within this category.²⁰ And this study concludes:

“Over the years courts have displayed remarkable caution and restraint with respect to enforcement and execution against foreign State property, and even those most liberal in exercising their jurisdiction of adjudication have treated the issue with circumspection, and have taken meticulous care to ensure that

¹⁷ International Court of Justice, *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, Judgment of 3 February 2012, para. 118.

¹⁸ *Ibid.*, para. 119.

¹⁹ Xiaodong Yang, *State Immunity in International Law*, Cambridge, Cambridge University Press, 2012, pp. 404.

²⁰ *Ibid.*, p. 417.

measures of constraint are allowed only in the most indisputable cases where the least possible hassle and hindrance is caused to the defendant foreign State in performing its public functions... Thus three principles have emerged on which there is now little dissension: first, a distinction must be drawn between immunity from adjudication and immunity from execution... ; secondly, ...execution is permissible only as against the property used for commercial or private purposes; and thirdly, certain categories of State property, such as diplomatic and consular property and military property, enjoy absolute immunity from execution."²¹

48. Thus, the following conclusion in another study of State immunity is plainly applicable here: "On doit conclure qu'un Etat qui permettrait la saisie des biens d'un autre Etat, affectés à des fins strictement militaires, violerait le droit international".²²

49. To date, 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,²³ which reflects a well-established rule of customary law.

50. The government of Ghana is aware that the State is responsible for the acts of all its organs, whether they exercise judicial or other functions, as firmly rooted in international law as reflected in Article 4 of the Articles on Responsibility of States for Internationally Wrongful Acts elaborated by the International Law Commission.²⁴

51. Furthermore, it is the Port Authority, an organ exercising elements of State authority, which is enforcing the judicial order and going even further to what is permitted by the judicial organisation of its State, while attempting to execute a decision

²¹ *Ibid.*, pp. 421-422.

²² Isabelle Pingel-Lenuzza, *Les immunités des Etats en droit international*, Bruxelles, Bruylant, 1998, p. 373.

²³ Annex to United Nations General Assembly Resolution 59/38 of 2 December 2004.

²⁴ Annex to United Nations General Assembly Resolution 58/63 of 28 January 2002. See also: *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion*, I.C.J. Reports 1999, pp. 87-88, par. 62-63; *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment, I.C.J. Reports 2002, p. 29, par. 70, p. 31, par. 75.

which is not definitive. As a matter of course, these acts are also attributable to Ghana under international law.

52. In sum, there is no ground whatsoever to preclude the wrongfulness of Ghana's disregard of the Argentine rights of immunity related to the Frigate ARA Libertad. Likewise, there is no justification for the other breaches of those elementary rules of the Law of the Sea, such as the right to leave the port and the jurisdictional waters of Ghana, and the full exercise of the right of passage and navigation in the relevant maritime areas. The words employed in the *Schooner Exchange* case two centuries ago can be repeated here and applied to the Frigate ARA Libertad and to Ghana:

“If the preceding reasoning be correct, the *Exchange*, being a public armed ship in the service of a foreign sovereign with whom the government of the United States is at peace, and having entered an American port open for her reception on the terms on which ships of war are generally permitted to enter the ports of a friendly power, must be considered as having come into the American territory under an implied promise that while necessarily within it and demeaning herself in a friendly manner, she should be exempt from the jurisdiction of the country.”²⁵

53. The analysis above unequivocally demonstrates the existence of *fumus boni iuris* with regard to Argentina's rights and claims.²⁶ Argentina's rights reflected in UNCLOS are indeed more than plausible in the present case.

(b) THE RIGHTS OF ARGENTINA ARE ALREADY SUFFERING IRREPARABLE DAMAGE AND THERE IS A RISK OF FURTHER AGGRAVATION OF THIS IRREPARABLE DAMMAGE

54. In accordance with Article 290, paragraph 1, of the UNCLOS, the purpose of provisional measures is to preserve the rights of the parties.²⁷ This is all the more

²⁵ *The Exchange v. Mc Faddon*, 11 U.S. 147 (1812)

²⁶ ICJ, *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, request for the indication of provisional measures, Order of 28 May 2009, para. 5 ; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Provisional Measures, order of 8 March 2011, I.C.J. Reports 2011, p. 13, par. 53 and p. 14, par. 58.

²⁷ *Southern Bluefin Tuna Cases (New Zealand v. Japan; Australian v. Japan)*, Request for Provisional Measures, Order of 27 August 1999, List of cases n° 3 and 4, par. 67, *Case concerning Land Reclamation by Singapore in and Around the Straits of Johor (Malaysia v. Singapore)*, Provisional Measures, order of 8 October 2003, List of cases n° 12, par. 64 ; *The Mox Plant Case (Ireland v. United Kingdom)*, Request for Provisional Measures, Order of 3 December 2001, List of Cases n° 10, par. 64 ;

required when a risk of irreparable damage or prejudice to those rights exists.²⁸ In the present case, the prospects of the occurrence of events that may risk an irreparable damage are certain, because these events have already taken place and are continuing. The fact that a Ghanaian commercial judge endows himself with jurisdiction to apply measures of constraint against the Frigate ARA Libertad, and is applying them through the Port Authority, is producing the immediate effect of preventing the warship from leaving the Ghanaian jurisdictional waters, from navigating as the owner – a sovereign State – deems fit and not as an agent of a foreign State decides. The detention of the Frigate ARA Libertad hinders the Argentine Navy from using it for its specific function as the training ship for its cadets. Furthermore, the current detention by Ghana of the Frigate ARA Libertad poses a serious risk to the safety of the warship and its crew. See the affidavit of the Commander of the Frigate ARA Libertad (**Annex I**).

55. This situation brings to mind the *Hostages* case before the ICJ,²⁹ and the *Denunciation of the Treaty of 2 November 1865 between China and Belgium* case before the Permanent Court of International Justice.³⁰ In each of these cases, provisional measures were ordered in favour of the Applicant on the basis of events which had already taken place and had a continuous character.

56. The question of prejudice in the present case is not contingent or speculative: Ghana, through its different organs, is preventing the exercise of Argentina's rights, making them nugatory for an indefinite period of time. Not only is there no prospect that this conduct will stop; on the contrary, the recent measures taken by organs of the Ghanaian State show the determination of Ghana's authorities to continue their illegal conduct, putting at extreme risk the Frigate ARA Libertad, even in disregard of Ghana's own domestic judicial system. Therefore, there exists a serious risk not only with regard

The M/V « Louisa » Case (Saint-Vincent and the Grenadines v. Kingdom of Spain), Request for Provisional Measures, order of 23 December 2010, List of Cases n° 18, par. 41.

²⁸ Cf the analysis of ITLOS in: *Case concerning Land Reclamation by Singapore in and Around the Straits of Johor (Malaysia v. Singapore), Provisional Measures, order of 8 October 2003, List of cases n° 12, par. 72*; *The M/V « Louisa » Case (Saint-Vincent and the Grenadines v. Kingdom of Spain), Request for Provisional Measures, order of 23 December 2010, List of Cases No. 18, para. 72*

²⁹ *Case Concerning United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran), Request for the Indication of Provisional Measures, Order of 15 December 1979.*

³⁰ *Denunciation of the Treaty of 2 November 1865 between China and Belgium, Order of 8 January 1927, P.C.I.J., Series A, No. 8, p. 7.*

to the exercise of the abovementioned rights, but also with regard to the very existence of these rights.

(C) POSSIBLE CONSEQUENCES IF THE REQUEST IS NOT GRANTED

57. If the provisional measure requested is not ordered, the involuntary presence of Frigate ARA Libertad and its crew in the Tema port will be left at the mercy of the will of the Ghanaian State, which continues to detain the warship contrary to international law.

58. The attempt by the government and judiciary system of Ghana to exercise jurisdiction over the warship, the application of measures of constraint and the threat of further measures of attachment against the Frigate ARA Libertad, not only preclude Argentina from exercising its rights for a prolonged period, but also entail a risk that these rights will be irreparably lost. There is also a concrete risk that, if the Tribunal does not order the requested measure, Ghana's organs will order the enforcement of the warship to satisfy the amount claimed by the "vulture" fund NML.

59. The situation of the Frigate ARA Libertad is worsening day by day as a consequence of the measures taken by Ghana. This situation is all the more grave since Ghana's measures against the Frigate ARA Libertad evince a clear determination to dispose of the warship.

60. The confinement of the ARA Libertad in the Ghana's port of Tema is, in the present circumstances, a direct source of danger. The recent events of 7 November 2012 and the later threats by Ghana demonstrate that the Ghanaian authorities are disregarding the nature of the ARA Libertad as a warship. Its Commander is under the exclusive authority of the Argentine Navy. The current threat to his prosecution for being in contempt of court as a result of the events of 7 November adds a new and flagrant denial to the immunities of Argentina, the ARA Libertad and its military staff. Further attempts to forcibly board and move the Frigate without the consent of Argentina would lead to the escalation of the conflict and to serious incidents in which human lives would be at risk.

61. Should this unprecedented flagrant violation of Argentina's rights arising from fundamental and long-standing rules regarding the conduct of international relations be tolerated, then Argentina's rights would be affected, and 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 the bringing of any lawsuit against the States to whom they belong and until a final decision of the highest domestic judicial authorities in the country in question is rendered.

(D) URGENCY OF THE SITUATION

62. A further condition for granting provisional measures is the requirement of urgency.³¹ In the *Mox Plant* case, the Tribunal stated:

*“Considering that, according to article 290, paragraph 5, of the Convention, provisional measures may be prescribed pending the constitution of the Annex VII arbitral tribunal if the Tribunal considers that the urgency of the situation so requires in the sense that action prejudicial to the rights of either party or causing serious harm to the marine environment is likely to be taken before the constitution of the Annex VII arbitral tribunal”*³².

63. In the present case, action prejudicial to the rights of Argentina is not only likely to be taken by Ghana before the constitution of the arbitral tribunal, but such action is being taken after the institution of the arbitral proceedings and before the constitution of the arbitral tribunal, as the events of 7 November 2012 illustrate.

64. On 7 November the Port Authority agents forcibly attempted to board and move the Frigate ARA Libertad. There is no reason to believe that this action will not be repeated. On the contrary, the judicial organs of Ghana are continuing in their illegal exercise of jurisdiction and are likely to order the forcible displacement of the warship.

³¹ *Southern Bluefin Tuna Cases (New Zealand v. Japan; Australian v. Japan)*, Request for Provisional Measures, Order of 27 August 1999, List of cases n° 3 and 4, par. 63, par. 80; *The Mox Plant Case (Ireland v. United Kingdom)*, Request for Provisional Measures, Order of 3 December 2001, List of Cases n° 10, paras. 63-64 and 81; *Case concerning Land Reclamation by Singapore in and Around the Straits of Johor (Malaysia v. Singapore)*, Provisional Measures, order of 8 October 2003, List of cases n° 12, paras 65 and 72.

³² *The Mox Plant Case (Ireland v. United Kingdom)*, Provisional measures, order of 3 December 2001, List of cases n° 10, par. 64 (emphasis added).

65. Ghana's Port Authority has cut off the supply of electricity and water to the warship. Its fuel supply will be depleted by mid-December.³³ If this situation persists, the life and well-being of the crew members and the future functioning of Frigate ARA Libertad will be placed at peril.

66. For the reasons stated in paragraph 16, the majority of the crew members had to be evacuated. The limited number of crew members that are now on board makes it impossible to carry out all the standard maintenance tasks, which normally require at least 145 crew members. In case of an emergency, such a small number of crew members would be unable to respond adequately. If a fire were to break out, the crew now present could form only one of the three brigades needed on board to combat a fire. If the warship 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 warship, and the health and integrity of the crew remaining on board. In addition, after the incidents of 7 November and the further threats made by the Ghanaian authorities, the Commander and his crew are under increasing pressure and ongoing stress of being victim of a forcible attempt of having their vessel seized by Ghana.

67. Another consequence of the permanence of the ARA Libertad in the port of Tema is the degradation of the general conditions of the warship due to the impossibility to carry out the scheduled maintenance of its systems, compromising the vessel's safety for prolonged navigation. As it is a tall ship, it requires intensive maintenance prior to its next instructional voyage. The whole situation is adversely affecting the 2013 Argentine Navy's training plans.

68. It is unconceivable that, as a result of a decision of a foreign judge and the inaction of the governmental authorities of its State, the Argentine Navy will be unable to use its flagship. The detention of the warship is, in turn, a measure that disrupts the organisation 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.

³³ See Affidavit of Commander Salonio from the Frigate ARA Libertad (Annex I).

69. As this Tribunal has stated:

“the urgency of the situation must be assessed taking into account the period during which the Annex VII arbitral tribunal is not yet in a position to ‘modify, revoke or affirm those provisional measures’; *Considering* further that the provisional measures prescribed by the Tribunal may remain applicable beyond that period”.³⁴

70. To date, Ghana has not appointed a member of the arbitral tribunal and has not reacted to the invitation of Argentina to enter into discussions with it for the purpose of appointing the other members of the Annex VII arbitral tribunal.

71. In the present circumstances, Ghana’s threat to continue to adopt illegal measures against the Frigate ARA Libertad in the very near future is likely and real, as demonstrated by Ghana’s conduct in recent days, despite the fact that the arbitral procedure has been commenced. Furthermore, the 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 for Argentina to wait for the completion of the procedure without seriously impairing the exercise of its rights, or their very existence.

(E) CONCLUSION

72. Argentina has demonstrated that the conditions required by Article 290 of UNCLOS and elaborated by the case law of the Tribunal are met. The only way to preserve Argentine rights in the present case is by allowing the Frigate ARA Libertad to sail out from the jurisdictional waters of Ghana and to be resupplied to that end. Any other measure would not eliminate the extremely grave risks the warship faces by remaining in Ghana and would not prevent the aggravation of the dispute with the utmost serious consequences.

CHAPTER 5 SUBMISSIONS

³⁴ ITLOS, *Case concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore)*, *Provisional Measures*, order of 8 October 2003, List of Cases n° 12, para. 68.

72bis. For the reasons set out above, pending the constitution of the arbitral tribunal under Annex VII of UNCLOS, Argentina requests that the Tribunal prescribes the following provisional measure:

that Ghana unconditionally enables the Argentine warship Frigate ARA Libertad to leave the Tema port and the jurisdictional waters of Ghana and to be resupplied to that end.

* * *

73. Given the urgency of this request and the aggravation of the situation by the conduct adopted by Ghana after the institution of the arbitral proceedings on 30 October 2012, Argentina respectfully requests the President of the Tribunal to urgently call upon the Parties to act in such a way as will enable any order the Tribunal may make on the request for the provisional measure to have its appropriate effects, as established by Article 90 of the Rules of the Tribunal.

APPOINTMENT OF AGENT AND ADDRESS FOR SERVICE

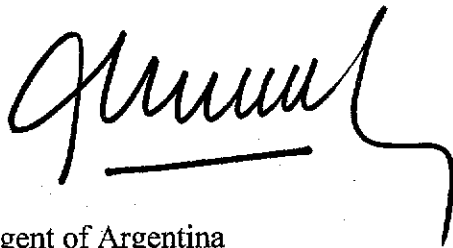
74. The Government of Argentina appoints as its Agent H.E. Ambassador Susana Ruiz Cerutti, and as its Co-Agent H.E. Ambassador Horacio Basabe.

75. The Agent and Co-Agent's address for service is:

Consulate of the Argentine Republic
Mittelweg 141,
20148 Hamburg

76. The Agent may be contacted in Argentina in:

Esmeralda 1212, piso 15, Dirección General de Consejería Legal
Tel. ++54 11 4819 8008 Fax ++54 11 4819 8009
Buenos Aires (1007)
ARGENTINE REPUBLIC



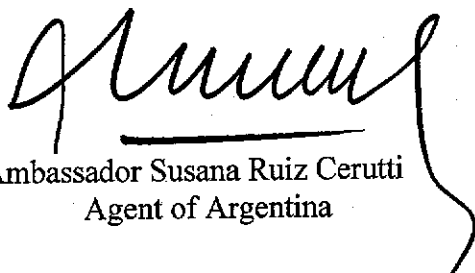
Agent of Argentina

Hambourg, 14 November 2012

CERTIFICATION

Pursuant to Articles 63, paragraph 1, and 89, paragraph 4, of the Rules of the Tribunal, I have the honour to certify that the copies of the notification instituting arbitral proceedings against Ghana and the documents annexed to the request for provisional measures of 14 November 2012 are true copies and conform to the original documents, and that the translations into English made by Argentina are accurate translations.

Hambourg, 14 November 2012



Ambassador Susana Ruiz Cerutti
Agent of Argentina

LIST OF ANNEXES

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.

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. Buenos Aires, 12 November 2012

ANNEX C. In the Superior Court of Judicature in the Commercial Division of the High Court Justice Accra, Submission on behalf of the Republic of Argentina and Supplementary Submission on behalf of the Republic of Argentina.

ANNEX D. 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.

ANNEX E. In the Superior Court of Judicature in the Commercial Division of the High Court Justice Accra, Motion on Notice for Variation of Order of Injunction by Ghana Ports and Harbour Authority, 19 October 2012.

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

ANNEX G. In the Superior Court of Judicature in the Commercial Division of the High Court Justice Accra, Ruling granting the motion on the relocation of the vessel, 5 November 2012.

ANNEX H. Note by Beyuo Jumu & Co. to the Ghana Ports & Harbours Authority, 6 November 2012.

ANNEX I. Affidavit by Captain Lucio Salonio, Commander of the Frigate ARA Libertad, Port of Tema (Ghana), 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.

ANNEX K. Note by Mr. Héctor Timerman, Minister of Foreign Affairs and Worship of Argentina, to Mr. Alhaji Muhammad Mumuni, Minister of Foreign Affairs and Regional Integration of Ghana, 7 November 2012.