



**INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
TRIBUNAL INTERNATIONAL DU DROIT DE LA MER**

Press Release

TRIBUNAL ORDERS RELEASE OF ARGENTINE FRIGATE “ARA LIBERTAD”

At a public sitting held today, the International Tribunal for the Law of the Sea delivered its Order in the “*ARA Libertad*” Case (*Argentina v. Ghana*).

THE DISPUTE

The Argentine frigate ARA Libertad arrived in the port of Tema, near Accra, Ghana, on 1 October 2012. The vessel’s departure from this port, which was scheduled for 4 October 2012, was prevented by Ghanaian authorities pursuant to a decision of the High Court of Accra.

On 30 October 2012, Argentina instituted arbitration proceedings against Ghana concerning the detention of the frigate. In addition, on 14 November 2012, Argentina submitted a request for the prescription of provisional measures under article 290, paragraph 5, of the United Nations Convention on the Law of the Sea to the Tribunal.

THE ROLE OF THE TRIBUNAL

The Convention provides for compulsory third-party disputes settlement mechanism for disputes concerning the interpretation or application of the Convention. To this purpose, the parties to a dispute may choose from different procedures that the Convention makes available to them (International Tribunal for the Law of the Sea, International Court of Justice or arbitration).

Both Ghana and Argentina are States Parties to the Convention. They have however not accepted the same procedure for the settlement of disputes. The Convention provides that, in such cases, the parties to a dispute are deemed to have accepted arbitration in accordance with Annex VII to the Convention.

The setting up of an arbitral tribunal may take some time and pending the constitution of such arbitral tribunal, any party to the dispute may, under the conditions set by the Convention, request the International Tribunal for the Law of the Sea to prescribe provisional measures according to article 290, paragraph 5, of the Convention. The Tribunal may prescribe provisional measures if it considers that

prima facie the arbitral tribunal to be constituted prima facie would have jurisdiction and that the urgency of the situation so requires.

THE ORDER OF 15 DECEMBER 2012

In its Order of 15 December 2012, the Tribunal holds that, “*at this stage of the proceedings, the Tribunal does not need to establish definitively the existence of the rights claimed by Argentina and yet, before prescribing provisional measures, the Tribunal must satisfy itself that the provisions invoked by the Applicant appear prima facie to afford a basis on which the jurisdiction of the Annex VII arbitral tribunal might be founded*” (paragraph 60).

Having found that “*the Annex VII arbitral tribunal would prima facie have jurisdiction*” (paragraph 67), the Tribunal examines whether the urgency of the situation requires the prescription of provisional measures. In this context, the Tribunal considers *inter alia* that, “*in accordance with general international law, a warship enjoys immunity*” (paragraph 95) and that “*any act which prevents by force a warship from discharging its mission and duties is a source of conflict that may endanger friendly relations among States*” (paragraph 97).

The Tribunal concludes that “*under the circumstances of the present case, pursuant to article 290, paragraph 5, of the Convention, the urgency of the situation requires the prescription by the Tribunal of provisional measures that will ensure full compliance with the applicable rules of international law, thus preserving the respective rights of the Parties*” (paragraph 100).

Therefore, in its Order of 15 December 2012, the Tribunal,

(1) *Unanimously,*

Prescribes, pending a decision by the Annex VII arbitral tribunal, the following provisional measures under article 290, paragraph 5, of the Convention:

Ghana shall forthwith and unconditionally release the frigate ARA Libertad, shall ensure that the frigate ARA Libertad, its Commander and crew are able to leave the port of Tema and the maritime areas under the jurisdiction of Ghana, and shall ensure that the frigate ARA Libertad is resupplied to that end.

(2) *Unanimously,*

Decides that Argentina and Ghana shall each submit the initial report referred to in paragraph 103 not later than 22 December 2012 to the Tribunal, and authorizes the President to request such information as he may consider appropriate after that date.

(3) *Unanimously,*

Decides that each Party shall bear its own costs.

Judge Paik appends a declaration to the Order of the Tribunal.

Judge Chandrasekhara Rao appends a separate opinion to the Order of the Tribunal.

Judges Wolfrum and Cot append a joint separate opinion to the Order of the Tribunal.

Judge Lucky appends a separate opinion to the Order of the Tribunal.

A recorded webcast of the public sitting is available under [Webcast Archives](#).

The text of the Order is available on the [website](#) of the Tribunal.

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