

IN THE MATTER OF AN ARBITRATION

- before -

**AN ARBITRAL TRIBUNAL CONSTITUTED UNDER ANNEX VII
OF THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA**

- between -

THE ARGENTINE REPUBLIC

- and -

THE REPUBLIC OF GHANA

RULES OF PROCEDURE

ARBITRAL TRIBUNAL:

**H.E. Judge Bruno Simma (President)
H.E. Judge Awn Shawkat Al-Khasawneh
Judge Elsa Kelly
Judge Thomas A. Mensah
Professor Bernard H. Oxman**

REGISTRY:

The Permanent Court of Arbitration

WHEREAS the Argentine Republic (“**Argentina**”) and the Republic of Ghana (“**Ghana**”) are parties to the United Nations Convention on the Law of the Sea (“**UNCLOS**”).

WHEREAS Article 286 of the UNCLOS provides that “[s]ubject to section 3, any dispute concerning the interpretation or application of this Convention shall, where no settlement has been reached by recourse to section 1, be submitted at the request of any Party to the dispute to the court or tribunal having jurisdiction under this section”;

WHEREAS Article 287(5) of the UNCLOS provides that “[i]f the Parties to a dispute have not accepted the same procedure for the settlement of the dispute, it may be submitted only to arbitration in accordance with Annex VII, unless the Parties otherwise agree”;

WHEREAS Article 1 of Annex VII to the UNCLOS provides that “[s]ubject to the provisions of Part XV, any Party to a dispute may submit the dispute to the arbitral procedure provided for in this Annex by written notification addressed to the other Party or Parties to the dispute. The notification shall be accompanied by a statement of the claim and the grounds on which it is based”;

WHEREAS Argentina has invoked Article 287 and Article 1 of Annex VII to the UNCLOS in relation to a dispute concerning the detention of and court measures adopted by Ghana against the frigate ARA Libertad as set out in Argentina’s Notification dated 29 October 2012 (“**Dispute**”);

WHEREAS in accordance with Article 3 of Annex VII to the UNCLOS, by 4 February 2013, the Arbitral Tribunal composed of H.E. Judge Awn Shawkat Al-Khasawneh, Judge Elsa Kelly, Judge Thomas A. Mensah, Professor Bernard H. Oxman, and H.E. Judge Bruno Simma (President) was constituted;

WHEREAS Article 5 of Annex VII to the UNCLOS provides that “[u]nless the Parties to the dispute otherwise agree, the arbitral tribunal shall determine its own procedure, assuring to each Party a full opportunity to be heard and to present its case”;

WHEREAS the Arbitral Tribunal, after having heard the Parties at the First Procedural Meeting and having considered Argentina’s comments of 10 and 24 June 2013, and Ghana’s comments of 13 June 2013, adopts the following Rules of Procedure (“**Rules**”). These Rules supplement those contained in the UNCLOS, including its Annex VII.

SECTION I. INTRODUCTION

Scope of Application

Article 1

1. These Rules shall apply in these proceedings on a supplemental basis, subject to the UNCLOS (including its Annex VII), the Terms of Appointment dated 21 May 2013, and subsequent Procedural Orders of the Arbitral Tribunal.
2. To the extent that any question of procedure is not expressly governed by the UNCLOS (including its Annex VII), these Rules, or existing Procedural Orders issued by the Arbitral Tribunal, the question shall be determined by the Arbitral Tribunal after consultation with the Parties.
3. The International Bureau of the Permanent Court of Arbitration at The Hague (“**PCA**”) shall serve as the Registry for the proceedings. It shall maintain an archive of the arbitral proceedings and provide appropriate registry services as directed by the Arbitral Tribunal.

Notice, Calculation of Periods of Time

Article 2

1. A notice, including a notification, communication or proposal, may be transmitted by any means of communication that provides or allows for a record of its transmission.
2. If an address has been designated by a Party specifically for this purpose or authorised by the Arbitral Tribunal, any notice shall be delivered to that Party at that address, and if so delivered shall be deemed to have been received. Delivery by electronic means such as facsimile or e-mail may only be made to an address so designated or authorised.
3. A notice shall be deemed to have been received on the day it is delivered in accordance with paragraph 2. A notice transmitted by electronic means is deemed to have been received on the day it is sent.
4. For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day that follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

Commencement of Proceedings

Article 3

These proceedings are deemed to have commenced on 29 October 2012.

Representation and Assistance

Article 4

1. Each Party shall appoint an agent and, if it so decides, one or more co-agents. Each Party may also be assisted by persons of their choice.
2. The names and addresses of agents, Party representatives, and other persons assisting the Parties must be communicated to all Parties, to the Arbitral Tribunal, and to the PCA. Such communication must specify whether the appointment is being made for purposes of representation or assistance. Where a person is to act as an agent or representative of a Party, the Arbitral Tribunal, on its own initiative or at the request of any Party, may at any time require proof of authority granted to the agent or representative in such a form as the Arbitral Tribunal may determine.

SECTION II. COMPOSITION OF THE ARBITRAL TRIBUNAL

Number and Appointment of Arbitrators

Article 5

The Arbitral Tribunal consists of five members appointed in accordance with Article 3 of Annex VII to the UNCLOS.

Challenge of an Arbitrator

Article 6

1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.
2. A Party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.
3. In the event that an arbitrator fails to act or in the event of the *de jure* or *de facto* impossibility of his or her performing his or her functions, the procedure in respect of the challenge of an arbitrator as provided in Article 7 shall apply.

Article 7

1. A Party that intends to challenge an arbitrator shall send notice of its challenge within thirty days after the circumstances mentioned in Article 6 became known to that Party.
2. The notice of challenge shall be communicated to the other Party, to the arbitrator who is challenged, to the other arbitrators, and to the PCA. The notice of challenge shall state the reasons for the challenge.
3. When an arbitrator has been challenged by a Party, the other Party may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his or her office. In neither case does this imply acceptance of the validity of the grounds for the challenge.
4. If, within fifteen days from the date of the notice of challenge, the Parties do not agree to the challenge or the challenged arbitrator does not withdraw, the Party making the challenge may elect to pursue it. In that case, within thirty days from the date of the notice of challenge, it shall seek a decision on the challenge by the President of the International Tribunal for the Law of the Sea ("**President of the ITLOS**").

Replacement of an Arbitrator

Article 8

1. If a challenge to an arbitrator is sustained, or in the event of the death or withdrawal of an arbitrator during the course of the proceedings, a substitute arbitrator shall be appointed as follows:
 - (a) Where the arbitrator being replaced was originally appointed by one of the Parties in accordance with Articles 3(b) or 3(c) of Annex VII to the UNCLOS, by the Party making the original appointment if possible within thirty days, or otherwise not later than sixty days, from the date of any challenge being sustained or the death or withdrawal of an arbitrator;
 - (b) Where the arbitrator being replaced was originally appointed by the President of ITLOS in accordance with Article 3(e) of Annex VII to the UNCLOS, if the Parties do not agree otherwise within thirty days of the challenge being sustained or of the death or withdrawal of the arbitrator, by the President of the ITLOS, after consultation with the Parties.
2. In such an event, prior hearings may be repeated at the discretion of the Arbitral Tribunal.

SECTION III. THE PROCEEDINGS

General Provisions

Article 9

1. Subject to Annex VII to the UNCLOS, the Terms of Appointment dated 21 May 2013, and these Rules, the Arbitral Tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the Parties are treated with equality and that at any stage of the proceedings each Party is given a full opportunity to be heard and to present its case. The Arbitral Tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the Parties' dispute.
2. As soon as practicable after its constitution and after inviting the Parties to express their views, the Arbitral Tribunal shall establish the provisional timetable of the arbitration. The Arbitral Tribunal may, at any time, after inviting the Parties to express their views, extend or abridge any period of time prescribed under these Rules or agreed by the Parties.
3. If at an appropriate stage of the proceedings any Party so requests, the Arbitral Tribunal shall hold hearings for the examination of witnesses and experts, and/or for oral argument. In the absence of such a request, the Arbitral Tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.
4. All communications to the Arbitral Tribunal by one Party shall be communicated at the same time by that Party to the other Party and the PCA.
5. Subject to these Rules, the Parties shall facilitate the work of the Arbitral Tribunal in accordance with Article 6 of Annex VII to the UNCLOS.

Venue of Arbitration

Article 10

1. The seat of arbitration proceedings shall be The Hague, the Netherlands.
2. Upon consulting the Parties, the Arbitral Tribunal may conduct hearings at any location it considers appropriate. The Arbitral Tribunal may also meet at any location it considers appropriate for deliberations or related purposes.

Language of the Arbitration

Article 11

1. The languages of the arbitration shall be English and Spanish.
2. Any decision or Award of the Arbitral Tribunal shall be rendered in both English and Spanish. In the absence of an agreement between the Parties, the Arbitral Tribunal shall determine whether the English or Spanish language version prevails in the event of inconsistency.
3. The Arbitral Tribunal's Procedural Orders shall be in both English and Spanish. If there is urgency, the Arbitral Tribunal may issue these documents in either English or Spanish, with a version in the other language to follow promptly.
4. The Parties' written submissions, witness statements, expert reports, and communications to the Arbitral Tribunal shall be submitted in English or Spanish.

5. All exhibits shall be submitted in their original language, together with translations into English or Spanish if they are not in one or the other language. When a Party considers that the content of a document is not relevant in its entirety, the translation may be limited to the relevant passages and such other portions of the document that are necessary to put such passages in context. A full translation shall be provided if the Arbitral Tribunal so requests or if the other Party so requests and, in case of objection by the submitting Party, the Arbitral Tribunal deems it appropriate.
6. Witness statements and expert reports shall be submitted in their original language, together with translations into one of the languages of the arbitration, if necessary.
7. At the request of the Tribunal, a Party shall provide to the Tribunal, the PCA and the other Party a translation of any pleading or exhibit submitted in English or Spanish into the other language of the arbitration. A translation provided by a Party will be accepted as accurate unless it is contested by the other Party, in which case the Parties shall attempt to reach agreement on the translation.
8. The PCA will arrange for all hearings to be simultaneously interpreted and transcribed into English and Spanish. Oral submissions by the Parties' agents and counsel, and the examination of witnesses and/or experts at a hearing, may be done in either English or Spanish, with simultaneous interpretation (or consecutive if the Arbitral Tribunal so orders).

Publicity of the Proceedings

Article 12

1. The arbitration shall be listed on the website of the PCA. The listing shall identify the Parties to the arbitration, the members of the Arbitral Tribunal, and the Parties' Agents, Co-Agents, Counsel, Advocates and Advisers.
2. Any Procedural Orders or Decisions issued by the Arbitral Tribunal shall be made publicly available on the website of the PCA the day after they have been notified to the Parties.
3. Any Award of the Arbitral Tribunal shall be made public, unless both Parties object. The manner of public release of an Award shall be determined by the Arbitral Tribunal after consultation with the Parties.
4. The Arbitral Tribunal will, after consultation with the Parties, issue further instructions regarding the publicity to be accorded to the Parties' written submissions and to the transcripts of any hearings, as well as the possibility that hearings will be held publicly.
5. The Arbitral Tribunal may, from time to time and after consultation with the Parties, issue press releases on the website of the PCA in respect of developments in the proceedings.

Preliminary Objections

Article 13

1. The Arbitral Tribunal shall have the power to rule on objections to its jurisdiction or to the admissibility of any claim made in the proceedings.
2. A submission that the Arbitral Tribunal does not have jurisdiction or that the notification of a claim made in the pleadings is inadmissible shall be raised either:

- (a) where Ghana requests that the submissions be dealt with as a preliminary issue, as soon as possible but not later than three months from the time of the filing of Argentina's Memorial; or
 - (b) in all other circumstances, in the Counter-Memorial or, with respect to the Reply, in the Rejoinder.
- 3. Upon receipt of a Preliminary Objection under paragraph 2(a), the proceedings on the merits shall be suspended. Argentina shall be entitled to file a written statement of its observations and submissions no later than three months from the filing by Ghana of its submissions on the Preliminary Objection.
- 4. Any Preliminary Objection by Ghana shall be dealt with by way of an oral hearing. After hearing the Parties, the Arbitral Tribunal shall rule on Ghana's Preliminary Objection either as a preliminary issue or in its final Award. If the Tribunal rejects the preliminary objection or decides to give the ruling in its final Award, Ghana shall submit its Counter-Memorial no later than six months after that decision. The Tribunal shall fix the time limits for further proceedings.

Form of Written Submissions

Article 14

- 1. The Parties shall submit together with their written submissions all documentary, witness, expert and other evidence upon which they intend to rely. The Parties shall also append legal authorities (such as treaties, laws, decrees, or judicial decisions) cited in their submissions.
- 2. The Parties' written submissions shall be transmitted in the following manner:
 - (a) The submitting Party shall transmit an electronic copy of its submission by e-mail, with accompanying evidence and legal authorities, to the other Party, the Arbitral Tribunal, and the Registry.
 - (b) On the same day, the submitting Party shall dispatch by courier to the opposing Party, the Arbitral Tribunal, and the Registry, hard copies of the same document sent electronically, together with hard copies of all accompanying documentary exhibits, witness statements, expert reports, and legal authorities. The submitting Party shall dispatch two copies of its submission to the opposing Party, one copy to each member of the Arbitral Tribunal, and four copies to the Registry.
 - (c) Along with every hard-copy submission, the submitting Party shall dispatch a complete electronic copy (including accompanying evidence and legal authorities) on USB flash drive or other electronic device, if possible in searchable Adobe PDF.
- 3. Evidence and legal authorities appended to the Parties' written submissions shall be organised as follows:
 - (a) Documents submitted to the Arbitral Tribunal shall be numbered consecutively throughout the arbitration and shall clearly distinguish between different types of documents (e.g., exhibits, witness statements, expert reports, legal authorities). The Parties shall agree on a method of numbering and labeling of documents that is consistent between them.
 - (b) Hard copies of documents shall be submitted in an appropriate order in files or volumes.

- (c) Written submissions shall be accompanied by a detailed table of contents describing all evidence and legal authorities appended to them by exhibit number, date, type of document, and author or recipient, if and as applicable.
- 4. Communications other than submissions shall be sent by e-mail to the Arbitral Tribunal and shall be simultaneously copied to the opposing Party and the Registry.
- 5. The Parties shall send copies of correspondence between them to the Arbitral Tribunal only if it pertains to a matter that the Arbitral Tribunal is requested to take action on or should be apprised of.

Evidence

Article 15

- 1. Each Party shall have the burden of proving the facts relied on to support its claim or defence.
- 2. The Arbitral Tribunal may take all appropriate measures in order to establish the facts, including when necessary, the conduct of a visit to the localities to which the case relates.
- 3. At any time during the proceedings the Arbitral Tribunal may call upon a party to produce documents, exhibits or other evidence within such a period of time as the Arbitral Tribunal shall determine.
- 4. The Arbitral Tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.
- 5. All documents, including copies of original documents, submitted to the Arbitral Tribunal shall be deemed to be authentic unless indicated otherwise by the submitting Party or promptly disputed by the other Party.

Article 16

- 1. Each written witness statement tendered in accordance with Article 14(1) shall stand as the witness's evidence-in-chief. No witness statement may be submitted after the time limit granted to the Parties to make their respective written submissions.
- 2. Each witness statement shall contain at least the following information: the name and date of birth of the witness; a description of the witness's background, position, qualifications and/or experience, if relevant to the dispute or to the contents of the statement; a description of the facts on which the witness's testimony is offered and, if applicable, the source of the witness's knowledge; and the witness's signature. Witness statements shall be accompanied by all documents or information upon which the witness relies, unless such documents or information have already been submitted with the Parties' written submissions. The provisions of Article 11(5) shall apply *mutatis mutandis* to such documents and information.
- 3. If witnesses, including expert witnesses, are to be heard, each party shall communicate at least forty days before the hearing to the PCA, to the members of the Arbitral Tribunal and to the other Party, a list of the names and addresses of the witnesses it intends to present, and the subject upon and the languages in which such witnesses will give their testimony.

4. Within ten days of the exchange of witness lists, a Party wishing to cross-examine one or more of the other Party's witnesses shall communicate the name or names of such witness or witnesses to the other Party, the Arbitral Tribunal, and the PCA. Further details regarding the examination, cross-examination, and re-examination of witnesses at any hearing will be addressed by the Arbitral Tribunal after consultation with the Parties at an appropriate time before the hearing. In general, the direct-examination of witnesses shall be restricted to a brief introduction of the witness to the Arbitral Tribunal, and the notification of any minor corrections or updates to the witness's statement.

Article 17

1. Each Party may retain and submit the evidence of one or more experts to the Arbitral Tribunal.
2. The provisions of Article 16 concerning witness evidence shall apply *mutatis mutandis* to expert evidence.

Hearings

Article 18

1. In the event of an oral hearing, the Arbitral Tribunal shall give the Parties adequate advance notice of the date, time and place thereof.
2. Witnesses and experts may be examined in the manner set by the Arbitral Tribunal.
3. The Arbitral Tribunal may require the retirement of any witness or expert during the testimony of such other witnesses, except that a witness who is a Party to the arbitration, or an expert, shall not, in principle, be asked to retire.

Experts appointed by the Arbitral Tribunal

Article 19

1. After consultation with the Parties, the Arbitral Tribunal may appoint one or more independent experts. That expert may be called upon to report to the Arbitral Tribunal, in writing, on specific issues to be determined by it. A copy of the expert's terms of reference, established by the Arbitral Tribunal, shall be communicated to the Parties.
2. Pursuant to their obligations under Article 6 of Annex VII to the UNCLOS, the Parties shall give the expert any relevant information or produce for his or her inspection any relevant documents or goods that he or she may require of them. Any dispute between a Party and such expert as to the relevance of the required information or production shall be referred to the Arbitral Tribunal for decision.
3. If called upon to prepare an expert's report, the Arbitral Tribunal shall, upon receipt of the report, communicate a copy of it to the Parties, who shall be given the opportunity to express, in writing, their respective opinions on the report. A Party shall be entitled to examine any document on which the expert relied in his or her report.
4. If a Party so requests or if the Arbitral Tribunal considers it necessary, the expert shall, after delivery of the report, participate in a hearing where the Parties have the opportunity to put questions to him or her and to present experts in order to testify on the points at issue. The provisions of Article 18 shall be applicable to such proceedings.

5. Any expert shall, in principle before accepting appointment, submit to the Arbitral Tribunal and to the Parties a description of his or her qualifications and a statement of his or her impartiality and independence. Within the time ordered by the Arbitral Tribunal, the Parties shall inform the Arbitral Tribunal whether they have any objections as to the expert's qualifications, impartiality or independence. The Arbitral Tribunal shall decide promptly whether to accept any such objections. After an expert's appointment, a Party may object to the expert's qualifications, impartiality or independence only if the objection is for reasons of which the Party becomes aware after the appointment has been made. The Arbitral Tribunal shall decide promptly what, if any, action to take.

Decisions on Administration and Routine Procedure

Article 20

Decisions of the Arbitral Tribunal, both on procedure and substance, shall be taken by a majority vote of its members, except that questions of administration or routine procedure may be decided by the President of the Arbitral Tribunal, unless the President wishes to have the opinion of the other members of the Arbitral Tribunal or the Parties request a decision of the full Arbitral Tribunal.

SECTION IV. THE AWARD

The Award

Article 21

1. An Award of the Arbitral Tribunal shall be rendered in accordance with Articles 8 to 11 of Annex VII to the UNCLOS.
2. In addition to making a final Award, the Arbitral Tribunal shall be empowered to make interim, interlocutory, or partial awards. The Arbitral Tribunal may make separate awards on different issues at different times.
3. The Parties shall communicate to the PCA the laws, regulations, or other documents evidencing the execution of an Award of the Arbitral Tribunal.

Settlement or other grounds for termination

Article 22

1. If, before an Award is made, the Parties agree on a settlement of the dispute, the Arbitral Tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by the Parties and accepted by the Arbitral Tribunal, record the settlement in the form of an arbitral award on agreed terms. The Arbitral Tribunal is not obliged to give reasons for such an Award.
2. If, before an Award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the Arbitral Tribunal shall inform the Parties of its intention to issue an order for the termination of the proceedings. The Arbitral Tribunal shall have the power to issue such an order unless there are remaining matters that may need to be decided and the Arbitral Tribunal considers it appropriate to do so.
3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the Arbitral Tribunal to the Parties. Where an arbitral award on agreed terms is made, the provisions of Article 21 shall apply.

Interpretation of the Award

Article 23

1. Any request for interpretation of an Award made in accordance with Article 12 of Annex VII to the UNCLOS shall be submitted by a Party by giving notice to the Arbitral Tribunal and the other Party.
2. The interpretation shall form part of the Award and the provisions of Article 21 shall apply.

Correction of the Award

Article 24

1. Within ninety days after the receipt of an Award, either Party, with notice to the other Party, may request the Arbitral Tribunal to correct in the Award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The Arbitral Tribunal may make such corrections on its own initiative after the communication of the Award.
2. Such corrections shall be in writing, and the provisions of Article 21 of these Rules shall apply.

Additional Award

Article 25

1. Within ninety days after the receipt of an Award, a Party, with notice to the other Party and the PCA, may request the Arbitral Tribunal to make an award or an additional award as to claims presented in the arbitral proceedings but not decided by the Arbitral Tribunal.
2. If the Arbitral Tribunal considers the request for an award or additional award to be justified, it shall render or complete its award within a reasonable period of time after the receipt of the request. The Arbitral Tribunal may extend, if necessary, the period of time within which it shall make the Award.
3. When such an award or additional award is made, the provisions of Article 21 shall apply.

Expenses and Costs

Article 26

1. Unless the Arbitral Tribunal decides otherwise because of the particular circumstances of the case, the expenses of the Arbitral Tribunal, including the remuneration of its members, shall be borne by the Parties in equal shares.
2. The expenses of the Arbitral Tribunal shall be reasonable in amount, taking into account the complexity of the subject-matter, the time spent by the arbitrators, the amount in dispute, if any, and any other relevant circumstances of the case.
3. The PCA shall keep a record of all expenses, and shall furnish a final statement thereof to the Parties.

Article 27

The Arbitral Tribunal may make such award as appears to it appropriate in respect of the costs incurred by the Parties in presenting their respective cases.

Deposit for Expenses

Article 28

1. The PCA may request each Party to deposit an equal amount as an advance for the expenses referred to in Article 27. All amounts deposited by the Parties pursuant to this Article shall be directed to the PCA, and disbursed by it for such expenses, including, *inter alia*, fees to the arbitrators, and the PCA.
2. During the course of the proceedings, the PCA or the Arbitral Tribunal may request supplementary deposits from the Parties in respect of the expenses referred to in Article 27.
3. If the requested deposits are not paid in full within sixty days after the receipt of the request, the Arbitral Tribunal shall so inform the Parties in order that one or another of them may make the required payment. If such payment is not made, the Arbitral Tribunal may order the suspension or termination of the proceedings.
4. After the Award has been made, the PCA shall render an accounting to the Parties of the deposits received and return any unexpended balance to the Parties.