

# Kluwer Arbitration Blog

## Argentina and Ghana announce settlement of arbitration over detained warship, ARA Libertad

Luke Eric Peterson (Investment Arbitration Reporter) · Saturday, September 28th, 2013

The Republic of Ghana and the Republic of Argentina have moved to terminate an arbitral proceeding currently pending at the Permanent Court of Arbitration

Readers of this blog may recall that Argentina [initiated arbitration](#) pursuant to the UN Convention on the Law of the Sea (UNCLOS) in response to the October 2012 detention in Ghana of the warship ARA Libertad at the request of a subsidiary of the US hedge fund, NML Capital.

NML Capital is one of many judgment-creditors pursuing Argentine assets, and a Ghanaian lower court had granted an order on an *ex parte* basis for detention of the vessel.

Argentina was not fully enamoured of these developments, and lodged a challenge in the Ghanaian courts, as well as its arbitration against Ghana under Annex VII of the UNCLOS.

### Provisional measures ruling secured release of the vessel in December 2012

While the Ghanaian proceedings unfolded, and an arbitral tribunal was being constituted, Argentina petitioned the International Tribunal of the Law of the Sea for provisional measures.

In a victory for Argentina, the ITLOS issued an order in December of 2012 for the release of the vessel pending the arbitration. (For a contemporaneous analysis of that order, see [this discussion](#) on the Opinio Juris blog.)

The detention of the Libertad ended as a result of the provisional measures ruling, and the ship [set sail for Argentina in mid-December](#).

### Tribunal constituted in February of 2013

An arbitral tribunal was constituted in February of 2013 – consisting of Judge Bruno Simma (President), Awn Shawkat Al-Khasawneh, Judge Elsa Kelly, Judge Thomas A. Mensah, and Prof. Bernard H. Oxman – and a [first procedural order](#) was issued in late July.

That order set out a briefing schedule which would see Argentina file a memorial in February of 2014.

However, it now appears likely that those briefings will not need to take place.

## **Ghana's Supreme Court sides with Argentina in June of this year**

While the arbitration was gearing up, Ghana's Supreme Court weighed in in June of this year with a ruling that reversed the lower court's order for the detention of the Libertad, and hailed the immunity of warships under customary international law.

Armed with this ruling, and the earlier recovery of the Libertad, Argentina was open to a diplomatic resolution of the dispute.

### **As part of settlement, Ghana to publicize to international community the June 2013 Supreme Court ruling**

In an [announcement released yesterday](#), Argentina and Ghana announced that they had reached a settlement, and they have asked the arbitrators to issue an order for termination of the proceedings.

As part of this deal, Ghana has committed to "publicize at the international level the contents of" a June 2013 ruling of the Ghanaian Supreme Court overturning the lower court's detention of the Libertad.

While Argentina has acknowledged some reservations about the interpretation "of the rules applicable to this case", the government has confirmed that it will be sufficient satisfaction for its injury if the June 2013 judgment is publicized, along with a Ghanaian *aide memoire* summarizing that judgment.

The Ghanaian Supreme Court judgment can be found [here](#).

**Luke Eric Peterson is the Editor of [InvestmentArbitrationReporter.com](#) an online news and analysis service focused on investor-state arbitration and policy. He has been a contributor to Kluwer's Arbitration Blog since its launch.**

---

*To make sure you do not miss out on regular updates from the Kluwer Arbitration Blog, please subscribe [here](#). To submit a proposal for a blog post, please consult our [Editorial Guidelines](#).*

### **Profile Navigator and Relationship Indicator**

Includes 7,300+ profiles of arbitrators, expert witnesses, counsels & 13,500+ relationships to uncover potential conflicts of interest.

Learn how **Kluwer Arbitration** can support you.

# Learn more about the newly-updated *Profile Navigator and Relationship Indicator*



This entry was posted on Saturday, September 28th, 2013 at 10:30 pm and is filed under [Uncategorized](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can skip to the end and leave a response. Pinging is currently not allowed.