UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CRYSTALLEX INTERNATIONAL CORPORATION,

Plaintiff,

v. CASE NO: 1:17-cm-0205-VEC

BOLIVARIAN REPUBLIC OF VENEZUELA,

Defendant,

and

THE MINISTRY OF DEFENSE OF THE BOLIVARIAN REPUBLIC OF VENEZUELA

Intervenor.
_____/

MOTION TO INTERVENE AND QUASH WRIT OF EXECUTION

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MOTION TO INTERVENE AND QUASH WRIT OF EXECUTION

Intervenor, the Ministry of Defense of the Bolivarian Republic of Venezuela (the "Ministry"), hereby files this Motion to Intervene and Quash the Writ of Execution issued by this Court on July 26, 2017 (the "Writ") in favor of Plaintiff, Crystallex International Corporation ("Crystallex"), and in support states:

INTRODUCTION

Twenty-four years after the creation of the Trust Agreement, and fifteen years after the Southern District of Mississippi ruled that the Trust Agreement holds funds in trust, Crystallex would have this Court decide that the Trust is not a trust. Crystallex would also have this Court believe many things the documents do not say, each of which is a grounds for quashing the Writ:

- The Ministry's obligation to pay is not an interest subject to attachment. *See Ladjevardian v. The Republic of Argentina*, No. 04-CV-2710 (TPG), 2016 WL 3039189, at *2 (S.D.N.Y. May 26, 2016).

- Because the Trust exists, the Ministry has no title in the funds and cannot "use" them sufficient to make them immune from execution. *See id*.

- Crystallex has a judgment against the Bolivarian Republic of Venezuela (the "Republic"), not the Ministry, and Crystallex has provided no grounds to undo the separation between the two. *See EM Ltd. v. Banco Central de la República Argentina*, 800 F.3d 78, 99 (2d Cir. 2015).

- The Ministry cannot "use" funds that are frozen by an injunction. *EM Ltd. v. The Republic of Argentina*, 2010 WL 2399560, at *4 (S.D.N.Y. June 11, 2010).

- As the Trust says, the purpose of the funds is a "military activity," meaning the funds are immune. *See* 28 U.S.C. § 1611.

- There is already an injunction over these funds in Mississippi. *See* Ex. A.

- The judgment does not include Ministry. The Writ cannot either. *Bayer & Willis Inc. v. Republic of Gambia*, 283 F. Supp. 2d 1, 7 (D.D.C. 2003).[1]

[1] For the avoidance of doubt, the Ministry is only intervening to protect whatever rights and obligations under the Trust. This is not a waiver of service, immunity from jurisdiction or attachment, or a waiver of any other right.

FACTUAL AND PROCEDURAL BACKGROUND

The Underlying Contract with Ingalls and the Trust with BNYM

1. In 1997, the Ministry of Finance of the Republic of Venezuela (now the "Bolivarian Republic of Venezuela," and in all cases the "Republic"), issued "global notes" in the amount of 315,000,000 USD. The proceeds of the issuance were placed in an account with Bank of New York Mellon ("BNYM"). From their issuance, the proceeds had a specific purpose. To receive the bond proceeds, the Republic created a trust with BNYM as trustee (the "Trust"). This arrangement was memorialized in an agreement (the "Trust Agreement"), a copy of which is attached as Exhibit A. The only parties to the Trust Agreement are the Republic and BNYM.

2. The Trust Agreements states it has been funded with 315,000,000 USD for the purpose of paying for the Republic's obligations in a potential contract (the "Contract") with Litton Ingalls Shipbuilding, Inc. (now "Huntington Ingalls" and referenced herein as "Ingalls"). The Trust Agreement contains a number of defining characteristics.

3. The Trust Agreement is not classified as "Secret," but the Contract is. The Trust Agreement lists members of the Venezuelan Armed Forces as authorized agents of the trust created by the Trust Agreement, and only a member of the Venezuelan Armed Forces or Ministry of Defense can authorize payments from the trust for items related to the Contract.

4. Both Ingalls and the Ministry of Defense executed the Contract, and the Contract contains a cover page that representatives of both undoubtedly read. The cover page states that the Contract is "Secret" and that any disclosure of the Contract is subject to compliance with security protocols within the Venezuelan Armed Forces. *See* Contract Cover Page, a true and correct copy with its translation attached as Exhibit B.

5. Although counsel does not have the authority to release the terms of the Contract, suffice to say that there is little doubt that the Contract was for the purpose of repair of two war frigates and their related elements, such as helicopters, anti-aircraft missiles, and similar items.

The Underlying Dispute Between Ingalls and the Ministry

6. In 2002, Ingalls decided to sue the Ministry for claims arising under the Contract in a case styled *Northrup Grumman Ship Systems, Inc. v. Ministry of Defense of the Republic of Venezuela*, Case No. 02-CV-00785 (S.D. Miss.) (the "Mississippi Proceedings"). Ingalls filed suit in the Southern District of Mississippi (the "Mississippi Court"), and it requested a preliminary injunction directed at BNYM, not the Ministry. There is no mention of the Republic as a party to the Mississippi Proceedings.

7. A temporary injunction issued on November 6, 2002, which is attached to this Motion as Exhibit C (the "Injunction"). The Injunction ordered that BNYM "is hereby restrained from transferring, or allowing to be transferred, any funds from the Republic of Venezuela Trust Account No. XXXX14 for any purpose other than to pay Ingalls in accordance with the trust agreement…"

8. The Ministry was not present at the hearing on the Injunction and BNYM took no position on the merits of the request, other than not to oppose it. The Injunction found that BNYM may suffer limited harm and ordered Ingalls to post a small bond. The Order's directions are to Ingalls and BNYM. The Order consistently refers to the underlying asset as funds in a "trust account."

9. The parties were ordered to arbitration in December 2010, and an award is expected no later than December 5, 2017. In the meantime, the Injunction remains in full force and effect. The Ministry does not believe the Injunction is warranted, a position it has asserted in the arbitration. Crystallex has not intervened in the Mississippi Proceedings.

The Underlying Dispute with Crystallex

10. Based on a completely separate dispute unrelated to Ingalls, Crystallex International Corporation ("Crystallex" or "Petitioner") initiated arbitration proceedings against Venezuela in 2011. An arbitral tribunal issued an award against Venezuela in 2016, which the District Court for the District of Columbia (the "D.C. Court") confirmed on March 25, 2017, in a case styled *Crystallex Int'l Corp. v. Bolivarian Republic of Venezuela*, Case No. 16-CV-661, DE 31 (D.D.C.).

11. Thereafter, Crystallex moved the D.C. Court for an order "pursuant to 28 U.S.C. § 1610(c), determining that a reasonable period of time has elapsed since this Court's March 25, 2017 Order" and "permitting, for good cause, Crystallex to register the Court's Judgment in other judicial districts of the United States ... pursuant to 28 U.S.C. § 1963." (Case No. 16-CV-661, DE 36, p. 1).

12. Notably, the Court declined to adjudicate whether certain assets would ultimately be attachable by Crystallex. As the DC Court noted, "[the] Court's determination that good cause exists to register the judgment has no bearing on whether any assets will ultimately be 'leviable' to satisfy [a] judgment." (Case No. 16-CV-661, DE 39, p. 4). Judgement was entered against Venezuela on April 7, 2017. (Case No. 16-CV-661, DE 33).

13. This Court registered the Judgment on June 15, 2017 in a case styled *Crystallex Int'l Corp. v. Bolivarian Republic of Venezuela*, Case No. 17-mc-205, DE 1 (S.D.N.Y.). Thereafter, Crystallex filed the instant *ex parte* application to attach the funds currently held by BNYM pursuant to the Trust Agreement. Despite the Injunction, which forbids BNYM from transferring funds out of the trust account for any purpose other than to pay Ingalls, Crystallex

urged this Court to keep its application under seal out of an ostensible fear that Venezuela would remove the funds from the trust. (Case No. 17-MC-205, DE 12-2.)

14. Crystallex's *ex parte* application was granted on July 25, 2017, and the Writ was issued the next day. (Case No. 17-MC-205, DE 12-4.)

15. Crystallex then filed a turnover petition against BNYM in this Court directing BNYM to turn over the funds held in trust in partial satisfaction of its Judgment against the Republic. The Republic is challenging the turnover petition contemporaneously with this Motion.

16. For the reasons explained below, the Writ is due to be quashed.

ARGUMENT AND MEMORANDUM OF LAW

I. The Ministry has met all of the criteria to intervene in this action

Federal Rule Civil Procedure 24 governs intervention in a federal action. Rule 24(a) expressly provides:

> On timely motion, the court must permit anyone to intervene who...claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

Under Rule 24, a putative intervenor of right must establish four criteria: "the applicant must (1) file a timely motion; (2) claim an interest relating to the property or transaction that is the subject of the action; (3) be so situated that without intervention the disposition of the action may impair that interest; and (4) show that the interest is not already adequately represented by existing parties." *Butler, Fitzgerald & Potter v. Sequa Corp.*, 250 F.3d 171, 176 (2d Cir. 2001). "Rule 24(a) should be liberally interpreted." *Twentieth Century-Fox Film Corp. v. Jenkins*, 7 F.R.D. 197, 199 (S.D.N.Y. 1947) (citations omitted).

The Motion satisfies all four criteria. This motion is timely, coming early in the case before any other party has filed a response. The Ministry also has a strong interest in the transaction at issue. If the Writ stands and the Trust is invaded, the Ministry will not have the funds to pay any amounts due under the Contract, should such a scenario arise. Although the interest identified for the purposes of intervention is apparent, it is not the kind of interest that is subject to execution or attachment, as discussed below. Finally, the Ministry's interest in this action cannot be adequately represented by Respondent. As a sovereign entity and authorized agent to issue instructions under the Trust, the Ministry can raise arguments unavailable to Respondent, and possesses information that Respondent does not. Having met all four elements, this Court should grant the Ministry's motion to intervene.

In addition, Crystallex can hardly oppose the Ministry's request to intervene. The Ministry is not the judgment debtor—the judgment issued by the D.C. Court clearly does not name the Ministry. But Crystallex has apparently asserted that the Ministry is the judgment debtor through the text of the Writ. If Crystallex wants to argue that the Ministry is the judgment debtor, then it certainly has no grounds to oppose the Ministry's motion to intervene.

II. Crystallex failed to satisfy the requirements of CPLR 5230 because the Republic lacks an interest in the property sought in the Writ

The Writ should be quashed because the Ministry does not have an "interest" in the property that can be attached, as CPLR 5230 interprets that term. According to the Trust Agreement, the Trust assets are to be used to satisfy the Ministry's contractual obligation to Ingalls, with a contingent residual interest to the Ministry of Finance, which is a separate entity from the Republic. The Ministry possesses only an obligation to pay Ingalls under the Trust Agreement, and Crystallex cannot properly list any interest the Ministry may have as part of the Writ. This Court should therefore quash the writ as it relates to the Ministry.

Listing the Ministry of Finance on the Writ does not create an interest in the Republic that Crystallex can attach. While there is not an extensive amount of jurisprudence related to the attachment of sovereign assets according to CPLR, the Court can look to CPLR 5225 as an interpretive aid. The companion statute of CPLR 5225 contains one of the same requirements present in CPLR 5230, *i.e.*, that the judgment debtor have an "interest" in the property upon which the judgment creditor seeks execution. In the strikingly similar case of *Ladjevardian v. The Republic of Argentina*, No. 04-CV-2710 (TPG), 2016 WL 3039189, at *2 (S.D.N.Y. May 26, 2016), *aff'd sub nom. Mohammad Ladjevardian, Laina Corp. v. Republic of Argentina*, 663 F. App'x 77 (2d Cir. 2016), this Court found that the judgment debtor lacked an interest in the corpus of a trust used to satisfy its contractual obligations. In *Ladjevardian*, the government of Argentina defaulted on a sizeable bond issue, and reached a settlement agreement with its bondholders. This settlement was to be funded by a separate series of bonds, the proceeds of which were committed to a trust with (coincidentally) BNYM. A bulk of the trust assets were to be used to satisfy Argentina's obligations under its settlement agreement, while any remainder was to be remitted to the Central Bank of Argentina. A group of holdout bondholders had declined to settle, and pursued Argentina through a turnover action aimed at seizing the corpus of the trust. This Court denied their turnover petition, finding that neither part of the applicable analysis was satisfied.

The Court found that Argentina did not have any interest in the trust assets. Because the entirety of the assets went either toward Argentina's settlement obligations or to the Central Bank, none of it remained for the Republic itself. *See id.* at *3. Accordingly, the first part of the analysis was not satisfied. The petitioners argued that Argentina was trying to deceive its creditors by naming the Central Bank as a potential beneficiary, and that the residue of the trust

would ultimately flow back to Argentina through the Central Bank in some form of benefit. The Court rejected this argument, citing the Second Circuit's decision in *EM Ltd. v. Banco Central de la República Argentina*, 800 F.3d 78, 99 (2d Cir. 2015), which held that a state was a presumptively separate entity from its instrumentalities, absent a strong showing of fraud or injustice.

The same analysis here yields the same result. The property at issue is a sum of funds held in trust with BNYM for the purpose of satisfying the Ministry's contractual obligations, with a contingent residual interest to the Ministry of Finance—an instrumentality of the Republic. Crystallex is a general unsecured creditor with a money judgment, while BNYM holds title to the Trust funds as trustee. By the very terms of the trust, its proceeds are to be paid to Ingalls (to the extent applicable under the Contract) while any surplus is to be remitted to the Ministry of Finance—a separate legal entity from the Republic. The Trust Agreement contains no provisions giving the Republic discretion to revoke the trust or redirect any payment. For the same reasons elaborated in *Ladjevardian*, the Republic has no interest in the Trust assets, it has no right to possess the Trust assets, and Crystallex lacks superior legal interest to BNYM in the Trust Assets. Without an interest in the property, a core requirement of CPLR 5230 is unsatisfied, and the Writ should consequently be quashed.

III. Crystallex has failed to establish a right to execution under FSIA § 1610, and the assets it seeks to obtain are immune from execution under § 1611

The assets Crystallex is seeking to wrest from BNYM are immune from attachment by the unequivocal provisions of the Foreign Sovereign Immunities Act ("FSIA"). The FSIA provides "the sole basis for obtaining jurisdiction over a foreign state in [federal] courts." *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 434, 109 S. Ct. 683, 688, 102 L. Ed. 2d 818 (1989). The same applies to jurisdiction over agencies and instrumentalities of

a foreign state, such as the Ministry. *See Simon v. Republic of Hungary*, 812 F.3d 127, 135 (D.C. Cir. 2016) ("In the United States, the sole avenue for a court to obtain jurisdiction over claims against a foreign state or its agencies and instrumentalities is through the FSIA."). Under § 1609 of the FSIA, "[s]ubject to existing international agreements...the property in the United States of a foreign state shall be immune from attachment arrest and execution except as provided in sections 1610 and 1611 of this chapter." *See also NML Capital, Ltd. v. Republic of Argentina*, 699 F.3d 246, 262 (2d Cir. 2012) (holding that courts are barred from granting any relief that they could not provide by attachment under the FSIA). When construing claims pursuant to the FSIA, "the district court must look at the substance of the allegations to determine whether one of the exceptions to the FSIA's general exclusion of jurisdiction over foreign sovereigns applies." *Robinson v. Gov't of Malaysia*, 269 F.3d 133, 140 (2d Cir. 2001) (quotation omitted). When a party makes a showing that it is a foreign state or instrumentality, the opposing party bears the burden of presenting evidence that demonstrates why an exception to immunity should apply. *See Freund*, 592 F Supp. 2d at 552-53 (citing *Baglab Ltd. v. Johnson Matthey Bankers Ltd.*, 665 F. Supp. 289, 293-94 (S.D.N.Y. 1987)).

By invoking the FSIA in its application, it would seem that Crystallex concedes that both the Republic and the Ministry are "foreign states" (or an instrumentality thereof) within the meaning of the FSIA. *See generally* ECF No. 13. Consequently, the property of the Republic and the Ministry are presumptively immune from attachment under the plain language of § 1609. While this presumption of immunity is a rebuttable one, Crystallex does precious little to allege that the assets sought are excepted from that immunity.

A. The Trust proceeds are not property used for commercial activity in the United States

Crystallex might try to proceed under the commercial activity exception of § 1610(a), which excludes property "used for a commercial activity in the United States." This argument, however, would be entirely unavailing; Crystallex cannot show the Trust Proceeds are to be "used" by the Republic or the Ministry, and Crystallex cannot prove the purpose of the Trust Proceeds is a "commercial activity."

1. *Crystallex cannot plead any of the statutory grounds to show the Trust assets are not immune from attachment under the commercial activity exception of the FSIA*

As to the first element, the "use" of the property, this Court has previously held that a sovereign's trust assets designated to satisfy a contractual obligation do not constitute property "used for a commercial activity" within the meaning of § 1610(a). *See Ladjevardian*, 2016 WL 3039189, at *5. As this Court found, "property held by a third party solely for the purpose of later transfer to a foreign state is not being 'used' by the state." *Ibid*. (citing *Aurelius Capital Partners, LP v. Republic of Argentina*, 584 F.3d 120, 131 (2d Cir. 2009)). "The Republic does not have the 'opportunity to use' property that is not 'in the hands of the Republic,' and the FSIA therefore precludes execution on any proceeds held by BNYM." *Ibid*.

The prior decisions of this Court in relation to the use of trust assets should apply to this case. The Trust Proceeds are on account with BNYM, and BNYM's trust department is the expressly designated trustee of the funds. The account statement has the words "trust account" prominently displayed at the top right-hand corner. The trust contains all the requirements for a valid trust under New York law. *See In re Carpenter*, 566 B.R. 340, 349 (S.D.N.Y. 2017) ("Under New York law, the requirements of a trust are (1) a designated beneficiary, (2) a designated trustee, who is not the same person as the beneficiary, (3) a clearly identifiable *res*,

and (4) the delivery of the *res* by the settlor to the trustee with the intent of vesting legal title in the trustee.") (quotation omitted). The trustee is not the same as the beneficiary, and it is sufficiently definite in regards to the trust corpus (the proceeds of the note issuance). As such, the Ministry has no ownership of the funds such that it can use them, making those funds immune under the FSIA. Any writ purporting to assert claims to the Trust assets must therefore be quashed.

2. *Crystallex's half-hearted attempt to overcome the presumption of independent status between the Ministry and the Republic must fail*

Further, there is no argument that the right of the Ministry of Defense to act as authorized agent in relation to the Trust Proceeds somehow changes the result. For the purposes of the FSIA, the Republic and the Ministry are separate entities entitled to their own immunities. Under the FSIA, a state's, agencies, and instrumentalities "are to be accorded a presumption of independent status" from the state itself. *First Nat. City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 611, 103 S. Ct. 2591, 2592 (1983). As held repeatedly through this circuit, this is a "strong presumption." *EM Ltd.*, 800 F.3d at 90 (citing *De Letelier v. Republic of Chile*, 748 F.2d 790, 794 (2d Cir. 1984)). Both Supreme Court precedent "and the FSIA legislative history caution against too easily overcoming th[is] presumption of separateness." *De Letelier*, 748 F.2d at 795. This presumption can only be overcome when an instrumentality's separateness "is interposed to defeat legislative policies" or where it would otherwise "work fraud or injustice." *Id.* at 794 (citing *First Nat. City Bank*, 103 S. Ct. at 2601). The plaintiff naturally has the burden of proving that a cause for separation does not exist. *See Seijas v. Republic of Argentina*, 502 F. App'x 19, 21 (2d Cir. 2012) (citing *De Letelier*, 748 F.2d at 795).

Governmental ministries are entitled to the presumption of separateness in the same manner as state-owned corporate entities. *See Wye Oak Tech., Inc. v. Republic of Iraq*, 72 F. Supp. 3d 356, 360 (D.D.C. 2014) ("[T]he Ministry [of Defense] is presumed to be a legally separate entity from Iraq for purposes of determining liability in this case."). The presumption can only be overcome when the plaintiff shows that the instrumentality is "so extensively controlled by its owner that a relationship of principal and agent is created...or when 'broader equitable principle[s]' dictate that separate treatment 'would work fraud or injustice.'" *Id.* (quoting *GSS Grp. Ltd. v. Nat'l Port Authority of Liberia*, 680 F.3d 598, 814 (D.C. Cir. 2016)). "In general, the test for determining when the presumption of separateness will give way is not a mechanical formula; instead, it involves an equitable determination in light of the facts presented by the particular case." *Id*. at 360 (D.D.C. 2014) (quotations omitted).

With precious little support, Crystallex contends that the Court should ignore this presumption of separateness based on the theory that the Ministry's "commercial activities" (which they are not) should be imputed to the Republic not only for liability purposes, but also for purposes of execution. This argument is untenable. Crystallex cites a handful of cases that ostensibly stand for the proposition that the commercial activities of the Republic's ministries may be imputed to the Republic itself. *See Gomes v. ANGOP, Angola Press Agency*, 2012 WL 3637453, at *11 (E.D.N.Y. Aug. 22, 2012), *aff'd sub nom. Gomes v. ANGOP*, 541 F. App'x 141 (2d Cir. 2013); *Servaas Inc. v. Republic of Iraq*, 653 F. App'x 22, 25 (2d Cir. 2011), *as amended* (Feb. 16, 2011); *Garb v. Republic of Poland*, 440 F.3d 579, 595 & n.19 (2d Cir. 2006). None of these cases, however, deal with the execution of a sovereign's assets, or with service of process in such proceedings. Rather, each of these cases concerns the liability of a sovereign in the first instance. Furthermore, it bears noting that in each of these cases the court gave considerable

discussion and analysis on the issue of imputation before reaching their decision. This is in keeping with the "strong presumption" of separateness that the Second Circuit affords foreign states and their agencies and instrumentalities. *EM Ltd.*, 800 F.3d at 90. If this presumption is to be a weighty one, the overcoming it certainly requires more proof than Crystallex's conclusory allegation that the Ministries of Defense and Finance are "primarily governmental" such that imputation is proper.

3. *The Injunction further bars any attempt to claim that the Ministry can "use" the Trust proceeds*

In addition, Crystallex faces a further issue regarding any "use" of the Trust Proceeds. The Injunction effectively freezes the Trust assets in place, and under similar circumstances, this Court reasoned that such property does not fall within the ambit of § 1610(a). In *EM Ltd. v. The Republic of Argentina*, 2010 WL 2399560, at *4 (S.D.N.Y. June 11, 2010), this court reasoned that frozen funds cannot be used by a sovereign are not "used for a commercial activity:"

> to hold here that frozen assets were "used for a commercial activity" for FSIA purposes would be inconsistent with the Second Circuit's recent holding in Aurelius, 584 F.3d at 130–31. There, bank deposits and securities were frozen by order of this court at the moment they were transferred to government control. The Second Circuit reversed this court's confirmation of the attachment orders, holding that because the assets were frozen at the moment of transfer, "neither the [Argentine Social Security] Administration nor the Republic had the opportunity to use the funds for any commercial activity whatsoever." Id. at 131. Likewise here, because the FRBNY funds have been frozen for the past four years, neither BCRA nor the Republic has had the opportunity to use the funds for commercial activity throughout that time, including at or around the period of the instant attachments in January and early February 2010.

The same result should apply here.

The Trust assets have been frozen, for all intents and purposes. The Injunction expressly commands that BNYM "is hereby restrained from transferring, or allowing to be transferred, any funds from the Republic...for any purpose other than to pay [Ingalls] in accordance with the trust

agreement…" Ex. A, p. 4. As long as the Trust remains subject to the Injunction, neither the Republic nor the Ministry have any opportunity to use the funds, and the funds are immune.

4. *In any event, the Trust assets are of a military character, making them immune*

Furthermore, the assets sought by Crystallex are specifically entitled to immunity under § 1611, which provides in relevant part:

> (b) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution, if--
>
> (2) the property is, or is intended to be, used in connection with a military activity and
>
> (A) is of a military character, or
>
> (B) is under the control of a military authority or defense agency.

The scope of this section is succinctly laid out in the decision in *All Am. Trading Corp. v. Cuartel Gen. Fuerza Aerea Guardia Nacional De Nicaragua*, 818 F. Supp. 1552 (S.D. Fla. 1993). That case involved a pair of airplanes owned by the Ecuadorian Air Force, which were flown to Florida for repair and maintenance work by the plaintiff. *Id.* at 1553. A dispute ultimately arose regarding payment, and the plaintiff prevailed in the ensuing suit, and attempted to execute on the defendant's airplanes which were still in its custody. *Ibid.* The defendant raised § 1611(b)(2) as a defense, as the planes were used to transport military personnel and operated under military command. *Id.* at 1554-55. The plaintiff argued that § 1611(b)(2) was inapplicable because the planes were, in essence, passenger jets and not combat aircraft. *Id.* at 1555. The court ruled for the defendant, finding that the property in question satisfied both prongs of § 1611(b)(2). The planes were found to have a military character because they were vehicles used to transport military personnel, which comported both with the statute's language and the legislative history. *All Am. Trading Corp.*, 818 F. Supp. at 1555-56. The planes also satisfied the

second prong of § 1611(b)(2) because they were "intended to protect other military property and is essential to military operations." *Id.* at 1555. It did not matter that the assets were currently in custody of the plaintiff, or that they were not themselves combat vehicles. *Id.* at 1555-56. This decision was cited extensively in the Northern District of California's decision that the Argentine president's airplane was immune from execution. *See generally Colella v. Republic of Argentina*, No. C 07-80084 WHA, 2007 WL 1545204, at *8 (N.D. Cal. May 29, 2007).

For the same reasons, the Trust assets are immune from execution under § 1611(b)(2). By the very language of the Trust Agreement, the Trust funds are "used in connection with a military activity," *i.e.*, the purchase of various upgrades and components to warships. *See* Ex. B, pp. 2, 4-5 (ordering payment to Ingalls for its work under the contract). They are, for the same reason, "of a military character." Furthermore, the funds are "under the control of a military authority;" the Trust Agreement contains express language giving the Ministry's personnel the authority to approve certain disbursements. *See id.*, pp. 2, 4-5. It makes no difference that the Trust funds—like the planes in *All Am. Trading Corp.*—might conceivably be used for non-military purposes. The Trust assets have, at all times, been assets intended for the procurement of military hardware aboard military vessels, subject to the command and oversight of military personnel. Accordingly, § 1611(b)(2) applies and the Trust assets are exempt from execution.

The decisions in *Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607, 112 S. Ct. 2160, 119 L. Ed. 2d 394 (1992) and *United Euram Corp. v. Union of Soviet Socialist Republics*, 461 F. Supp. 609, 611 (S.D.N.Y. 1978) are inapposite for several reasons. First, the cases concerned themselves with a sovereign's immunity from liability; *not* the separate issue of the immunity of that sovereign's assets from execution. The concepts travel under entirely different provisions of the FSIA. Furthermore, the "commercial activity" being analyzed in each case was not a defense

contract (or trusts established for payment of the same). Notably, neither case makes mention of the military property immunity in § 1611(b)(2). The court in *NML Capital*, 680 F.3d 254 likewise did not pass on a § 1611 issue. Without a case dealing with the specific exemption at issue, Crystallex's arguments fall flat.

IV. Crystallex impermissibly sought the Writ for the sole purpose of circumventing an Injunction issued by a federal court that has already exercised jurisdiction over the matter

Crystallex's attempt to execute on the Trust through this Court is a blatant attempt to usurp the jurisdiction of a sister federal court. Crystallex acknowledges that the Trust is subject to a temporary injunction (essentially a freeze order) by the Mississippi Court, which Ingalls is currently attempting to finalize into a permanent injunction. In simplest terms, Crystallex is asking this Court to ignore the findings of a sister court and direct BNYM to execute on funds in violation of the Injunction. This is plainly impermissible under the barest notions of full faith and credit.

The Constitution requires that judicial proceedings in any State be given full faith and credit in the courts of every other State. U.S. Const. art. IV, § 1. This "full faith and credit" explicitly extends to federal courts under 28 U.S.C. § 1738, and indeed "the judgments of the courts of the United States have invariably been recognized as upon the same footing, so far as concerns the obligation created by them, with domestic judgments of the states, wherever rendered and wherever sought to be enforced." *Embry v. Palmer*, 107 U.S. 3, 10, 2 S. Ct. 25, 31, 27 L. Ed. 346 (1883). "[C]ourts in the United States, both state and federal, must recognize and give effect to valid judgments rendered by other courts in the United States, including state and federal courts." *Employers Reinsurance Corp. v. Mid-Continent Cas. Co.*, 358 F.3d 757, 765 (10th Cir. 2004).

The Mississippi Court exercised jurisdiction over the Ministry, BNYM, and the Trust some fifteen years ago. On November 6, 2002, the Mississippi Court issued a temporary injunction freezing the assets in the Trust, and in the process made a number of findings that reaffirmed the existence of the Trust and that the Injunction would be in force to protect the rights related to the Contract, nothing more. While the Ministry disagrees with the need for the Injunction, it respects the Mississippi Court's findings, which is far more than can be said of Crystallex.

In spite of the Injunction, Crystallex asks this Court to set aside the reasoning of the Mississippi Court and empty the Trust, which would "frustrate the ends of justice and cause [Ingalls] irreparable harm," as expressly found in the Injunction. *Id.* at p. 3. What Crystallex proposes goes against every notion of co-equality among federal district courts, and violates both statute and precedent that assures full faith and credit among United States courts. There is simply no basis for this course of action. If Crystallex takes issue with the Injunction, it can intervene and challenge it in the Mississippi Proceedings. That it has not done so is telling. Accordingly, the Court should refuse to entertain Crystallex's attempted end-around the Mississippi Court and quash the Writ.

V. Given that the subject assets were frozen, and considering the extremely public nature of the Ingalls litigation, it was improper and unnecessary for Crystallex to seek a writ through *ex parte* proceedings under seal

Under the circumstances of this case, it is improper for Crystallex to have proceeded *ex parte* to obtain the Writ. Crystallex claims that it was justified in procuring the Writ through *ex parte* proceedings and filings under seal because "[i]f Venezuela learned about Crystallex's intent to execute against the assets currently in BNYM's possession in the United States, it is extremely likely that Venezuela would take immediate steps to encumber or assign its interest therein." ECF No. 13, p. 13. This argument is without merit.

As noted above, the Trust and its proceeds are subject to the Injunction in the Mississippi Proceedings. This injunction prevents any movement of the Trust assets except to pay Ingalls, which effectively freezes the money in the hands of BNYM as the trustee. The Republic has, at all times, respected both the spirit and the letter of the Trust, and the Mississippi Court has issued no finding to the contrary. Furthermore, nothing at all in the Trust Agreement permits the Ministry to transfer any interest in the Trust property, and nothing empowers the Trustee to accept such an appointment. Indeed, for the reasons stated in Section II, there is no interest to encumber or assign.

Furthermore, Crystallex does not need the guise of *ex parte* proceedings in order to avoid surprise. The Ingalls litigation has become a closely watched case in the legal world, with no shortage of publicity.[2] In addition, Crystallex has up-to-the-minute access to any paper filed in relation to the Trust Agreement. Crystallex has retained the law firm of Hughes Hubbard & Reed, LLP ("Hughes Hubbard") to represent it in the D.C. Court and the appeal filed by the Republic.[3] Hughes Hubbard also represents Huntington Ingalls in the arbitration proceedings brought by Huntington Ingalls against the Ministry of Defense. The Trust Agreement and the rights to the money from it are a contested issue in the arbitration, and Crystallex therefore has access through its attorneys to everything filed in the arbitration that could affect the Trust Agreement. To the extent it needs a second layer of notice,[4] Crystallex has public access to any

[2] *See, e.g.* Sebastian Perry, "Rio Panel Hears Frigates Claim," Global Arbitration Review, Oct. 1, 2014. A true and correct copy is attached as Exhibit C.

[3] Indeed, at the time of filing the *ex parte* motion, the Hughes Hubbard partner on the brief in the D.C. Court and subsequent appeal on behalf of Crystallex was Alex Yanos, the same person who is also lead counsel in the arbitration for Ingalls. According to press reports, Mr. Yanos has moved to Alston & Bird. There is no indication that the move would have any impact on the concurrent representation of Crystallex and Ingalls.

[4] Due to the fact that Ingalls and Crystallex have publicly taken divergent positions regarding the same money, one can only assume that the proper conflict of interest waivers are in place to

paper filed in the Mississippi Proceedings. And if this dual notice was insufficient, Crystallex could attempt to intervene in the Mississippi Proceedings to safeguard its nonexistent interest in the Trust, subject to Crystallex meeting the proper grounds for intervention.

In other words, Crystallex attempts to utilize *ex parte* proceedings based on a vague (and fictitious) fear of events that simply cannot happen. This does not constitute a "good and sufficient" reason to proceed *ex parte* in this case under Local Rule 6.1(d). Accordingly, Applicant should be denied any further access to *ex parte* relief.

VI. The form of the writ is defective because it fails to satisfy the FSIA and seeks assets that are not subject to Crystallex's judgment against the Republic

The Writ contains a number of errors that further impact its existence. First, the Writ does not reflect the judgment that Crystallex received. The judgment ordered in the D.C. Court lists the defendant as the "Bolivarian Republic of Venezuela." It does not list any ministry or any other agency or instrumentality. Instead, the Writ adds key language, adding after "Bolivarian Republic of Venezuela" the following: "(and its organs or subdivisions, including but not limited to, the Venezuelan Ministries of Defense and Finance), including, but not limited to, its interest in funds on deposit at the Bank of New York Mellon[.]" Crystallex did not sue the Ministry of Defense or the Ministry of Finance, and it did not obtain a judgment against either. For Crystallex to add this notation after obtaining a judgment in the DC Court but only in front of this Court indicates that Crystallex knows its judgment does not extend to the Ministry of Defense or the Ministry of Finance—it is merely trying to add the language in an unobtrusive, but wrong, way.

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ensure that Hughes Hubbard (with or without Alston & Bird, as the case may be) can be counsel to both Ingalls and Crystallex and simultaneously share information about the arbitration to both of its clients.

The Writ is also impermissibly broad because it lacks the specificity that the FSIA requires, and because it was not issued pursuant to the appropriate provisions of the statute. While Crystallex has a judgment against the Republic, it has nothing at all against the Ministry (or, for that matter, against the Ministry of Finance). Nonetheless, it is attempting to execute on property that belongs to the Ministry, even though the Ministry has not been accorded any notice. This is simply not permitted under the FSIA.

Put simply, Crystallex is attempting to satisfy a judgment against the Republic by executing on an interest in the Trust that belongs to the Ministry of Defense. As discussed at length in Section III.A.2 above, this is simply impermissible because the Republic and the Ministry (and their assets) are entitled to a presumption of separateness. *See generally, EM Ltd.*, 800 F.3d at 90; *De Letelier*, 748 F.2d at 794. Furthermore, the FSIA does not permit such practice without a very specific process which was not followed here. At the outset, "the U.S. Supreme Court has quoted the legislative history of FSIA as stating that '[s]ection 1610(b) will not permit execution against the property of one agency or instrumentality to satisfy judgment against another, unrelated agency or instrumentality.'" *Bayer & Willis Inc. v. Republic of Gambia*, 283 F. Supp. 2d 1, 7 (D.D.C. 2003) (quoting *First Nat. City Bank*, 462 U.S. at 627, 103 S. Ct. at 2600).

In addition to Crystallex's failure to show any grounds to rebut the presumption of separateness, Crystallex has not satisfied the procedural requirements of the FSIA. Under such circumstances, it is not sufficient that Crystallex obtained a § 1610(c) determination as to the Republic. The FSIA requires that a § 1610(c) decision must be issued as to each specific asset sought for execution. *See Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, No. CIV.A. H-01-0634, 2002 WL 32107928, at *1 (S.D. Tex. Mar. 7, 2002)

("[Plaintiff] must identify with specificity the assets it seeks to execute upon so that the Court may determine whether an asset is immune from attachment under the FSIA.") (citing *Olympic Chartering S.A. v. Ministry of Industry & Trade of Jordan*, 134 F. Supp. 2d 528, 536 (S.D.N.Y. 2001)). The Seventh Circuit has held the same, reasoning that:

> A court cannot give a party a blank check when a foreign sovereign is involved; property belonging to the sovereign itself, or a different instrumentality, may still enjoy immunity while property of the instrumentality that is in the case may not. The only way the court can decide whether it is proper to issue the writ is if it knows which property is targeted.

Autotech Tech. LP v. Integral Research & Dev. Corp., 49 F.3d 737, 750 (7th Cir. 2007).

None of the appropriate FSIA findings have been made with respect to the Trust, or with respect to any of the other property or parties listed in the Writ. Specifically, the Writ seeks execution upon "the goods and chattels of [the Republic] (and its organs and subdivisions, including but not limited to the Venezuelan Ministries of Defense and Finance), including, but not limited to, its interest in funds on deposit at the Bank of New York Mellon…" By its own language, the Writ could be used to reach any property of any governmental entity of Venezuela within the jurisdiction of this Court. The FSIA and the applicable case law does not permit execution under this wide of a net. Neither the DC Court nor this Court have issued any decisions pursuant to § 1610(c) that state that the Trust is subject to execution, or that the Ministry's assets should be imputed to the Republic or *vice versa*. Accordingly, the Writ is due to be quashed.

CONCLUSION

The Writ is procedurally defective and seeks to execute on property that is immune to execution under the FISA. For these reasons, and those stated above, the Writ is due to be

quashed. The Republic respectfully requests that the Court enter an order quashing the Writ and granting any other such relief it deems fair and appropriate under the circumstances.

Respectfully Submitted,

/s/ Mauricio Gomm

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CERTIFICATE OF SERVICE

I hereby certify that on October 12, 2017, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF filing system, which shall serve copies of this filing on every party to this action. I further certify that I am unaware of any non-CM/ECF parties.

By: */s/ Mauricio Gomm*

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

NORTHROP GRUMMAN SHIP SYSTEMS, INC., formerly known as INGALLS SHIPBUILDING, INC. — PLAINTIFF

VERSUS — CIVIL ACTION NO. 1:02cv785GR

THE MINISTRY OF DEFENSE OF THE REPUBLIC OF VENEZUELA, and BANK OF NEW YORK — DEFENDANTS

ORDER

This cause is before the Court on the plaintiff's motion for a preliminary injunction filed pursuant to Rule 65(b) of the Federal Rules of Civil Procedure. After due consideration of the evidence of record, the applicable law, and being otherwise fully advised in the premises, the Court finds as follows.

Ingalls provided timely notice of the hearing on the motion for a preliminary injunction to defendant the Ministry of Defense of the Republic of Venezuela [the Ministry] and defendant the Bank of New York [BONY]. Proofs of service of these notices are on file with this Court. On October 30, 2002, BONY gave notice that it did not oppose the issuance of a preliminary injunction.

Plaintiff Northrop Grumman Ship Systems, Inc., f/k/a Ingalls Shipbuilding, Inc. [Ingalls] seeks a preliminary injunction enjoining BONY from releasing funds in a trust account to the Ministry. Ingalls fears that a withdrawal of these funds by the Ministry is imminent because the Ministry has refused to pay Ingalls, per contractual agreement, for work done to two naval frigates, and Ingalls has now filed suit. Ingalls contends that withdrawal of the trust account funds would place the funds beyond the reach of the Court and prevent any recovery on Ingalls'

claims against the Ministry, which would result in irreparable harm to Ingalls. Ingalls has brought suit against the defendants alleging claims for, among others, breach of contract against the Ministry and declaratory and injunctive relief against the Ministry and BONY.

The Court has jurisdiction of this case pursuant to 28 U.S.C. 1330(a). For the Court to grant a preliminary injunction, Ingalls must establish the following elements:

(1) a substantial likelihood of success on the merits;
(2) a substantial threat that the plaintiff will suffer irreparable injury if the injunction is denied;
(3) that the threatened injury to the plaintiff outweighs any damage that an injunction might cause the defendant; and
(4) that granting the injunction will not disserve the public interest.

Canal Auth. of Florida v. Callaway, 489 F.2d 567, 572 (5th Cir. 1974). A preliminary injunction is an extraordinary measure that will not be granted unless the movant clearly carries its burden of persuasion. *Id.* at 573. "The primary justification for applying this remedy is to preserve the court's ability to render a meaningful decision on the merits." *Id.* Moreover, the grant or denial of a motion for a preliminary injunction rests with the discretion of the Court. *Id.* at 572.

After reviewing the four factors, the Court finds that Ingalls has carried its heavy burden of persuasion. As an initial matter, the Court notes two conditions favoring the issuance of a preliminary injunction. First, maintaining the status quo favors a preliminary injunction and will lead to little inconvenience to the parties. *Deckert v. Independence Shares Corp.*, 311 U.S. 282, 290 (1940). Second, a preliminary injunction will aid in assuring a viable recovery should the need arise. *Id.* at 289. Equitable considerations strongly favor Ingalls' position.

Next, the Court will analyze the four factors Ingalls must prove to sustain its burden in attaining a preliminary injunction. First, Ingalls has substantial likelihood of success on the

merits, specifically regarding its claims for declaratory and injunctive relief by proving the formation of a trust and Ingalls entitlement to the funds thereof. The establishment of the trust account was a direct product of Ingalls' apparently legitimate concerns about receiving payment from the Ministry for the work on the two naval frigates contemplated by the parties. The contract provides:

> In order to make the payments planned under this Contract, the Ministry of Finance of the Republic of Venezuela shall issue Eurobonds for the sum of $315,000,000.00 in a private placement by ING Barings (US) Securities converted to US dollars. The results of the issue will be placed in a trust fund created by the Ministry of Finance and the Bank of New York, New York, United States of America with the sole and specific purpose of making the payments under the Contract.

(Aff. of Cecil L. Rector in Support of Plaintiff's Application for a Preliminary Injunction, Exh. A.) The Court finds that Ingalls is likely to prevail on the merits.

Second, there is the threat of irreparable injury if the injunction is denied. Given the Ministry's situation as a foreign sovereign and its apparent previous failure to offer payment for services performed or negotiate in bad faith, the Court finds there exists the distinct possibility that the Ministry might seek to withdraw the funds held in the trust fund and move them beyond this Court's reach. Such an act would hinder, if not entirely prevent, any meaningful recovery by Ingalls if it prevailed on the merits of its claims. Removal of the funds could frustrate the ends of justice and cause Ingalls irreparable harm. *See United States v. First City Bank*, 379 U.S. 378 (1965); *United States v. Jenkins*, 974 F.2d 32 (5th Cir. 1992).

Third, the threatened injury to the plaintiff outweighs any harm that the injunction might cause the defendants. Maintenance of the trust fund would only minimally hinder the defendants. Further, the account continues to draw interest. The disproportionate level of harm threatening

Ingalls compared to the potential harm facing the defendants is obvious. The Court finds that the threatened injury to Ingalls outweighs any harm an injunction poses to the defendants.

Fourth, granting the injunction will not disserve the public interest. To the contrary, the injunction, in this instance, would potentially secure the funds for the benefit of their intended purpose. The public interest in the appropriate recovery of a potentially aggrieved party is served rather than thwarted. The Court finds that granting the injunction will not disserve the public interest. Consequently, the Court finds that Ingalls' motion for a preliminary injunction should be granted and that BONY should be enjoined from allowing the removal or aiding in the transfer of funds from the trust account for any purpose other than to pay Ingalls for the work that it has performed under the Contract.

The Court is mindful that enjoining BONY from allowing or aiding the affirmative act of the Ministry removing funds is a remedy that could cause BONY some economic harm. The Court shall require Ingalls to maintain the $15,000 bond posted in accordance with the TRO.

It is therefore,

ORDERED that Northrop Grumman Ship Systems, Inc.'s Application for a Preliminary Injunction is GRANTED and BONY is hereby restrained from transferring, or allowing to be transferred, any funds from the Republic of Venezuela Trust Account No. 304314 for any purpose other than to pay Ingalls in accordance with the trust agreement, which payments may be made without further order from this Court. It is further,

ORDERED that BONY shall deliver to Northrop's counsel within ten (10) days an accounting of funds moved in and out of trust account no. 304314 and all documents related to any such transfers. It is further,

ORDERED that Ingalls shall maintain a bond in the amount of $15,000.

SO ORDERED this the 6th day of November, A.D., 2002.

UNITED STATES DISTRICT [redacted] JUDGE

EXHIBIT B

72

304314-8

6-17-97

TRUST AGREEMENT

between

The Republic of Venezuela

and

The Bank of New York, as Trustee

Dated as of June 17, 1997

This Trust Agreement (this "Agreement") dated as of June 17, 1997, between The Republic of Venezuela (the "Republic") and The Bank of New York, a New York banking corporation, as Trustee (the "Trustee").

W I T N E S S E T H :

WHEREAS, the Republic has issued $315,000,000 aggregate principal amount of its 9-1/8% Global Notes due 2007 (the "Notes"); and

WHEREAS, the Republic wishes to deposit the proceeds of the Notes in a trust with the Trustee in order to provide for the payment of the Republic's obligations under its proposed agreement with Litton Ingalls Shipbuilding, Inc. (the "Contract") as such payments become due; and

WHEREAS, the Trustee is willing to serve as trustee for such trust;

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 In addition to the definitions set forth above, as used herein the following terms shall have the following meanings:

"Authorized Agents" shall mean the Chief of the V.I.C., the Controller of the Armed Forces, and authorized representatives of the Ministry of Defense and Ministry of Finance.

"Authorized Investments" means the instruments described on the Schedule to the Management Agreement (as such Schedule may be amended from time to time) provided that such instruments are rated AA or better by Standard & Poor's Rating Services or A or better by Moody's Investors Service, Inc. or the equivalent by another credit rating agency nationally recognized in the United States.

"Chief of the V.I.C." means the Chief of the Venezuelan Inspection Committee as defined in the Contract.

"Company" for purposes of Exhibit B hereto, means Litton Ingalls Shipbuilding, Inc.

"Contractor" means Litton Ingalls Shipbuilding.

"Controller of the Armed Forces" means the General Comptroller of the National Armed Forces of the Republic.

"Disbursement Schedule" means the schedule of projected dates of payments for completion of phases of the Contract to be delivered by the Ministry of Defense to the Trustee and the Investment Manager following the execution of the Contract.

"Effective Date" means June 17, 1997.

"Initial Trust Investments" means the Temporary Trust Investments in which the Trust Deposit will be invested until receipt of the Disbursement Schedule.

"Investment Interest" means all interest or other investment income earned on all Trust Funds.

"Investment Manager" means The Bank of New York, Institutional Investment Management-Short Term Money Management Group.

"Management Agreement" means the Short Term Money Management Agreement dated as of June 17, 1997 between the Republic and the Investment Manager attached hereto as Exhibit A, as such Management Agreement may be amended from time to time.

"Ministry of Defense" means the Ministry of Defense of the Republic.

"Ministry of Finance" means the Ministry of Finance of the Republic.

"Person" means an individual, a corporation, a company, a voluntary association, a partnership, a trust, an unincorporated organization or a government or any agency, instrumentality or political subdivision thereof.

"Schedule" means Schedule #1 to the Management Agreement.

"Subsequent Trust Investments" means the Authorized Investments in which the Trust Funds will be invested following receipt of the Disbursement Schedule having maturities such that the Trustee can collect the proceeds thereof and make the next payment due under the Contract in a timely manner.

"Temporary Trust Investments" means the investments made by the Investment Manager on a temporary basis comprised of Authorized Investments.

"Trust Account" means the Trust Account established by the Trustee pursuant to Section 2.3 hereof.

"Trust Deposit" means the sum of $311,015,250 transferred by the Republic to the Trustee concurrently herewith.

"Trust Funds" means the amount of all monies and investments on deposit in the Trust Accounts (including the Trust Deposit, the Trust Investments and Investment Interest).

"Trust Investments" means the Initial Trust Investments, the Subsequent Trust Investments and any Temporary Trust Investments.

ARTICLE II

ESTABLISHMENTS OF THE TRUST AND THE TRUST ACCOUNTS

Section 2.1 In order to establish the trust created hereby, the Republic appoints the Trustee to act as trustee hereunder, and the Trustee accepts such appointment and declares that it will hold all estate, right, title and interest in and to the Trust Funds in trust for the use and benefit of the Republic, all in accordance with the terms and provisions of this Agreement.

Section 2.2 The Trustee hereby establishes an account entitled the "Republic of Venezuela Trust Account No. 304314" to be maintained and held in trust pursuant to and under this Agreement.

Section 2.3 The Trustee acknowledges receipt from the Company of the Trust Deposit and agrees to purchase or cause the purchase of the Initial Trust Investments selected by the Investment Manager and to deposit or cause the credit of the same into the Trust Account on the Effective Date.

Section 2.4 Each of the parties hereto acknowledges that, upon receipt by the Trustee and the Investment Manager of the Disbursement Schedule, the Investment Manager shall liquidate the Initial Trust Investments as promptly as practicable and invest the proceeds in the Subsequent Trust Investments.

ARTICLE III

APPLICATION OF THE TRUST FUNDS

Section 3.1 The Trustee shall hold the Trust Funds in trust and shall make payments from such Trust Funds only as follows:

(a) Upon receipt of a duly executed notice from the Ministry of Defense, the Trustee will pay the Contractor the amount of $57,640,000.00 in respect of an advance payment bond.

(b) Upon receipt of

(i) an invoice relating to the completion of a phase of the Contract and approved in writing by the Chief of the V.I.C.;

(ii) an "Act of Advancement of Progress of Works" in substantially the form of Exhibit B hereto, signed by the Chief of the V.I.C.; and

(iii) an "Act of Perceptive Control" in substantially the form of Exhibit C hereto, signed by the Controller of the Armed Forces

the Trustee will pay the Contractor the amount shown on the invoice in respect of completion of a phase of the Contract. The estimated invoice amounts for each of the seven phases of the Contract are set forth on Exhibit D hereto.

(c) Upon receipt of an invoice relating to materials, parts or incidentals approved in writing by the Chief of the V.I.C., the Trustee will pay the Contractor the amount shown on such invoice.

(d) All payments to the Contractor shall be by wire transfer of immediately available funds to:

Wells Fargo Bank
San Francisco, CA
ABA: 121000248
Account: Litton Industries, Inc.
4601016447

(e) Upon receipt of a duly executed notice from the Ministry of Finance stating that it has determined that the Contract will not be entered into by the parties thereto or that the Contract has been cancelled (unless, in either such case such notice states that another such contract is to be substituted for the Contract, which notice shall give appropriate details of such new contract) or that the Contract has been completed and all payment obligations on the part of the Republic have been satisfied, the Trustee will promptly remit all remaining Trust Funds to the Ministry of Finance in the manner and to the account specified in such notice.

(f) As promptly as practicable, the Republic shall provide the Trustee with specimen signatures of the Chief of the V.I.C., the Controller of the Armed Forces and authorized representatives the Ministry of Defense and Ministry of Finance. Until it receives such specimen signatures, the Trustee shall be entitled to rely on documents purported to be executed by or on behalf of the Chief of the V.I.C., the Controller of the Armed Forces, the Ministry of Defense and the Ministry of Finance.

Section 3.2 The Trustee shall collect the principal amount of, and interest on, all Trust Investments as the same shall mature and become due from time to time from the Investment Manager.

Section 3.3 If necessary, the Trustee shall cause the sale from time to time of so much of the Trust Investments having the shortest maturities as may be required to afford timely payment of any payment directed pursuant to Section 3.1 hereof giving effect to the application of all uninvested Trust Funds, if any, available for such purpose.

ARTICLE IV

FEES OF THE TRUSTEE

Section 4.1 The Republic has paid to the Trustee concurrently herewith and separate from the Trust Deposit the amount of $5,000 in fees for its acceptance of its duties hereunder. The Republic shall pay the Trustee an annual fee of $3,000 payable upon execution of this Agreement and on each anniversary date of this Agreement until the termination of this Agreement.

Section 4.2 The Republic shall be responsible for and shall reimburse the Trustee upon demand for all expenses, disbursements and advances incurred or made by the Trustee or the Investment Manager in connection with this Agreement including the reasonable fees and expenses of its counsel.

ARTICLE V

DUTIES AND LIABILITIES OF THE TRUSTEE

Section 5.1 The Trustee shall promptly prepare and deliver to the appropriate tax authorities copies of any tax filings for the Trust. The Republic agrees to provide to the Trustee any information required to comply with this Section 5.1 or to respond to any audits conducted by tax authorities, in either such case to the extent permitted by applicable law.

Section 5.2 The duties, responsibilities and obligations of the Trustee shall be limited to those expressly set forth herein and no duties, responsibilities or obligations shall be inferred or implied. The Trustee shall not be subject to, nor required to comply with, any other agreement to which the Republic is a party, even though reference thereto may be made herein, or to comply with any direction or instruction, (other than those contained herein or delivered in accordance with this Agreement) from the Republic or any entity acting on its behalf. The Trustee shall not be required to, and shall not, expend or risk any of its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

Section 5.3 If at any time the Trustee is served with any judicial or administrative order, judgment,

decree, writ or other form of judicial or administrative process which in any way affects the Trust Funds (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of the Trust Funds), the Trustee shall promptly give notice thereof to the Republic, provided that the Trustee is authorized to comply therewith in any manner as it or its legal counsel of its own choosing deems appropriate; and if the Trustee complies with any such judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process, the Trustee shall not be liable to any of the parties hereto or to any other person or entity even though such order, judgment, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect.

Section 5.4 (a) The Trustee shall not be liable for any action taken or omitted or for any loss or injury resulting from its actions or its performance or lack of performance of its duties hereunder in the absence of negligence or willful misconduct on its part. In no event shall the Trustee be liable (i) for acting in accordance with or relying upon any instruction, notice, demand, certificate or document from any Authorized Agent or any entity acting on behalf of any Authorized Agent, (ii) for any consequential, punitive or special damages or (iii) for the acts or omissions of its nominees, correspondents, designees, subagents or subcustodians chosen with due care.

(b) The Trustee may consult with legal counsel approved by the Republic at the expense of the Republic as to any matter relating to this Agreement, and the Trustee shall not incur any liability in acting in good faith in accordance with any advice from such counsel.

(c) The Trustee shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Trustee (including but not limited to any act or provision of any present or future law or regulation or governmental authority, any act of God or war, or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility).

Section 5.5 The Trustee shall provide to the Republic monthly statements identifying transactions,

transfers or holders of Trust Funds and each such statement shall be deemed to be correct and final upon receipt thereof by the Republic unless the Trustee is notified in writing to the contrary within thirty (30) business days of the date of such statement.

Section 5.6 The Trustee shall not be responsible in any respect for the form, execution, validity, value or genuineness of documents or securities held hereunder, or for any description therein, or for the identity, authority or rights of persons executing or delivering or purporting to execute or deliver any such document, security or endorsement.

Section 5.7 The Republic shall be liable for and shall reimburse and indemnify the Trustee and hold it harmless from and against any and all claims, losses, liabilities, costs, damages or expenses (including reasonable attorneys' fees and expenses) (collectively, "Losses") arising from or in connection with or related to this Agreement or being Trustee hereunder (including but not limited to Losses incurred by the Trustee in connection with its successful defense, in whole or in part, of any claim of negligence or willful misconduct on its part), provided, however, that nothing contained herein shall require the Trustee to be indemnified for Losses caused by its negligence or willful misconduct.

Section 5.8 In the event of any ambiguity or uncertainty hereunder or in any notice, instruction or other communication received by the Trustee hereunder, the Trustee may, in its sole discretion, refrain from taking any action other than to retain possession of the Trust Funds until the Trustee receives written instructions which eliminate such ambiguity or uncertainty.

ARTICLE VI

RESIGNATION, REMOVAL OR MERGER OF TRUSTEE

Section 6.1 The Trustee shall have the right, at any time, to resign as Trustee by giving written notice of its resignation to the Republic at least thirty (30) business days prior to the date specified for the resignation to take effect. The Republic shall have the right, at any time, to remove the Trustee from its duties hereunder by giving a written notice of such removal to the Trustee at least thirty (30) business days prior to the date specified for the removal to take

effect, together with the name and address of the successor Trustee to be appointed hereunder. If the Trustee shall be dissolved, or shall be in the course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case the Trustee shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, the Republic shall have the right, at any time, to remove the Trustee from its duties hereunder by giving a written notice of such removal to the Trustee at least two (2) business days prior to the date specified for the removal to take effect, together with the name and address of the successor Trustee to be appointed hereunder. In any such case, upon the effective date of the resignation or removal:

(a) All Trust Funds then held by the Trustee will be delivered by it to such successor Trustee or a temporary successor Trustee as may be designated in writing by the Republic or appointed by a court pursuant to subclause (c) of this Section 6.1, at which time the Trustee's obligations under this Agreement will terminate.

(b) The Trustee's sole responsibility after the effective date of its resignation will be to keep all property then held by it and to deliver that property to such successor Trustee or a temporary successor Trustee as may be designated in writing by the Republic or appointed by a court pursuant to subclause (c) of this Section 6.1.

(c) In the event that no appointment of a successor Trustee or a temporary successor Trustee shall have been made by written notice by the Republic within thirty (30) days after written notice of resignation of the Trustee has been given to the Republic, the Republic or the resigning Trustee may apply to any court of competent jurisdiction for the appointment of a successor Trustee, and such court may thereupon, after such notice, if any, as it shall deem proper, appoint a successor Trustee. Any successor trustee appointed pursuant to this Section 6.1(c) shall be a national bank or a bank or trust company having its principal office in The City of New York, and having a capital and surplus of not less than $100,000,000 and a rating on its long-term unsecured debt obligations of not less than "A-", "A3" or the equivalent from Standard & Poor's Rating Services, Moody's Investors Service, Inc. or another rating agency nationally recognized in the United States (and if 100% owned by a parent corporation

which is so rated, such parent corporation shall have a rating of not less than "A-", "A3" or the equivalent), and subject to regulations regarding fiduciary funds on deposit substantially similar to 12 C.F.R. 9.10(b), if there be such an institution willing, qualified and able to accept the Trust upon reasonable or customary terms.

Section 6.2 Any corporation into which the Trustee or any successor to it in the Trust created by this Agreement, may be merged or converted or with which it or any successor to it may be consolidated, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee or resulting from any merger, conversion, consolidation or tax-free reorganization to which the Trustee or any successor to it shall be a party shall, if satisfactory to the Republic, be the successor Trustee under this Agreement without the execution or filing of any paper or any other act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 6.3 Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and to the Issuer, an instrument in writing accepting such appointment hereunder, and thereupon, each such successor Trustee, without any further act, deed or conveyance, shall become fully vested with all the rights, immunities, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of the Republic, execute, acknowledge and deliver an instrument transferring to such successor Trustee all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and monies held by it to its successor. Should any transfer, assignment or instrument in writing from the Republic be required by any successor Trustee for more fully and certainly vesting in such successor Trustee the estates, rights, powers and duties hereby vested or intended to be vested in the predecessor Trustee, any such transfer, assignment and instruments in writing shall, on request, be executed, acknowledged and delivered by the Republic.

ARTICLE VII

NOTICES

All notices, instructions and other communications or deliveries required or permitted to be

given hereunder shall be in writing and shall become effective when received. Any written notice may be delivered personally, given by confirmed facsimile or prepaid telegram or recognized courier service to the addresses set forth below. Each party may by notice to the other party designate a new address to which notices must be sent.

If to the Republic:

Ministerio de Hacienda de la
Republica de Venezuela
Direccion General Sectorial de
Finanzas Publicas
Avenida Mexico
Edificio Torre Banco La Guaira,
Piso 9 y 12
Caracas, Venezuela
Attention: Director de Credito Publico
Telecopier: (582) 509-7713
Telephone: (582) 509-8672

If to the Trustee:

The Bank of New York
Corporate Trust Department
101 Barclay Street
Corporate Trust Department
21 West
New York, New York 10286

ARTICLE VIII

GENERAL TERMS

Section 8.1 This Agreement shall be interpreted, construed, enforced and administered in accordance with the internal substantive laws (and not the choice of law rules) of the State of New York. The parties hereto agree that any suit, action or proceeding relating to this Agreement (collectively, "Proceedings") shall be brought exclusively in the Supreme Court of the State of New York, County of New York; in the United States District Court for the Southern District of New York (the "New York Courts"); or in the courts of Venezuela that sit in Caracas. To the extent permitted by law, the Republic hereby submits to the personal jurisdiction of and agrees that all Proceedings shall be brought in

the New York Courts. To the extent permitted by law, the Republic hereby waives the right to trial by jury and to assert counterclaims in any such Proceedings.

The Republic agrees that service of all writs, process and summonses in any Proceeding brought against it in the State of New York may be made upon the Consul General of the Republic of Venezuela or, in his or her absence or incapacity, any official of the Consulate of Venezuela, presently located at 7 East 51st Street, New York, New York 10022, U.S.A. (the "Process Agent"), and the Republic irrevocably appoints the Process Agent as its agent to receive such service of any and all such writs, process and summonses, and agrees that the failure of the Process Agent to give any notice to it of any such service of process shall not impair or affect the validity of such service or of any judgment based thereon. The Republic agrees to maintain at all times an agent with offices in New York to act as its Process Agent. Nothing herein shall in any way be deemed to limit the ability to serve any such writs, process or summonses in any other manner permitted by applicable law.

The Republic irrevocably consents to and waives any objection which it may now or hereafter have to the laying of venue of any Proceeding brought in any of the New York Courts, and further irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of any Proceeding or any such suit, action or proceeding in any such court.

To the extent that the Republic or any of its revenues, assets or properties shall be entitled, with respect to any Proceeding at any time brought against the Republic or any of its revenues, assets or properties in any jurisdiction in which any of the courts designated in this Section 8.1 is located, to any immunity from suit, from the jurisdiction of any such court, from attachment prior to judgment, from attachment in aid of execution of judgment, from execution of a judgment or from any other legal or judicial process or remedy, and to the extent that in any such jurisdiction there shall be attributed such an immunity, the Republic irrevocably agrees not to claim and irrevocably waives such immunity to the fullest extent permitted by the laws of such jurisdiction (including, without limitation, the Foreign Sovereign Immunities Act of 1976 of the United States) and consents generally for the purposes of the State

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Section 8.7 This Agreement shall terminate upon the distribution of all Trust Funds from the Trust Accounts, provided, that the provisions of Sections 4.1, 4.2, 5.4, 5.6 and 5.7 shall survive termination of this Agreement and/or the resignation or removal of the Trustee.

Section 8.8 No printed or other material in any language, including prospectuses, notices, reports, and promotional material which mentions "The Bank of New York" by name or the rights, powers, or duties of the Trustee under this Agreement shall be issued by any other parties hereto, or on such party's behalf, without the prior written consent of the Trustee.

Section 8.9 The headings contained in this Agreement are for convenience of reference only and shall have no effect on the interpretation or operation hereof.

Section 8.10 This Agreement may be executed by each of the parties hereto in any number of counterparts, each of which counterpart, when so executed and delivered, shall be deemed to be an original and all such counterparts shall together constitute one and the same agreement.

Section 8.11 This Agreement is for the exclusive benefit of the parties hereto and their respective successors hereunder, and shall not be deemed to give, either express or implied, any legal or equitable right, remedy, or claim to any other entity or person whatsoever.

Section 8.12 The parties hereto intend that this Agreement be construed as a grantor trust. The Trustee will perform its duties, and the provisions of this Agreement will be interpreted, in a manner consistent with this intention.

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Immunity Act of 1978 of the United Kingdom to the giving of any relief or the issue of any process in connection with any Proceeding. In addition, to the extent that the Republic or any of its revenues, assets or properties shall be entitled, in any jurisdiction, to any immunity from set-off, banker's lien or any similar right or remedy, and to the extent that there shall be attributed, in any jurisdiction, such an immunity, the Republic hereby irrevocably agrees not to claim and irrevocably waives such immunity to the fullest extent permitted by the laws of such jurisdiction with respect to any claim, suit, action, proceeding, right or remedy arising out or in connection with this Agreement.

Section 8.2 Except as otherwise permitted herein, this Agreement may be modified only by a written amendment signed by all the parties hereto, and no waiver of any provision hereof shall be effective unless expressed in a writing signed by the party to be charged.

Section 8.3 The rights and remedies conferred upon the parties hereto shall be cumulative, and the exercise or waiver of any such right or remedy shall not preclude or inhibit the exercise of any additional rights or remedies. The waiver of any right or remedy hereunder shall not preclude the subsequent exercise of such right or remedy.

Section 8.4 Each party hereto hereby represents and warrants (a) that this Agreement has been duly authorized, executed and delivered on its behalf and constitutes its legal, valid and binding obligation and (b) that the execution, delivery and performance of this Agreement by it does not and will not violate any applicable law or regulation.

Section 8.5 The invalidity, illegality or unenforceability of any provision of this Agreement shall in no way affect the validity, legality or enforceability of any other provision; and if any provision is held to be enforceable as a matter of law, the other provisions shall not be affected thereby and shall remain in full force and effect.

Section 8.6 This Agreement shall constitute the entire agreement of the parties with respect to the subject matter and supersedes all prior oral or written agreements in regard thereto.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be duly executed and delivered by its duly authorized representative as of the day and year first above written.

THE REPUBLIC OF VENEZUELA

By: _____
Celso Miranda
General Director
of Public Finance

THE BANK OF NEW YORK

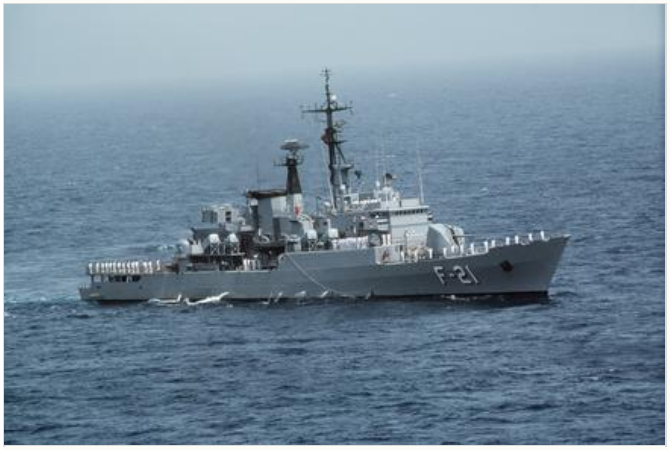
By: _____
Title: Assistant Treasurer

EXHIBIT C

Rio panel hears Venezuelan frigates claim

Sebastian Perry • Wednesday, 1 October 2014 *(Just now)*

A tribunal in Rio de Janeiro is hearing a US$450 million dispute between a US shipbuilder and Venezuela's ministry of defence, more than a decade after the claim was filed.



The Mariscal Sucre, one of two Venezuelan naval frigates at the heart of the dispute (Credit: Wikipedia)

Brazilian arbitrator **José Emilio Nunes Pinto** is chairing the ad hoc panel, which also includes Argentina's **Horacio Grigera Naón** and Spain's **Antonio Hierro**, partner at Cuatrecasas Gonçalves Pereira in Madrid.

Virginia-based Huntington Ingalls, which spun off from US defence contractor Northrop Grumman three years ago, is seeking around US$370 million under a 1997 contract for the repair and upgrade of two frigates owned by the Venezuelan navy. The ministry has also filed a counterclaim worth around US$76 million. A hearing on the merits is scheduled for January.

The case has an unusually tortuous procedural history. Northrop, as Huntington Ingalls' predecessor, first sued the ministry in 2002 before a US district court in Mississippi, the state where the work on the frigates was carried out, to recover damages for cost overruns and other issues. Soon after, the contractor asked the court to compel arbitration of the dispute.

Although the contract provided for ICC arbitration in Caracas, Northrop won a court order in 2003 that the arbitral proceedings should take place in the United States on the grounds that political instability in Venezuela (resulting from an abortive coup against President Hugo Chávez) made it an unsuitable forum.

That arbitration was eventually relocated to Mexico City, with the tribunal consisting of **Filiberto Agusti** of Steptoe & Johnson, **Steven Hammond** of Hughes Hubbard & Reed, and Mexico's **Claus von Wobeser** as chair. But those proceedings were stayed by order of the US district court in 2005 to allow the parties to pursue mediation in the US. Later that year, the parties' US counsel agreed to settle the dispute for US$70 million.

However, a fresh round of litigation ensued in the US over the legitimacy of the settlement, with Venezuela complaining that its Mississippi attorney, **Richard**

Scruggs, had not been authorised to settle the case. The US Court of Appeals for the Fifth Circuit struck down the settlement agreement in 2009 and remanded the case to the district court to consider further arguments about the enforceability of the contract's forum selection clause.

The district court ruled in 2010 that the deterioration in diplomatic relations between the US and Venezuela meant that to compel Northrop to arbitrate in Caracas would be "unreasonable". The court therefore ordered a new arbitration in a seat outside Venezuela, and required the parties to submit regular reports on the status of those proceedings.

The parties initially agreed on Washington, DC, as the new seat but further wrangles meant it took more than a year for the tribunal to be formed. Huntington Ingalls appointed Grigera Naón and the ministry appointed Hierro but the co-arbitrators failed to agree on a chair. The ICC Secretariat in Paris stepped in at the shipbuilder's request and nominated Nunes Pinto in 2012.

The tribunal issued a procedural order in July last year affirming its jurisdiction over the dispute and designating Rio de Janeiro as the seat of arbitration. It also declared that the procedure would be conducted according to the Venezuelan arbitration act, supplemented by the UNCITRAL rules if needed. While the case remains ad hoc, the ICC has been providing some administrative services.

According to regulatory disclosures, Huntington Ingalls filed a statement of claim in March this year, seeking US$173 million in damages plus substantial interest and litigation expenses. Venezuela submitted its statement of defence in July, denying all the company's claims and submitting a counterclaim for alleged late delivery of the frigates, unfinished work and breach of warranty.

Venezuela has also asked the tribunal to lift an injunction granted by the US district court in 2002 against the Bank of New York Mellon. The bank is holding funds in trust for Venezuela as part of the original contract but was ordered by the court not to disburse those funds except to Huntington Ingalls.

Los Angeles-based firm Shepherd Mullin Richter & Hampton has been long-term counsel to Huntington Ingalls in the Mexico City and Rio arbitrations and US court proceedings, along with Venezuelan firm Hoet Pelaez Castillo & Duque. DLA Piper also came on board as co-counsel in the Rio arbitration earlier this year.

Venezuela has had several changes of counsel since the dispute began. In the Rio arbitration, Miami-based firm Diaz Reus & Targ initially advised the ministry but was replaced last year by Guglielmino & Asociados, the Buenos Aires-based firm set up by the former head of Argentina's ICSID defence team.

The ministry's original counsel team in the Mexico City arbitration and US court proceedings consisted of Scruggs Law Firm in Mississippi and Podhurst Orseck in Miami. Following the disputed 2005 settlement, those law firms joined the US district court proceedings as intervenors, submitting their own claims against the ministry. From 2006, the ministry has used Mississippi firm Wise Carter Child & Caraway in the US court matters.

Richard Scruggs was a prominent trial attorney who helped the state of

Mississippi bring a landmark lawsuit against 13 tobacco companies in the 1990s, as dramatised in the Russell Crowe film *The Insider.* Scruggs was later disbarred and sentenced to seven years' imprisonment in 2009 after pleading guilty to the attempted bribery of two judges. The attempted bribes did not relate to the Huntington Ingalls dispute.

Huntington Ingalls (formerly known as Northrop Grumman Ship Systems) v Ministry of Defence of the Republic of Venezuela

In the Rio de Janeiro arbitration

Tribunal

- **José Emilio Nunes Pinto** (Brazil) (appointed by the ICC)
- **Horacio Grigera Naón** (Argentina) (appointed by Huntington Ingalls)
- **Antonio Hierro** (Spain) (appointed by the ministry)

Counsel to Huntington Ingalls

- Shepherd Mullin Richter & Hampton

Joseph Coyne and **Kenneth O'Brien** in Los Angeles

- DLA Piper (from 2014)

Juan José Delgado Álvarez and **Maria Cecilia Rachadell** in Caracas and Miami

- Hoet Pelaez Castillo & Duque

Jorge Acedo and **José Gregorio Torrealba** in Caracas

Counsel to the Ministry of Defence

- Guglielmino & Asociados (from 2014)

Osvaldo Guglielmino in Buenos Aires and **Diego Brian Gosis** in Miami

- Diaz Reus & Targ (until 2014)

Michael Diaz, **Carlos Gonzalez**, **Brant Hardaway** and **Marta Colomar Garcia** in Miami

Expert witnesses

For the ministry

Fabián Bello - on valuation

In the Mexico City arbitration

ICC tribunal

- **Claus von Wobeser** (Mexico) (chair)
- **Filiberto Agusti** (US) (appointed by Northrop Grumman)
- **Steven Hammond** (US) (appointed by the ministry)

Counsel to Northrop Grumman

- Shepherd Mullin Richter & Hampton

Joseph Coyne, **Joseph Costello**, **Daniel Park** and **Judith Martinez** in Los Angeles

Counsel to the ministry

- Scruggs Law Firm in Oxford, Mississippi
- Podhurst Orseck in Miami

Before the US District Court of the Southern District of Mississippi and the Fifth Circuit Court of Appeals

Counsel to Huntington Ingalls

- Franke & Salloum

Richard Salloum and **Traci Castille** in Gulfport, Mississippi

- Shepherd Mullin Richter & Hampton

Joseph Coyne and **Kenneth O'Brien** in Los Angeles

Counsel to the Ministry of Defence

- Wise Carter Child & Caraway (from 2006)

James Robertson and **Mark Goldberg** in Jackson, Mississippi

Counsel to Scruggs Law Firm, Richard Scruggs and Podhurst Orseck (intervenors)

- **David Shelton** in Oxford, Mississippi
- Shaddock & Associates

George Shaddock

Counsel to Bank of New York Mellon

- Hailey McNamara Hall Larmann & Papale

Richard Tubertini in Gulfport, Mississippi