

In the Privy Council

2

No. 13 of 1973

ON APPEAL

FROM THE SUPREME COURT OF HONG KONG

(APPELLATE JURISDICTION)

CIVIL APPEAL NO. 53 OF 1973

(On appeal from Admiralty Jurisdiction Folio Nos. 103, 106 and 139 of 1973)

BETWEEN

THE OWNERS OF THE SHIP
"PHILIPPINE ADMIRAL" (Philippine Flag) *Appellants*

and

WALLEM SHIPPING (HONG KONG) LIMITED
TELFAIR SHIPPING CORPORATION *Respondents*

RECORD OF PROCEEDINGS

MAXWELL BATLEY & COMPANY,
27, Chancery Lane, WC2A 1PA.
London Agents for
PETER MARK & COMPANY,
Solicitors for the Appellants.

HOLMAN, FENWICK & WILLAN,
1, Pepys Street, EC3N, 4AU.
London Agents for
JOHNSON, STOKES & MASTER,
Solicitors for the Respondents.

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and

**WALLEM SHIPPING (HONG KONG) LIMITED
TELFAIR SHIPPING CORPORATION Respondents**

RECORD OF PROCEEDINGS

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In the Supreme Court of Hong Kong

Admiralty Jurisdiction

Folio Nos. 103, 106 & 139 of 1973

ON APPEAL

FROM THE SUPREME COURT OF HONG KONG

(APPELLATE JURISDICTION)

CIVIL APPEAL NO.53 OF 1973

(On appeal from Admiralty Jurisdiction Folio Nos.103, 106 and 139 of 1973)

BETWEEN

10 THE OWNERS OF THE SHIP
"PHILIPPINE ADMIRAL" (Philippine Flag) *Appellants*

and

WALLEM SHIPPING (HONG KONG) LIMITED
TELFAIR SHIPPING CORPORATION *Respondents*

RECORD OF PROCEEDINGS

1973, Folio 103

IN THE SUPREME COURT OF HONG KONG

ADMIRALTY JURISDICTION

Admiralty Action in rem against:
the ship "Phillipine Admiral"

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

No. 1
Writ of Summons
(Folio 103)
dated 23.5.1973

20 BETWEEN:

WALLEM SHIPPING (HONG KONG) LIMITED *Plaintiffs*

and

THE OWNERS OF THE SHIP "PHILIPPINE
ADMIRAL" (Philippine Flag) *Defendants*

Amended as in red this 1st
day of June, 1973 pursuant
to Order 20, Rule 3 of the
Supreme Court Rules,
1967.

(*sd.*) S.H. Mayo
Assistant Registrar

ELIZABETH THE SECOND BY THE GRACE OF GOD, OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND OF
OUR OTHER REALMS AND TERRITORIES QUEEN, HEAD OF THE COMMON-
WEALTH, DEFENDER OF THE FAITH.

In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction

No. 1
Writ of Summons
(Folio 103)
dated 23.5.1973

To The Owners and all others interested in the ship "Philippine Admiral"
(Philippine Flag)

We command you that within 8 days after the service of this Writ, inclusive of the day of service, you do cause an appearance to be entered for you in an Action at the suit of Wallem Shipping (Hong Kong) Limited whose registered office is situate at 2nd floor, Hongkong & Shanghai Bank Building, Hong Kong; and take notice that in default of your so doing the Plaintiffs may proceed therein, and judgment may be given in your absence, and if the res described in this Writ is then under Arrest of the Court it may be sold by order of the Court.

WITNESS the Hon. SIR IVO RIGBY,

Chief Justice of Hong Kong, the 23rd day of May, 1973.

(sd.) J. R. Oliver
Registrar.

Note: This writ may not be served more than 12 calendar months after the above date unless renewed by order of the Court.

STATEMENT OF CLAIM

1. The Plaintiffs carry on business in Hong Kong and elsewhere as (inter alia) shipbrokes and shipping agents.

2. The Phillipine Admiral is a steamship owned by the Defendant and belonging to the port of Manila.

3. Between the months of January 1973 and April 1973 up to and including 30th April 1973 the Plaintiffs at the request of the Defendant supplied goods and materials and made certain necessary disbursements for the said steamship at the port of Hong Kong amounting to the sum of ~~HK\$63,372.27~~ HK\$75,207.57 which sum remains due and owing to the Plaintiffs. Particulars of the said expenditures exceeding three folios have already been delivered to the Defendant.

And the Plaintiffs claim:-

(1) Judgment against the said steamship her tackle apparel and furniture and freight for the said sum of ~~HK\$63,372.27~~ HK\$75,207.57 together with interest and costs.

(2) If necessary an order for the appraisalment and sale of the said steamship her tackle apparel and furniture.

(sd.) JOHNSON, STOKES & MASTER
Solicitors for the Plaintiff.

This writ was issued by Johnson, Stokes & Master of 403-413, Hongkong & Shanghai Bank Building, Victoria in the Colony of Hong Kong, Solicitors for the said Plaintiffs, whose address is at 2nd floor, Hongkong & Shanghai Bank Building, Hong Kong.

(sd.) JOHNSON, STOKES & MASTER

1973, Folio 139

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

IN THE SUPREME COURT OF HONG KONG

Admiralty Jurisdiction

Admiralty Action in rem against:
the ship "Philippine Admiral"

No. 2
Writ of Summons
(Folio 139)
dated 7.9.1973

BETWEEN WALLEM SHIPPING (HONG KONG) LIMITED *Plaintiffs*

and

THE OWNERS OF THE SHIP "PHILLIPINE ADMIRAL" (Phillipine Flag) *Defendants*

10 ELIZABETH THE SECOND, BY THE GRACE OF GOD, OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND OF OUR OTHER REALMS AND TERRITORIES QUEEN, HEAD OF THE COMMONWEALTH, DEFENDER OF THE FAITH.

To The Owners and all others interested in the ship "Philippine Admiral" (Philippine Flag)

We command you that within 8 days after the service of this Writ, inclusive of the day of service, you do cause an appearance to be entered for you in an Action at the suit of Wallem Shipping (Hong Kong) Limited whose registered office is situate at 2nd floor, Hongkong & Shanghai Bank Building, Hong Kong, and
20 take notice that in default of your so doing the Plaintiffs may proceed therein, and judgment may be given in your absence, and if the res described in this Writ is then under Arrest of the Court it may be sold by order of the Court.

WITNESS the Hon. Sir Alastair Blair-Kerr

Acting Chief Justice of Hong Kong, the 7th day of September, 1973.

(*sd.*) J. R. OLIVER
Registrar.

Note:- This writ may not be served more than 12 calendar months after the above date unless renewed by order of the Court.

In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction

STATEMENT OF CLAIM

No. 2
Writ of Summons
(Folio 139)
dated 7.9.1973

1. The Plaintiffs carry on business in Hong Kong and elsewhere as (inter alia) shipbrokers and shipping agents.
2. The Phillipine Admiral is a steamship owned by the Defendant and belonging to the port of Manila.
3. Between the months of May 1973 and July 1973 up to and including 31st July, 1973 the Plaintiffs at the request of the Defendant supplied goods and materials and made certain necessary disbursements for the said steamship at the port of Hong Kong amounting to the sum of HK\$90,160.41 which sum remains due and owing to the Plaintiffs. Particulars of the said expenditures exceeding three 10 folios have already been delivered to the Defendant.

And the Plaintiffs claim:-

- (1) Judgment against the said steamship her tackle apparel and furniture and freight for the said sum of HK\$90,160.41 together with interest and costs.
- (2) If necessary an order for the appraisalment and sale of the said steamship her tackle apparel and furniture.

(sd.) JOHNSON STOKES & MASTER
Solicitors for the Plaintiff.

This writ was issued by Johnson, Stokes & Master of 403-413, Hongkong & Shanghai Bank Building, Victoria in the Colony of Hong Kong Solicitors for the said 20 Plaintiffs, whose address is at 2nd floor, Hongkong & Shanghai Bank Building, Hong Kong.

(sd.) JOHNSON STOKES & MASTER

ORDER

**BEFORE THE HONOURABLE MR. JUSTICE BRIGGS,
CHIEF JUSTICE IN COURT.**

—
No. 3
Order of
Briggs, C.J.
dated 14.12.1973

10 Upon hearing Counsel for the Plaintiffs and Counsel for the Liberation Steamship Company Inc. and Counsel for the Government of the Republic of the Philippines IT IS ORDERED that the writ of summons and all subsequent proceedings herein be set aside with costs to be paid equally by the parties in Admiralty Jurisdiction Folio Nos. 94, 103, 105 and 139 of 1973 to the Government of the Republic of the Philippines, such costs to be taxed on the ground that the ship "Philippine Admiral" formerly m.v. "Dagohoy" is the property of the Government of the Republic of the Philippines, a recognised foreign independent state AND IT IS FURTHER ORDERED that this order shall not take effect for a period of fourteen days and this Order for stay will continue if during the said period of fourteen days a Notice of Motion for Appeal is lodged in Admiralty Jurisdiction Folio Nos. 103 or 139 of 1973.

Dated the 14th day of December, 1973.

(*sd.*) S.H. MAYO (L.S.)
Acting Deputy Registrar

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

IN THE SUPREME COURT OF HONG KONG
ADMIRALTY JURISDICTION
FOLIO NOS. 94, 103, 105 AND 139
OF 1973

No. 4
Judgment of
Briggs, C.J.
dated 14.12.1973

Re: THE PHILIPPINE ADMIRAL

Coram: Briggs, C.J. in Court
Date: 14th December, 1973.

J U D G M E N T

I am here dealing with the case of the Hong Kong United Dockyards Ltd. and the owners of the ship The Philippine Admiral, that is Admiralty Jurisdiction No.94 of 1973. This is one of several cases now before the court and what I have to say is applicable not only to this case, No. 94, but also to Admiralty Jurisdiction Nos. 103, 105 and 139. There has been no order for consolidation of these cases but they were heard together, the parties being represented by counsel individually. The point at issue is the same in each case. There is one further case, however, with which I am not concerned, namely, The Telfair Shipping Corporation and the Owners of the ship, that is Admiralty Jurisdiction No. 106 of 1973, that case is not before me. 10

In this case, No. 94 of 1973, the writ was issued on May 2nd, 1973. It was directed to "the owners and others interested in the ship 'Philippine Admiral'". 20

Appearance was entered for the defendants on May 8th, 1973, but this was amended on November 16th, 1973 and the defendant who has entered an appearance is now The Liberation Steamship Company Inc. who claim to be the beneficial owner of the ship. This company also appeared before me and was heard.

On October 29th, 1973, a few days before that amendment was made, a notice of motion was filed on behalf of the Republic of the Philippines, for an order that the writ and all subsequent proceedings be set aside on the grounds that the ship The Philippine Admiral is the property of that Government which is, of course, a foreign sovereign state.

Order 12 rule 8 was invoked. It appears from that rule that the proceedings should have been brought by summons and not by notice of motion. The parties asked that the notice of motion be treated as a summons and with the consent of all the parties I agreed to adopt that course. The summons, as it now became, was dealt with in Chambers. 30

The Plaintiffs brought this action in rem to recover a debt due to them for certain services and repairs which they allege they have carried out on the ship.

The ship has been arrested and an order has been made for appraisalment and sale. The date of that order was the 26th September, 1973.

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

The Philippine Government has not entered an appearance and it is clear that that is unnecessary. Their case is very simple. It is this: The Government of the Philippines is recognized by the United Kingdom as the legitimate Government of the Philippines, and That Government is the registered owner of the ship The Philippine Admiral. It is an accepted rule of law that an independent sovereign may not be directly or indirectly impleaded in the courts without its consent. The word "implead" is here used in the sense of forcing a foreign sovereign government to forego part of its independent authority or its proprietary rights. It is obvious that if the plaintiff has his way and the ship is sold, the rights of the Government of the Philippines, as owners, if owners they are, will be lost and that Government's independence will be sacrificed to that extent.

No. 4
Judgment of
Briggs, C.J.
dated 14.12.1973

For a full understanding of this case, it is necessary to deal with the facts at some length.

After the last World War, a treaty was entered into between the Japanese Government and the Government of the Philippines under which the former agreed to make certain reparations to the latter to offset in part the ravages of the war in the Philippines. Reparation was to take the form of monetary payment as well as the provision of capital goods and services.

The Government of the Philippines passed an Act No. 1789, dated June 21st, 1957, ratifying this treaty which sets forth the policy to be adopted in making use of the reparations and establishes machinery for its distribution.

The Act clearly states that the policy shall be to utilize all reparations "in such manner as shall assure the maximum economic benefit to the people of the Philippines and in as equitable and widespread a manner as possible."

The Act set up a Reparations Commission as part of the machinery to implement this policy. It consists of a Chairman and four other members who are appointed by the President of the Philippines. The Commission is an organ of the Government of the Philippines and comes directly under the office of the President.

As part of the reparations, the Japanese Government made funds available to the Government of the Philippines which the latter used to pay for the construction of a vessel in a Japanese shipyard. This vessel is the subject matter of this action. It is now named The Philippine Admiral but was then known as The Dagohoy. She was constructed for the Government of the Philippines in Japan and paid for out of reparation moneys, the purchaser being the Government of the Philippines.

Part of the Act, No. 1789, states that one of the policies of the

Government of the Philippines is to give preference to private enterprise when deciding who was to utilize capital goods such as a ship supplied under the reparations treaty with Japan. It was laid down that such private enterprises must be Filipinos or bodies wholly owned by Filipinos. It was also stated that no goods supplied could be re-sold, leased or otherwise disposed of to any person other than a Filipino or to an entity wholly owned by Filipinos. Penalties were to be imposed for any violation of these terms.

The proceeds of any sale of capital goods by the Reparations Commission were to be placed in a Special Economic Development Fund which was available for the economic rehabilitation of the people of the Philippines. It was further contemplated that half of such fund should be used for industrial loans. This provision was in implementation of the declared policy that reparations were to be used for the maximum economic benefit of the Filipino people. 10

On November 16th, 1960, the Reparations Commission entered into an agreement for the conditional sale of The Philippine Admiral to the Liberation Steamship Company Inc. I will refer to this company as the "End User".

The agreement refers to the Reparations Commission as an entity of Government and throughout the agreement the parties are referred to as Conditional Vendor and Conditional Vendee.

The contract clearly states that the title to and ownership of the ship shall remain with the Conditional Vendor, in other words, the Government of the Philippines until it has been paid for, provision being made for payment of the vessel by instalments. The provision that there must be no sale or lease etc. to interests other than Filipino interests is recited in an Annexure to the agreement. There are other restrictions as to the time in which a resale may be made. But a resale cannot be made without the approval of the Reparations Commission. 20

The contract also provides that if the End User fails to pay any instalment due, the agreement automatically comes to an end and the End User must thereupon deliver up possession of the ship to the Conditional Vendor. Any instalments of the purchase price which had already been paid are to be considered as rentals. There is a further provision that if the End User does not deliver up possession of the ship in such circumstances the Conditional Vendor is entitled to his costs for any proceedings in court consequent upon such refusal. 30

The ship was registered in the Philippine Register of Ships and with the Customs Department of the Government of the Philippines on December 15th, 1960, in the name of the Reparations Commission, who are stated to be the owners of the ship. These certificates are still valid.

The End User took possession of the ship and paid various instalments

under the agreement of Conditional Sale. These sums were credited to the Special Economic Development Fund by the Commission. The End User was responsible for the running of the ship while it was in their possession. This included engaging the crew and the payment of their wages, payment of repairs and the provisioning of the vessel.

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

—
No. 4
Judgment of
Briggs, C.J.
dated 14.12.1973

10 In 1963, the Reparations Commission interfered with a proposed charter of the ship by the End User to an Indian Company which, I understand, was an organ of the Indian Government. They interfered on the ground that such a charter would violate the purpose for which the utilization of the ship had been handed to the End User. The matter was raised in the courts of the Philippines by the End User. But after the Indian Government and the Government of the Philippines had exchanged views the matter seems to have been compromised or settled. The interest of these facts is that it shows that upon this occasion the Government of the Philippines exercised its rights as the owners of the ship although the ship was under the control and in the possession of the End User.

20 The End User did not pay the instalments of the purchase price in accordance with the terms of the contract of conditional sale of the vessel to them. As at October 9th, 1973, by which time, under the terms of the contract of conditional sale, the whole of the purchase price should have been paid they were indebted to the Reparations Commission in the sum of five million odd pesos. This has been admitted by the End User.

30 On October 10th, 1973, the Reparations Commission, by resolution, ordered the re-possession of the ship on the grounds that the End User was in breach of the contract of conditional sale in that they had not paid the whole of the purchase price. This resolution was passed after the courts in Hong Kong had ordered that the vessel be appraised and sold. The date of that order was the 26th September, 1973. On November 3rd, 1973, the Reparations Commission obtained a preliminary prohibitory injunction in a court in Manila ordering the End User to desist or refrain from performing any act tending to obstruct, delay or interfere with the release of the ship from arrest.

The question is: What does a foreign sovereign government have to prove in order to claim immunity successfully? At one time it was thought that all that was necessary was for a government to assert a claim. See *The Jupiter*⁽¹⁾. This view has not prevailed and the modern and correct principle appears to be stated by Lord Jowitt in the case of *Juan Ysmael & Company Inc. v. Government of the Republic of Indonesia*⁽²⁾. At page 89 of his judgment he says this:-

(1) (1924) P.236.
(2) (1955) A.C. 72.

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

—
No. 4
Judgment of
Briggs, C.J.
dated 14.12.1973

“In their Lordships’ opinion a foreign government claiming that its interest in property will be affected by the judgment in an action to which it is not a party is not bound as a condition of obtaining immunity to prove its title to the interest claimed but it must produce evidence to satisfy the court that its claim is not illusory nor founded on a title manifestly defective. The court must be satisfied that conflicting rights have to be decided in relation to the foreign government’s claim. When the court reaches that point it must decline to decide the rights and must stay the action.”

In that case, the appellants brought an action in rem in the courts in Hong Kong. The Privy Council held that a claim of ownership in that case was not enough to found immunity on the grounds that there was evidence that the title was manifestly defective. 10

What, therefore, is the position in the present case? That the Reparations Commission owns this ship is not really in dispute. The Commission is the registered owners of the ship. It is also not disputed that the Reparations Commission is an organ of the Government of the Philippines. The ownership of the ship therefore lies with the Government of the Philippines.

I do not think that it can be disputed that the Reparations Commission have a right to possess the ship. This is clear from the terms of the contract of conditional sale. That contract states, in paragraph 11 of Annexure ‘A’ which is made an intergral part of the contract:- 20

“Should the Conditional Vendee fail to pay any of the yearly installments when due., then this Deed of Conditional Sale shall automatically and without any further formality become ineffective and declared rescinded, and all sums so paid by the Conditional Vendee before rescission by reason thereof shall be considered as rentals and the Conditional Vendor and its agents shall then and there be free to enter into the premises where such goods are found, take possession of the same and dispose them according to law.” 30

It is also stated in Annexure ‘A’:-

“..... should the Conditional Vendor rescind this Deed of Conditional Sale for any of the reasons stated the Conditional Vendee, by these presents, obligates itself to peacefully deliver the property subject of this contract to the Conditional Vendor.”

This clearly shows the right of the Reparations Commission to re-possess the ship arises automatically upon a breach. It is unnecessary for the Reparations Commission to act in any way. The contract also states that when the Conditional Vendor rescinds the contract, the Conditional Vendee is obliged to hand over the possession of the ship. This, the End User has not done. Indeed, it could not have done this since the ship is under arrest in Hong Kong. 40

At the time the Reparations Commission wished to exercise their rights, the ship was in Hong Kong, they therefore passed a resolution to re-posses the ship

and brought proceedings against the End User in the Philippines. As I have already said, we have therefore the position that the Government of the Philippines is the owner of the vessel and has a right to immediate possession of the vessel. In my view, this is enough to found a claim to immunity successfully.

*In the Supreme
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10 It was argued that special rules applied to ships. Mr. Arculli, who appeared for the End User, put forward four propositions. He said the case law shows that (1) warships of a sovereign state are entitled to absolute immunity whether they are being used for the purpose for which they were built or not; (2) ships owned by a sovereign state which are being used for state public purposes other than for the purpose of trade are also entitled to absolute immunity; (3) ships requisitioned by a sovereign state are again entitled to absolute immunity; but (4) state-owned vessels operated by them for the purpose of normal commercial transactions are not entitled to immunity. His argument was that The Philippine Admiral came under his fourth proposition that it was a ship owned by the Government of the Philippines but was one that was employed in ordinary trading and not in the public service of the Government of the Philippines.

—
No. 4
Judgment of
Briggs, C.J.
dated 14.12.1973

20 Mr. Litton argued that if I were to hold that no immunity attaches to state-owned vessels engaged in ordinary commercial transactions then I should hold that The Philippine Admiral was operating in the public service of the Philippines. I have stated the terms on which the End User was bound to utilise the ship above. I do not think that those facts warrant me to come to the conclusion desired by Mr. Litton. The ship was in the possession of the End User who was using it for its own purposes. Any profits made as the result of a charter or for carrying freight would be earned not by the Government of the Philippines but by the End User. The only direct benefit for the people of the Philippines came from the instalments of the purchase price. They received nothing from any commercial venture that the ship undertook.

But is Mr. Arculli right? Is there a special rule that state-owned ships utilised for private trading do not attract immunity?

30 Many authorities were cited by counsel, including cases from the United States and Canada. I will say at once that I do not intend to take notice of these foreign cases because it seems that there are differences between the law in those countries and the law in Hong Kong.

40 I have been unable to find authority for the proposition that the law as to ships differs from other property. Nor apart from certain dicta, do I find that there is the special rule as to private trading urged by Mr. Arculli. There are cases where immunity has been granted when the ship the subject matter of the dispute was engaged in private trading. In *Compania Mercantil Argentina v. United States Shipping Board*⁽³⁾ it was held that a sovereign independent state does not, by entering into a trading contract with a foreigner, lose its immunity from process in British courts as regards matters arising out of the contract. Again, in the case of

(3) (1924) 131 L.T. 388.

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The Porto Alexandre⁽⁴⁾ it was held that a vessel owned by a sovereign independent state which earned freight for the state was not deprived of immunity from the process of arrest by reason of the fact that she was being employed in ordinary trading voyages carrying cargoes for private individuals. It is true that this case was severely criticised in *The Cristina*⁽⁵⁾ but it was not overruled. *The Cristina*⁽⁵⁾ was a case of the requisition of a ship and there is clear authority that such a ship attracts immunity. Again, in an earlier case, *The Parlement Belge*⁽⁶⁾ there was evidence that the ship was partially at any rate engaged in private trade. And yet immunity was claimed successfully. Finally, there is the case of the *United States of America and Republic of France v. Dollfus Mieg et Cie. S.A. and Bank of England*⁽⁷⁾. In this case 10
the Bank of England held as bailee for the Governments of the United States, France and the United Kingdom some gold bars. It was held that the action must be stayed since the doctrine of immunity of a foreign sovereign applied to the case of a claim to recover property in the hands of a bailee for a foreign sovereign. In his judgment, at page 606, Lord Jowitt said this:-

“The doctrine of immunity should not, I think, be confined to those cases in which the foreign sovereign was either directly in possession of property by himself or at least indirectly by his servants, for if it were so confined the doctrine would not be applicable to the case of any bailment.” 20

In that case the foreign sovereign states did not have possession of the gold bars. What they had was a right to immediate possession. This was, of course, a case of bailment but in my view the position is similar in the present case before me. The Government of the Philippines has the ownership of The Philippine Admiral and also an immediate right to the possession of the ship and this, in my view, is enough to found a claim of sovereign immunity successfully. The Government of the Philippines is therefore entitled to the relief sought by the notice of motion which I have dealt with as a summons. There will be a similar order in Admiralty Jurisdiction Nos. 103, 105 and 139. The Government of the Philippines is entitled to its costs which must be borne equally by the other parties. 30

(sd.) G.G. Briggs
Chief Justice.

W. Waung (Deacons) for Plaintiffs in A.J. 94, 105 and 139 of 1973.

C. Ching (Johnson, Stokes & Master) for Plaintiffs in A.J. 103 of 1973.

Litton, Q.C. and Mills-Owens (Peter Mark & Co.) for the Government of the Philippines in all cases.

R. Arculli (Brutton & Stewart) for Liberation Steamship Company Inc. in all cases.

- (4) (1920) P.30
(5) (1938) A.C. 485.
(6) (1880) 5 P. 197.
(7) (1952) A.C. 582.

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*In the Supreme
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Admiralty
Jurisdiction*

IN THE SUPREME COURT OF HONG KONG
Admiralty Jurisdiction

Admiralty Action in rem against:
the ship "Philippine Admiral"

No. 5
Writ of Summons
(Folio 106)
dated 2.6.1973

BETWEEN: TELFAIR SHIPPING CORPORATION *Plaintiffs*

and

THE OWNERS OF THE SHIP "PHILLIPINE ADMIRAL" (PHILLIPINE FLAG) *Defendants*

10 ELIZABETH THE SECOND, BY THE GRACE OF GOD, OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND OF OUR OTHER REALMS AND TERRITORIES QUEEN, HEAD OF THE COMMONWEALTH, DEFENDER OF THE FAITH.

To The owners of the ship "Philippine Admiral" (Philippine Flag).

We command you that within 8 days after the service of this Writ, inclusive of the day of service, you do cause an appearance to be entered for you in an Action at the suit of Telfair Shipping Corporation of 80 Broad Street, Monrovia, Liberia; and take notice that in default of your so doing the Plaintiffs may proceed therein, and judgment may be given in your absence, and if the res described in this
20 Writ is then under Arrest of the Court it may be sold by order of the Court.

WITNESS the Hon. MR. JUSTICE GEOFFREY GOULD BRIGGS,

Chief Justice of Hong Kong, the 2nd day of June, 1973.

(*sd.*) J.R. Oliver
Registrar

Note: This writ may not be served more than 12 calendar months after the above date unless renewed by order of the Court.

ENDORSEMENT OF CLAIM

The Plaintiffs as charterers of the Defendants' motorvessel Philippine Admiral under a charterparty dated 21st December 1972 claim damages for the loss suffered by
30 them by reason of the Defendants' breach of the said charterparty.

(*sd.*) JOHNSON, STOKES & MASTER
Solicitors for the Plaintiffs

This writ was issued by Johnson, Stokes & Master of 403-413, Hongkong & Shanghai Bank Building, Victoria in the Colony of Hong Kong Solicitors for the said Plaintiffs, whose address is at 80 Broad Street, Monrovia, Liberia.

(*sd.*) JOHNSON, STOKES & MASTER

AFFIDAVIT OF STRUAN ROBERTSON

—
No. 6
Affidavit of
Struan Robertson
dated 2.6.1973

I, Struan Robertson of 80 Macdonnell Road, Flat 201, Victoria in the Colony of Hong Kong, a Solicitor of the Supreme Court, make oath and say as follows:-

1. I am an Assistant Solicitor in the firm of Johnson, Stokes & Master of Rooms 403-413 Hong Kong & Shanghai Bank Building, 1 Queen's Road Central, Victoria, Hong Kong, Solicitors for the Plaintiffs.
2. The Plaintiffs are the charterers of the Philippine flag vessel "Philippine Admiral" belonging to the port of Manila under the terms of a charter party dated 21st December 1972.
3. I am informed by Michael Porter of Wallen Shipping (Hong Kong) Limited of 2nd floor, Hong Kong & Shanghai Bank Building aforesaid, the agents in Hong Kong for the Plaintiffs, are verily believe that the Plaintiffs have a claim against the above-named vessel in respect of such charter party by virtue of the repudiation by the Defendants of such charter party.
4. This action is brought by the Plaintiffs pursuant to Section 3(4) of the Administration of Justice Act 1956. To the best of my knowledge and belief the Defendants were at the time when the cause of action arose in possession or control of the said ship "Philippine Admiral" and would be liable to the Plaintiffs in an action in personam. They were also at the date of the issue of the writ in this action the beneficial owners of the "Philippine Admiral" as respects all the shares therein. The grounds of my belief are that according to Lloyd's Register of Shipping for 1971-1972 and the supplements thereto to April 1973 no change of ownership has taken place since the cause of action arose and further that on enquiry made on my behalf by Messrs. Holman, Fenwick and Willan, Solicitors of 1 Lloyds Avenue, London, E.C.3, England on 1st June 1973 of Lloyds reveals that they have no record of change of ownership since April 1973.

The Plaintiffs have been unable to obtain compensation from the Defendants for the said damage, and the aid and process of this Court are required to enforce payment thereof by the arrest of the "Philippine Admiral".

SWORN at the Courts of Justice)
Victoria in the Colony of Hong) (sd.) STRUAN ROBERTSON
Kong this 2nd day of June 1973.)

Before me,

(sd.) Y.P. CHAN
A Commissioner for Oaths.

AFFIDAVIT OF SIMON HERBERT MAYO

I, Simon Herbert Mayo, Acting Deputy Registrar of the Supreme Court of Hong Kong, make oath and say as follows:

—
No. 7
Affidavit of
Simon Herbert
Mayo
dated 25.9.1973

1. I have the conduct of all matters relating to the Admiralty Jurisdiction of the Registrar and I give assistance and directions to the Chief Bailiff in connection with all work which is performed by him.
2. A Writ of Summons was issued by the Plaintiffs on the 2nd June, 1973, claiming damages for loss suffered by them by reason of the Defendants' breach of a charterparty agreement. On the same date, a Warrant of Arrest was issued by me and the ship was arrested on the 4th June, 1973. On the 11th June, 1973, the Defendants entered an Appearance to these proceedings.
3. A period of over three months has elapsed since the arrest of the ship. During the course of this period very considerable expenses have been incurred in maintaining the ship under arrest. I have been advised by the Chief Bailiff that the present amount outstanding and being due and payable amounts to approximately HK\$110,000.00 Although I do not at this present time have available to me an accurate valuation of the ship, it appears to me to be highly probable that the expenses I have referred to are disproportionate in relation to the value of the ship. Although all reasonable measures have been taken to protect the ship, it is nonetheless true that the condition of the ship is likely to deteriorate whilst the ship remains under arrest.
4. Recently a gentleman named Tomas Cloma who claimed to be the President of the Liberation Steamship Co., Inc., PMI Building, 419, David Street, Manila, attended upon me and informed me that he is the President of the company which owns the ship. Mr. Cloma informed me that his financial situation was somewhat precarious and that he did not see any prospect within the foreseeable future of being able to have recourse to financial facilities which would enable him to either obtain a bond which would enable the said ship to be released or to discharge the claim which was being pursued against him by the Plaintiffs.
5. In all the circumstances, I have formed the opinion that it is unlikely now that any steps are likely to be taken to release the ship from arrest. It is also clearly the case that considerable expenditure of a continuing nature is certain to be incurred if the ship is kept under arrest by the Court. I am therefore satisfied that it would be in the best interests of all parties concerned if action was to be taken to sell the ship and for the proceeds of sale to be paid into Court.
6. The Courts have on several occasions in the past to my certain knowledge made Orders for the sale of ships in similar circumstances. The authority for this course of action can be found on pages 121 and 122 of British

*In the Supreme
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—

Shipping Laws, Volume 1, by Kenneth C. McGuffie, B.L. If the Court sees fit to accede to this Application, I would respectfully recommend that an Order should be made authorising me to arrange for an appraisal of the ship and for its sale in accordance with the advice of the Court's Appraisers, Messrs. Mollers' (Hongkong) Ltd.

No. 7
Affidavit of
Simon Herbert
Mayo
dated 25.9.1973

7. By reason of all of the aforesaid I humbly crave an Order in the terms of the Notice of Motion filed herein.

SWORN at the Court of Justice)
on the 25th day of September)
1973.)

(*sd.*) SIMON HERBERT MAYO

10

Before me,

(*sd.*) J. R. OLIVER
A Commissioner for Oaths.

1973, Folio 106

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

NOTICE OF MOTION

TAKE NOTICE that this Honourable Court will be moved on the 8th day of October 1973 at 9:30 o'clock in the forenoon or so soon thereafter as the Registrar can be heard for an Order that the ship "Phillipine Admiral" be appraised and sold by the Bailiff and that the proceeds of sale be paid into Court.

No. 8
Notice of
Motion
dated 26.9.1973

Dated the 26th day of September, 1973.

(*sd.*) S. H. MAYO
Acting Deputy Registrar

10 To: Messrs. Deacons, Solicitors
Messrs. Johnson, Stokes & Master, Solicitors
Messrs. Wilkinson & Grist, Solicitors.

1973, Folio 106

No. 9
Order of
Pickering, J.
dated 8.10.1973

ORDER

BEFORE THE HONOURABLE MR. JUSTICE PICKERING IN COURT

DATED THE 8TH DAY OF OCTOBER, 1973

Upon the application of the Registrar of the Supreme Court of Hong Kong and upon reading the Affidavit of Simon Herbert Mayo, Acting Deputy Registrar of the Supreme Court of Hong Kong, filed herein on the 26th day of 20 September, 1973 IT IS HEREBY ORDERED that the Ship "Philippine Admiral" be appraised and sold by the Bailiff and that the proceeds of sale be paid into Court.

(*sd.*) S.H. Mayo
Deputy Registrar

NOTICE OF MOTION

—
No. 10
Notice of
Motion
dated 29.10.1973

0.12 r.8)
of the)
Rules of)
Supreme)
Court)
1967)

TAKE NOTICE that this Honourable Court will be moved on Saturday, the 3rd day of November 1973 at 10.00 o'clock in the forenoon or so soon thereafter as Counsel can be heard by Counsel on behalf of the Government of the Republic of the Philippines for an order that the writ of summons, the order for appraisal and sale dated 8th October, 1973 and all subsequent proceedings herein be set aside with costs on the ground that the ship "Philippine Admiral" formerly mv. "Dagohoy" is the property of the Government of the Republic of the Philippines, a recognised foreign independent state, and that the said state declines to sanction the institution of these proceedings in this Court. 10

Dated the 29th day of October, 1973.

(*sd.*) PETER MARK & CO.
Solicitors for the Government of the
Republic of the Philippines owners
of the ship.

To the abovenamed Plaintiffs,
and their solicitors,
Messrs. Johnson, Stokes & Master,
Hong Kong.

20

AFFIDAVIT OF RODOLFO LAMAYO DIAZ

I, RODOLFO LAMAYO DIAZ of 38 Ventris Road, 8th floor, Victoria, Consul and Acting Principal officer of The Philippine Consulate General in the Colony of Hong Kong, of the Government of Republic of The Philippines, make oath and say as follows:-

—
No. 11
Affidavit of
Rodolfo Lamayo
Diaz
dated 30.10.1973

1. The ship "Philippine Admiral" formerly known as m.v. "Dagohoy" ("the said ship") against which this action is brought is owned by and has at all material times been owned by The Philippine Reparations Commission, a state organ of The Government of The Republic of the Philippines. The said ship is registered in the port of Manila in the Republic of The Philippines. There are now produced and shown to me marked respectively "RLD-1", RLD-2 and "RLD-3" true certified copies of the following documents:-

- "RLD-1" – certificate of register
- "RLD-2" – certificate of owner-ship
- "RLD-3" – certificate of change of name of vessel.

2. I am instructed by the said Government of The Republic of The Philippines to state that the said Government declines to sanction the institution of these proceedings in This Court against the said ship "Philippine Admiral".

20 SWORN at the Courts of Justice,)
Victoria, Hong Kong this 30th day)
of October, 1973.)

(sd.) Rodolfo Lamayo Diaz

Before me,

(sd.) K.H. Lam
A Commissioner for Oath.

This affidavit is filed on behalf of the Government of The Republic of The Philippines.

In the Supreme
Court of
Hong Kong
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EXHIBIT "RLD-1"

B. C. FORM NO. 21

Certificate No. 4571

Official No. 210153

Signal letters

No. 12
Exhibit "RLD-1"

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF CUSTOMS

CERTIFICATE OF PHILIPPINE REGISTER

PORT OF **MANILA**, PHILIPPINES

IN PURSUANCE OF SECTION 1172 OF THE ADMINISTRATIVE CODE AS AMENDED

REPARATIONS COMMISSION, Rep. of the Philippines, as represented 10

by **MAURICIO O. BAS**, Executive Director and Secretary

....., residing at
..... **Manila**, Philippines, having sworn that

It is a government agency duly created by law

is the sole owner of the vessel called the "**DAGOHOY**"

..... and that said vessel was built in the year 19 **60**

at **Maisuru, Japan** of **Steel**

and that said vessel is a **Motor Ship** of **9,132.11** gross tons and
..... **5,068.25** net tons and that said vessel has **Two** decks and

..... **Two** masts, and that her length is **459.95 ft.**, her breadth **20**
..... **61.25 ft.**, and her depth **34.95 ft.**, and

that said vessel is engaged in legitimate trade.

Therefore, said vessel is by this Certificate entitled to the protection
and flag of the Republic of the Philippines.

Given under my hand and the seal of the Bureau of Customs
at the Port of **MANILA**, Philippines, this **15th**
day of **DECEMBER** in the year one thousand nine
hundred and **SIXTY**

..... (*sd.*) **PEDRO PACIS**
..... **Acting Collector of Customs** 30

Certificate No. 4502

EXHIBIT "RLD-2"

Official No. 210153

Signal Letters

*In the Supreme
Court of
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**REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF CUSTOMS**

No. 12
Exhibit "RLD-2"

CERTIFICATE OF OWNERSHIP

Port of **MANILA** Philippines

**IN PURSUANCE OF SECTION ELEVEN HUNDRED SEVENTY-THREE OF THE
REVISED ADMINISTRATIVE CODE OF 1917**

10 I, **PEDRO PACIS**, Acting Collector of Customs for the
 Port of **MANILA** , Philippines, do hereby certify that a duly executed
Contract of Conditional Purchase & Sale of Reparations Goods, presented at this office,
 bearing date the day of, 19, of the Motor Ship
 vessel called the **"DAGOHOY"**, built in the year 1960 at
 **Maisuru, Japan** of **Steel**, and described
 in Certificate of Admeasurement No. **236/60**, issued to said vessel at the Port
 of **MANILA**, Philippines as being of **9,132.11** gross
 and **5,068.25** net tonnage, and that said vessel has **Two** decks, and **Two**
 masts, is **459.95 ft.** long, **61.25 ft.** broad, and **34.95 ft.**

20 deep, **Built and constructed for REPARATIONS COMMISSION, Rep. of the**
Philippines of **Manila**, Philippines
 has been proved satisfactorily to me; and I further certify that
REPARATIONS COMMISSION, herein mentioned as the sole owner of said vessel,
 is a government agency duly created by law.

Given under my hand and the seal of the Bureau of Customs
at the Port of **MANILA**, Philippines,
this **15th** day of **December**, 1960.

(sd.) PEDRO PACIS
Acting Collector of Customs

In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction

No. 12
Exhibit "RLD-3"

EXHIBIT "RLD-3"

Republic of the Philippines
Department of Finance
BUREAU OF CUSTOMS
Manila

CERTIFICATE OF CHANGE OF NAME OF VESSEL NO. 1990

I, **ALBERDO DE JOYA** Commissioner of Customs,
do hereby certify that the name of **"DAGOHOY"**
of **9,132.11** gross and **5,068.25** net tonnages, provided
with Official No. **210153** Certificate of Philippine **10**
Register No. **4571** Certificate of Ownership No. **4502**
and Coastwise License No. **Foreign**, now owned by
... **REPARATIONS COMMISSION, Rep. of the Phil.**,, Philippines, has this
date been changed to **"PHILIPPINE ADMIRAL"** and that said change
has been duly recorded in this Office.

WITNESS by Hand and the Official Seal of the Bureau of Customs,
at the Port of Manila, this **2nd** day of
..... **October**, 19... **64**

ALBERDO DE JOYA
Commissioner of Customs **20**

By:

(*sd.*) **PABLO C. MARIANO**
Deputy Commissioner of Customs

Fee:
P **110.00** - C. Stamps
..... **.50** - D. "
Paid - 10-2-64

AFFIDAVIT OF FELICISIMO OCAMPO

I, FELICISIMO OCAMPO, of 571 Holy Cross Street, Green Hill Mandaluyong, Rizal, Republic of the Philippines, now of Lee Gardens Hotel, Victoria, Hong Kong make oath and say as follows:-

—
No. 13
Affidavit of
Felicisimo Ocampo
dated 2.11.1973

1. I am a duly qualified lawyer and am a member of the Philippine Bar, a former member of the Philippine Judiciary and of the Congress of the Philippines and am one of the Commissioners of the Reparations Commission.

2. That the Reparations Commission a state organ of the Government of the Philippines, created by Republic Act No. 1789 for the purpose of implementing the provisions of said Act, the Reparations Agreement and the exchange of notes on Reparations Commission.

3. On May 9, 1956, a Reparations Agreement was signed between the Governments of the Republic of the Philippines and of Japan providing for the payment of reparations in the form of goods and services from Japan totalling \$550,000,000.00.

Sec. 3, Art. 9 of this Agreement specifically provides:-
"The products of Japan supplied under the present Agreement shall not be re-exported from the territories of the Republic of the Philippines."

20

4. The MV "PHILIPPINE ADMIRAL" (formerly Dagohoy) is a product of Japan, obtained under the above Agreement by way of reparations to the Republic of the Philippines from Japan through its State Organ, the Reparations Commission, which is directly under the Office of the President. Without the approval and consent of the Reparations Commission directly charged with the task of implementing the Reparations Law (Republic Act No.1789), this vessel cannot be sold or transferred except to Filipino citizens and must be utilized in a manner that will contribute to the economic development of the country. Hence all Reparations contracts involving reparations goods are unique and different from ordinary contracts under Philippine Law.

30

5. It is the declared intention of the aforesaid Act of the Government of the Philippines to utilize all reparations payments procured in whatever form from Japan under the terms of the Reparations Agreement mentioned above in such manner as shall assure the maximum possible economic benefit to the Filipino people.

6. The contemplated sale of MV "PHILIPPINE ADMIRAL" will defeat the letter and spirit of the Reparations Agreement (which is actually a Treaty) between two sovereign states, namely, the Philippines and Japan.

*In the Supreme
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No. 13
Affidavit of
Felicisimo Ocampo
dated 2.11.1973

The Republic of the Philippines through its State Organ, the Philippine Reparations Commission, is and has at all material times been the owner of the MV "PHILIPPINE ADMIRAL" and registered as such. Although a contract of conditional purchase and sale was entered into between the Reparations Commission as Conditional Vendor and the Liberation Steamship Co. (a 100% Filipino Corporation) (as Conditional Vendee) it was expressly covenanted and agreed thereby that the title to and ownership of the vessel should remain with the Reparations Commission until the vessel had been fully paid for. The said contract was subject also to the Provisions of the said Republic Act. No.1789 and in particular a prohibition to transfer to a non-Filipino is permanent and would remain even after the full payment of the costs of the vessel had been made. 10

7. As a sovereign states, the Republic of the Philippines, under Section 16, Article XV of the present Philippine Constitution, cannot be sued without its consent.

8. It is the obligation of Liberation Steamship Company as end user while utilizing the vessel, to pay for repairs and provisions for the vessel, as well as harbour fees and the salaries and wages of its officers and crew. The Liberation Steamship Company has not complied with the terms of the Conditional Contract referred to in paragraph 6 hereof and in particulars has not paid for the said vessel.

9. As at 9th October, 1973, the Liberation Steamship Company was delin- 20
quent in payment and owed the Reparations Commission the sum of ₱5,322,120.04. A statement of account prepared by the Acting Director Accounting Finance & Budget Operation Department of the Reparations Commission is now produced and shown to me marked "FO-1".

10. The Reparations Commission, by Resolution No.368(73) formally adopted on October 10, 1973, has ordered the repossession of the vessel. A true copy of the said Resolution is now produced and shown to me marked exhibit "FO-2".

11. The Charter Party apparently entered into by Liberation Steamship Company with Telfair Shipping Corporation was entered into without the know- 30
ledge, consent or approval of the Reparations Commission. Under Philippine Law a claim for damages for breach of a Charter Party does not give rise to a maritime lien on the vessel which can be enforced by arrest. At most, it given rise to an action in personam, and not in rem, and cannot, therefore, attach to the vessel.

12. I am directed by my Government, the Republic of the Philippines, to invoke its rights as a friendly independent Sovereign State and claim immunity from suit.

SWORN at the Courts of Justice,)
Victoria, Hong Kong this 2nd day)
of November, 1973.

(sd.) FELICISIMO OCAMPO

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

Before me,

(sd.) K.H. Lam
A Commissioner for Oath.

—
No. 13
Affidavit of
Felicisimo Ocampo
dated 2.11.1973

This affidavit is filed on behalf of the Government of The Republic of The Philippines.

EXHIBIT "FO-1"

LIBERATION STEAMSHIP CO., INC.

Statement of Account as of
(Based on ten (10) years amort.)
October 9, 1973

<u>Date of Delivery</u>	<u>P a r t i c u l a r s</u>	<u>FOB Cost</u>	<u>Date Due</u>	<u>Amount Due</u>	<u>Payment</u>	<u>Balance Due</u>
October 31 1960	One (1) unit cargo vessel 12,201.47 DWT "MS Dagohoy"	₱6,868,577.75	(Amortised for ten (10) years)			10
	1st Payment w/o interest - 10% of FOB Cost	(686,857.78)	10-31-62	₱686,857.78	₱686,857.78	
	1st Installment w/3% interest:					
	Principal	(539,234.59)	10-31-63	539,234.59	724,686.19	
	3% Amort. Interest	-	10-31-63	185,451.60		
	2nd Installment w/3% interest:					
	Principal	(555,411.63)	10-31-64	555,411.63	724,686.19	
	3% Amort. Interest	-	10-31-64	169,274.56		
	3rd Installment w/3% interest:					
	Principal	(572,073.98)	10-31-65	572,073.98	369,411.64	₱202,662.34
	3% Amort. Interest	-	10-31-65	152,612.21	152,612.21	20
	4th Installment w/3% interest:					
	Principal	(589,236.20)	10-31-66	589,236.20	-	724,686.19
	3% Amort. Interest	-	10-31-66	135,449.99		
	5th Installment w/3% interest:					
	Principal	(606,913.28)	10-31-67	606,913.28	-	724,686.19
	3% Amort. Interest	-	10-31-67	117,772.91		
	6th Installment w/3% interest:					
	Principal	(625,120.68)	10-31-68	625,120.68	-	724,686.19
	3% Amort. Interest	-	10-31-68	99,565.51		
	7th Installment w/3% interest:					
	Principal	(643,874.30)	10-31-69	643,874.30	-	724,686.19
	3% Amort. Interest	-	10-31-69	80,811.89		

Liberation Steamship (Cont'd)

8th Installment w/3% interest:							
Principal	(663,190.53)	10-31-70	663,190.53				724,686.19
3% Amort. Interest	—	10-31-70	61,495.66				
9th Installment w/3% interest:							
Principal	(683,086.25)	10-31-71	683,086.25				724,686.19
3% Amort. Interest	—	10-31-71	41,599.94				
10th Installment w/3% interest:							
Principal	(703,576.53)	10-31-72	703,578.53				724,686.19
3% Amort. Interest	—	10-31-72	21,107.66				
Sub-Total	₱ ----		₱7,933,719.68			₱2,658,254.01	₱5,275,465.67
Add: 3% Additional interest computed up to		10- 9-73	786,900.36			740,245.99	46,654.37
Total	₱ ----		₱8,720,620.04			₱3,398,500.00	₱5,322,120.04

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PAYMENTS:

<u>Date</u>	<u>O.R. No.</u>	<u>Total Payments</u>	<u>Principal & 3% Amort. Interest</u>	<u>3% Add'l Int. for Delinquency in Payment</u>
From 1963 to				
7-31-67	Various	₱1,510,000.00	₱1,426,753.83	₱ 83,246.17
8- 7-67	1169829	30,000.00	28,757.92	1,242.08
9-18-67	1247137	30,000.00	22,821.89	7,178.11
10- 5-67	1169848	30,000.00	27,055.60	2,944.40
11- 2-67	1254023	30,000.00	25,153.10	4,846.90
12- 5-67	1260190	30,000.00	22,460.41	7,539.59
1- 3-68	1264782	30,000.00	23,427.84	6,572.16
2- 5-68	1253550	30,000.00	22,584.88	7,415.12
3- 4-68	1253568	30,000.00	23,760.36	6,239.64
4- 3-68	1253576	30,000.00	23,373.26	6,626.74
5- 7-68	1253586	30,000.00	22,555.01	7,444.99
7-18-68	1331452	15,665.80	33.41	15,632.39
7-19-68	1253600	44,334.20	44,117.09	217.11
8-15-68	1340284	30,000.00	24,235.83	5,764.17
10-16-68	1363498	30,000.00	16,887.26	13,112.74

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In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction

No. 14
Exhibit "FO-1"

Liberation Steamship (Cont'd)

10-30-68	1276621	30,000.00	27,058.49	2,941.51	
11-25-68	1276628	30,000.00	23,165.50	6,834.50	
12-16-68	1276636	30,000.00	24,423.60	5,576.40	
1-15-69	1276644	30,000.00	22,093.93	7,906.07	
2-17-69	1351860	30,000.00	21,363.25	8,636.75	
3-13-69	1351870	30,000.00	23,760.87	6,239.13	
4-14-69	1351878	30,000.00	21,743.65	8,256.35	
5-26-69	1428407	30,000.00	19,238.61	10,761.39	10
6-30-69	1448974	30,000.00	21,087.52	8,912.48	
7-25-69	1431920	30,000.00	23,677.27	6,322.73	
8-29-69	1431933	30,000.00	21,216.29	8,783.71	
9-25-69	1431942	30,000.00	23,271.08	6,728.92	
10-17-69	1493374	30,000.00	24,559.25	5,440.75	
11-17-69	1495472	30,000.00	21,443.06	8,556.94	
12-26-69	1432087	30,000.00	18,179.53	11,820.47	
1-21-70	1512996	30,000.00	22,158.54	7,841.46	
2-27-70	1493963	30,000.00	18,908.38	11,091.62	
3-30-70	1493970	30,000.00	20,755.20	9,244.80	
5-15-70	1494060	30,000.00	16,360.38	13,639.62	20
6- 5-70	1539671	30,000.00	23,801.46	6,198.54	
7- 3-70	1494088	30,000.00	21,790.05	8,209.95	
8-28-70	1568062	30,000.00	13,680.40	16,319.60	
9-30-70	1568088	30,000.00	20,420.20	9,579.80	
10-30-70	1593914	30,000.00	21,341.44	8,658.56	
11-25-70	1568109	30,000.00	21,112.00	8,888.00	
12-29-70	1568125	30,000.00	18,280.45	11,719.55	
1-29-71	1568136	30,000.00	19,361.11	10,638.89	
4- 6-71	1640274	30,000.00	7,112.88	22,887.12	
5-11-71	1651418	90,000.00	78,064.51	11,935.49	30
6-11-71	1656836	30,000.00	19,627.47	10,372.53	
6-18-71	1657009	30,000.00	27,669.11	2,330.89	
7-23-71	1568248	30,000.00	18,425.13	11,574.87	

Liberation Steamship (Cont'd)

8-26-71	1683460	30,000.00	18,807.33	11,192.67
9-17-71	1696063	30,000.00	22,791.69	7,208.31
10-22-71	1663287	30,000.00	18,597.81	11,402.19
11-12-71	1698378	30,000.00	22,535.58	7,464.42
1-10-72	1713037	30,000.00	7,464.40	22,535.60
7-26-72	1773510	30,000.00	—	30,000.00
9- 4-72	1797504	75,000.00	14,239.67	60,760.33
9-20-72	1799867	37,500.00	31,417.19	6,082.81
10-16-72	—	24,000.00	14,180.44	9,819.56
10-16-72	1797513	6,000.00	6,000.00	—
11-16-72	1797525	6,000.00	23,091.60	6,908.40
	LBB	24,000.00		
1-12-73	1833992	6,000.00	—	6,000.00
8- 1-73	1919103	60,000.00	—	60,000.00
9- 4-73	1919136	30,000.00	—	30,000.00
Total		₱3,398,500.00	₱2,658,254.01	₱740,245.99

Prepared by:

(sd.) NOBE B. GUTIERREZ
Clerk II

APPROVED:

(sd.) TRIFUNA P. TOMAGAN
Acting Director
Accounting, Finance & Budget
Operations Department

In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction

No. 14
Exhibit "FO-2"

EXHIBIT "FO-2"

REPUBLIC OF THE PHILIPPINES
Office of the President
REPARATIONS COMMISSION
Quezon City

RESOLUTION NO. 368(73)

RESOLVED, in view of the proposed sale in Hongkong, allegedly in pursuance of an order of the Hongkong Supreme Court, of the reparations vessel, M/S "Philippine Admiral" (formerly, M/S "Dagohoy") procured for and delivered to the Liberation Steamship Co., Inc. as an end-user of the same and which proposed sale was published in the Manila newspaper, "Bulletin Today" dated October 10, 1973, and considering that the aforesaid vessel remains the property of the Philippine Government, represented by the Reparations Commission, the same not having been fully paid for; considering further, that the published proposed sale could have been the result of the neglect and/or failure of the said enduser to operate the vessel as a good father of a family and in a bonafide manner within the framework of pertinent laws and regulations; considering also, that the said enduser has been delinquent of the payment of its obligations to the Commission and which delinquency has aggregated in the amount of ₱5,322,120.04 as of October 9, 1973; considering finally, that the said enduser, has continuously failed to make even a reply to the letters and telegrams of the Commission inquiring about the status of the case against it in Hongkong and/or steps it had taken to bring the vessel to the Philippines, (1) to direct the immediate repossession of said vessel; and (2) to direct and authorise the Legal Department, in coordination with the DBP-Repacom Action Group, to implement this resolution and to take such other steps and/or actions as may be necessary and warranted for the protection of the best interest of the Government.

Adopted, October 10, 1973.

(sd.) ANACLETO C. MANGASER
Acting Chairman

(On leave)
FELICISIMO OCAMPO
Member

(sd.) LUIS ASIS
Member

(sd.) GONZALO T. ESCALORA
Acting Member

ATTESTED:

(sd.) ERNESTO R. TENA
Secretary of the Commission
ERT:JRD:LBT:sa

AFFIDAVIT OF STRUAN ROBERTSON

I, STRUAN ROBERTSON, Solicitor of 30 Lugard Road, The Peak, Hong Kong, make oath and say as follows:-

No. 15 Affidavit of Struan Robertson dated 2.11.1973

- 1. I am an Assistant Solicitor in the firm of Messrs. Johnson, Stokes & Master of Rooms 403-413, Hongkong & Shanghai Bank Building, 1, Queen's Road, Central, Hong Kong and the facts herein deposed to are within my own knowledge.
- 2. I have read what purports to be an affidavit of Rodolfo Lamayo Diaz filed herein on 30th October 1973 in support of a Notice of Motion to set aside the Writ of Summons and all subsequent proceedings herein.
- 3. There is now produced and shown unto me and exhibited hereto marked "S.R.1." a true copy of a letter dated 23rd July 1973 addressed by the President of Liberation Steamship Co., Inc. to Messrs. Salcedo, Del Rosario, Bito, Misa & Lozado who have been acting as my firm's correspondents in this matter in the Philippines. Immediately after being served with a copy of the Notice of Motion filed herein I telephoned Arturo M. Del Rosario, a partner of the said correspondents and am now awaiting for the documents referred to in the said letter to arrive at Hong Kong by air mail. However, from reading the contents of this letter I verily believe that at the time these proceedings were brought the beneficial owner of the said vessel was Liberation Steamship Co. Inc.
- 4. During the aforesaid telephone conversation with the said Arturo M. Del Rosario I was informed by him that the Reparations Commission which is alleged in the aforesaid affidavit of Mr. Diaz to be the owner of the "Philippine Admiral" is a Government agency which was created by statute having power to enter contracts in its own name and without immunity from legal process in the Republic of the Philippines. I am furthermore informed as aforesaid that the said Reparations Commission has only on 10th October 1973 purported to rescind the agreement referred to as Document 1 in exhibit "S.R.1." hereto and that under Philippine law such rescission is of no effect in the absence of a court order supporting the same.
- 5. I furthermore believe that the "Philippine Admiral" at all material times was and still is in the possession of Liberation Steamship Co., Inc. The grounds of my belief are (inter alia) that the master of the said vessel, Captain Virgilio A. Cloma is the vice-president of Liberation Steamship Co., Inc. I also am informed by him and believe that he is also the son of the President of that Corporation.
- 6. I therefore believe that this Honourable Court has jurisdiction in these proceedings and that the Writ of Summons and the arrest herein should not be set aside.

SWORN at the Courts of Justice)
Victoria in the Colony of Hong)
Kong this 2nd day of November,)
1973.

(sd.) STRUAN ROBERTSON

Before me,

(sd.) K.H. LAM
A Commissioner for Oaths.

In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction

EXHIBIT "S.R.1"

July 23, 1973

—
No. 16
Exhibit "S.R.1" —
Atty. Arturo Del Rosario
Salcedo, Del Rosario, Bito, Misa & Lozada
9th Floor, R. Magsaysay Center Bldg.
Roxas Blvd., Manila

Dear Atty. Del Rosario:

Attached hereto are the following documents:

1. Photo copy of the original Conditional Deed of Sale of M/S "Philippine Admiral" dated 1960. Due to the fire that threatened our building at David St., this is the only copy available in our file at the moment; 10
2. Photo copy of the letter of transmittal and Resolution No. 479(64) by the Reparations Commission authorizing Liberation Steamship Co., Inc. to change name of the vessel from M/S "Dagohoy" to M/S "Philippine Admiral";
3. Photo copies of the Certificate of Insepection dated 1964 and 1966, issued by the Bureau of Customs, indicating that the Owner of the M/S "Philippine Admiral" is the Liberation Steamship Co., Inc.;
4. Photo copy of the certification by the Reparations Commission that the Liberation Steamship Co., Inc. is the end-user of the vessel; 20
5. Photo copy of the Bureau of Customs' Hull & Boiler Inspection Division's certification, also indicating that the Owner of the vessel is the Liberation Steamship Co., Inc.

It is understandable that Charterers, through counsel in Hongkong, would like to have evidence of Liberation Steamship Company's ownership hold on the vessel to gurantee security of advances. It is our opinion that more than any other documents, the decision of the Court dated February 15, 1964, is a judicial recognition of the ownership right of Liberation Steamship Co., Inc. on the M/S "Philippine Admiral".

Sincerely yours,
LIBERATION STEAMSHIP CO., INC.
(sd.) TOMAS CLOMA
President

30

TC/ag
encls: as stated

AFFIDAVIT OF PETER MARK

I, PETER MARK, proprietor of the firm of Messrs. Peter Mark & Co., Solicitor, of Grand Building, 11th floor, 15-18 Connaught Road Central, Victoria, in the Colony of Hong Kong, make oath and say as follows:-

—
No. 17
Affidavit of
Peter Mark
dated 3.11.1973

1. I am the solicitor having the conduct of this action for and on behalf of the Government of the Republic of Philippines in connection with the vessel M.V. "Philippine Admiral".

2. I have caused enquires by telex to be made by Messrs. Maxwell Batley & Co., Solicitors, of No.27 Chancery Lane, London, W.C.1, as to the registered owner of the vessel "Philippine Admiral" formerly "Dagohoy".

3. By return telex, I am informed by Mr. George Parry of Messrs. Maxwell Batley & Co. that as at 2.00p.m. on the 31st day of October, 1973 the registered owner the vessel M.V. "Philippine Admiral" according to Lloyd's Register of Shipping in London was the Republic of the Philippines (Reparations Commission) and the Republic of the Philippines has at all material time been the registered owner of the said vessel.

SWORN at the Courts of Justice)
Victoria, Hong Kong this 3rd day)
20 November, 1973.)

(sd.) PETER MARK

Before me,

(sd.) K.H. LAM
A Commissioner for Oath.

This affirmation is filed on behalf of the Government of the Republic of the Philippines.

AFFIDAVIT OF TOMAS CLOMA

—
No. 18
Affidavit of
Tomas Cloma
dated 3.11.1973

I, TOMAS CLOMA at present of Room 721, Luk Kwok Hotel, Gloucester Road, Wanchai, in the Colony of Hong Kong, Merchant, make oath and say as follows:-

1. I am the president and chief executive of Liberation Steamship Company, Inc. (hereinafter called "Liberation"), a company incorporated under the law of the Republic of the Philippines, and I am duly authorised to make this my affidavit on its behalf.

2. I am normally resident at 2115, Leveriza Street, Pasay City in the said Republic of the Philippines. I have been the president and chief executive of Liberation for the past 25 years. In or about the month of October, 1960 Liberation acquired the ship "Philippine Admiral" as part of the reparation scheme made by the Government of Japan to the citizens of the Philippines. Prior to a change to her present name the said ship was named "Dagohoy". This change of name was effected in or about September, 1964. Liberation has had possession and control of the said ship for the past 13 years and has traded her during the said period of time. She was often chartered out to other ship operators. Liberation was and is entitled to all moneys earned and received save that Liberation has been making certain payments to the Reparations Commission. These payments were in the nature of instalment payments and were made under a contract intended to be entered into between the said Commission and Liberation. However in 1964 these payments were varied by an order made by the Court of First Instance, 6th Judicial District, Branch XI in Manila. Under the said order Liberation was only obliged to pay to the said Commission the sum of 30,000 pesos per month. There is now produced and shown to me marked "TC-1" a true copy of the said order. I shall deal with the intended contract at a later stage.

3. I am informed by Mr. G.E.S. Stevenson of Messrs. Brutton & Stewart, the solicitors now acting for Liberation in place of Messrs. Wilkinson & Grist, and I verily believe that:-

(a) the Government of the Philippines has instructed solicitors to issue notice of motion in five separate actions now pending in this Honourable Court in its Admiralty Jurisdiction for the purpose of setting aside all the writs of summons issued thereunder;

(b) none of the said notices of motion have been served on Liberation's former solicitors, Messrs. Wilkinson & Grist, or on Liberation;

(c) the hearing of the said motion is fixed for 10.30 a.m. on the 3rd day of November, 1973;

(d) the Government of the Philippines is claiming to be the owner of the said ship;

(e) affidavits have been filed by the Government of the Philippines but which again have not been served on Liberation's former solicitors or on Liberation.

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

—
No. 18
Affidavit of
Tomas Cloma
dated 3.11.1973

4. I do not know why the Government of the Philippines has now chosen to enter into the disputes which exist between the Plaintiffs in the various actions now pending as such disputes really concern these Plaintiffs and Liberation. The said ship was arrested on or about the 2nd day of June, 1973. There have been other actions concerning the said vessel in the past in which neither the said Commission nor the Government of the Philippines intervened. At the time of her arrest her crew was
10 employed and paid by Liberation and this has been the position for a very substantial period of time. Indeed, Liberation has appointed various agents throughout the world and has always dealt with such agents. Liberation is and has always regarded itself as the beneficial owner of the said ship notwithstanding the fact that the said Commission is registered as the owner. Indeed some documents issued by the Government of the Philippines describe Liberation as the owner. There are now produced and shown to me marked respectively "TC-2", "TC-3" and "TC-4" true copies of a Certificate of Inspection dated the 11th day of November 1971, a Certificate of Stability dated the 2nd day of June, 1964, and a Ship Radio Station Licence dated the 5th day of December, 1968.

20 5. I revert to the circumstances under which Liberation acquired the said ship. It was intended that such acquisition was to be the subject matter of a written contract known as "Contract of Conditional Purchase and Sale of Reparation Goods under RC No.337". However, the said Commission never executed the said document and has denied a petition by Liberation for the reconstitution of the said document on the grounds that there is nothing in their files to show the existence of the intended contract. The said Commission alleged that their files pertaining to this matter had been destroyed in a fire. There are now produced and shown to me marked respectively "TC-5" and "TC-6" true copies of the intended contract and exhibits hereto, and of a document dated the 10th day of November, 1960 from the
30 said Commission. The position would appear to be that the terms of the intended contract have not yet been finalised nor accepted by the said Commission although some of the terms of exhibit "TC-5" have been compiled with over the past 13 years. In the circumstances, Liberation contends that:-

(a) It is the beneficial owner of the said ship.

(b) The appearance entered on behalf of Liberation by Messrs. Wilkinson & Grist should be clarified by stating:-

"Please enter an appearance for Liberation Steamship Company, Inc. who claims to be a beneficial owner of the ship "Philippine Admiral".

40 (c) The Government of the Philippines is only entitled to be paid the balance of the moneys under exhibit "TC-5".

(d) The Government of the Philippines has not at any time been in possession of nor had the control or management of the said ship and the

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

—
No. 18
Affidavit of
Tomas Cloma
dated 3.11.1973

possession, control and management of the said ship has been and is now vested in Liberation. Further, the said ship has never been and is not employed by the Government of the Philippines on any State errand.

(e) As the beneficial owner of the said ship Liberation is entitled to defend the actions now pending.

(f) Any dispute between the Government of the Philippines and Liberation over the said ship or the proceeds of sale thereof should be adjudicated upon in Hong Kong where the said ship now lies.

6. The matter is of great complexity and I do not have with me in Hong Kong a lot of the documents which are or may be relevant to the issue now raised before this Honourable Court by the Government of the Philippines so that I am unable to fully instruct Liberation's legal advisers. The matters I have touched upon are by no means exhaustive. Up to now I have not seen any of the affidavits filed herein on behalf of the Government of the Philippines and I am unable to estimate how long it would take to deal with the same save that I can probably do so within 14 days. 10

SWORN at the Courts of Justice, Victoria)
in the Colony of Hong Kong, this 3rd)
day of November, 1973.)

(*sd.*) TOMAS CLOMA

Before me,

(*sd.*) C. K. Wong
Commissioner for Oaths.

20

EXHIBIT "TC-1"

C. F. I. FORM NO. 38

**REPUBLIC OF THE PHILIPPINES
COURT OF FIRST INSTANCE OF MANILA**

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

No. 19
Exhibit "TC-1"

I, LEONARDO S. ALCID, Clerk of the above-entitled Court, do hereby certify that the attached documents, consisting ofthree (3)..... pages, are true and correct copies of the following:

(1) "ORDER OF THE COURT" dated February 15, 1964; and

(2) "ORDER OF THE COURT" dated March 7, 1964:

10 attached to the record of/Civil Case No. 53607 entitled "The Liberation Steamship Co., Inc. versus The Reparations Commission, et al." on file in my Office.

In WITNESS WHEREOF I have hereunto signed my name and affixed the seal of this Court this 9th day of July, 1973

LEONARDO S. ALCID
Clerk of the Court of First Instance
Manila, Philippines

By
Branch Clerk of Court

In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction

Republic of the Philippines
COURT OF FIRST INSTANCE OF MANILA
Sixth Judicial District
Branch XI

No. 19
Exhibit "TC-1"

THE LIBERATION STEAMSHIP CO., INC.,
Petitioner

— versus —

CIVIL CASE NO. 53607

THE REPARATIONS COMMISSION,
BENEDICTO PADILLA,
JUAN M. ALBERTO,
GREGORIO G. ABAD,
CALIXTO O. ZALDIVAR,
HERMENEGILDO ATIENZA, and
MAURICIO O. BAS,
THE HONOURABLE EMMANUEL PELAEZ,
SECRETARY OF THE DEPARTMENT OF
FOREIGN AFFAIRS,
MINISTER SIMEON ROXAS,
Respondents.

10

ORDER

20

When this case was called for hearing today, pursuant to our Orders of 11 and 27 January 1964, counsel for the petitioner reiterated his "Motion for Leave to Withdraw the Above-Entitled Case," filed by the petitioner, thru counsel, on 5 December 1963. Counsel for the petitioner manifested, supported by Exhibits "A", "B" and "C", that the vessel involved in this case, M/S "Dagohoy," is in route to the Philippines, the charter thereof having been terminated, and may arrive in San Fernando, La Union, on or about the 22nd or 23rd of this month. Petitioner in person, thru counsel, also manifested that he would be willing to make payments in the amount of Thirty Thousand (P30,000.00) Pesos per month in amortization of the said vessel and in satisfaction of the counterclaim, in view of which the respondent, The Reparations Commission, thru counsel, gave its conformity to the dismissal of the counterclaim. 30

IN VIEW OF THE FOREGOING, let this case (petition as well as counterclaim) be, as it is hereby, dismissed, with prejudice.

No pronouncement as to costs.

SO ORDERED.

Given in open Court this 15th Day of February 1964, in Manila, Philippines.

(sgd.) Guillermo S. Santos
t/ GUILLERMO S.S. ANTOS 40
Judge

Republic of the Philippines
COURT OF FIRST INSTANCE OF MANILA
6th Judicial District
BRANCH XI

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

LIBERATION STEAMSHIP CO., INC.,
Plaintiffs

versus

REPARATIONS COMMISSION, ET AL,
Defendants.

Civil Case No. 53607

No. 19
Exhibit "TC-1"

X-----X

10

O R D E R

The Motion for Clarification is GRANTED.

The Order is clarified to the effect that petitioners shall pay the sum of thirty-thousand pesos (₱30,000.00) monthly to respondent, Reparations Commission, the first payment to begin February, 1964, and monthly thereafter on the 15th of each month.

SO ORDER.

Given in open court this 7th day of March, 1964, in the City of Manila, Philippines.

20

(sgd.) Guillermo S. Santos
t/ GUILLERMO S.S. ANTOS
Judge

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

EXHIBIT "TC-2"

**LIBERATION STEAMSHIP COMPANY, INC.
PMI BLDG., 419 DAVID ST., MANILA PHILIPPINES
PHONES 40-65-68 OR 49-29-14 CABLE ADDRESS: LISTCO MANILA**

**No. 19
Exhibit "TC-2"**

CERTIFICATION

TO ALL WHOM IT MAY CONCERN:

This is to certify that the document attached hereto is a true and correct copy and reproduction of the original Certificate of Inspection, issued by the Philippine Coast Guard, which is on my office file and record.

Manila, Philippines, October 24, 1973.

10

COMPANY SEAL

LIBERATION STEAMSHIP CO., INC.

ADELGUNDO R. GULMATICO
Office Manager

REPUBLIC OF THE PHILIPPINES)
CITY OF MANILA) s.s.

SUBSCRIBED and sworn to before me this 24th day of October, 1973, affiant exhibiting to me his Res. Cert. No. A-5264333, issued at Manila, on January 17, 1973.

Doc. No. 303 ;
Page No. 62 ;
Book No. II ;
Series of 1973.

ORLANDO O. AILES 20
NOTARY PUBLIC
Until December 31, 1974
TAN 1905-294-3
PTR NO. E-7035927
JANUARY 30, 1973
M A N I L A

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF NATIONAL DEFENSE
PHILIPPINE COAST GUARD

In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction

Certificate of Inspection

No. 684-71

No. 19
Exhibit "TC-2"

This Certificate Expires June 14, 19 72
 Vessel: M/V "PHILIPPINE ADMIRAL" Official No. 210153
 Class: Freight Tons: Gross: 9,132.11 Net: 5,352.90 Length: 484.11 ft.
 Port of Registry: Manila, Philippines Owner: Liberation Steamship Co., Inc.
 Operators: Liberation Steamship Company Inc.

The inspection of the above named vessel having been completed at Rutard Drydock Co. Ltd.
 on the 15th day of June 19 71

I HEREBY CERTIFY that the said vessel was built at Japan in the year 1960
 rebuilt in the year --- that the hull is constructed of STEEL that the said
 vessel at the date hereof is in all things in conformity with the applicable vessel inspection laws and the
 rules and regulations prescribed and is allowed to carry --- passengers.

There must be included in the manning requirements - 2 - certified lifeboatmen.

MANNING REQUIREMENT

1 Master	1 Boatswain	1 Electrician Watchman	1 Chief Steam/Motor Engineer
1 Chief Mate	3 Doctor	1 Carpenter	1 Second Steam/Motor Engineer
1 Second Mate	1 Quartermaster	1 Deckhands	1 Third Steam/Motor Engineer
1 Third Mate	1 Purser	3 Oilers	1 Fourth Steam/Motor Engineer
1 Radio Operator	3 Able Seaman	1 Machinist	10 Apprentice (Engineer/Mate)
	4 Ordinary Seamen	1 Fireman/Watch tender	
		3 Wipers	

and may carry - 10 - persons when needed in the steward's and other departments not connected
 with the navigation of the vessel. (Total number of persons allowed - 50 -). The vessel is
 permitted to be navigated for the waters and under the following condition of operations:

INTERNATIONAL VOYAGES FOR LEGITMATE INTERNATIONAL TRADE.

NOTE: Issued under Coast Guard Administrative Order No. 02-68, dated November 21, 1968.

DATA, PARTICULARS OF EQUIPMENT AND PERIODIC EXAMINATIONS

1 Onr propelled lifeboats for 67 persons	30 Life preservers for adults	Fire hose total length of 950 feet	Pressure vessel examined June 1971
x Hand operated lifeboats for persons	x Life preservers for children	Inspected and approved for the carriage of inflammable or combustible liquid of grade ---	Fuel Diesel
1 Motor lifeboats for 67 persons	1 Type, line throwing apparatus	Capacity barrel ---	BOILERS
x Workboats for persons	7 Fire extinguisher Class A	Date Stability Letter Issued 6/2/64	Number one Year Built 1960
x Lifeboats for persons	10 Fire extinguisher Class B	Date last drydocked June 15, 19 71	Mfr Japan
x Buoyant apparatus for persons	5 Fire extinguisher Class C	Date last drydocked June 11, 1971	Minimum efficiency of weakest longitudinal %
x Liferrafts for persons	x Fire extinguisher others	Canada	Recording office of Manila
2 Inflatable liferaft for 50 persons	x Fire extinguisher System Fixed type	Propelled by Motor	Mounting opened
4 Lighted ring lifebuoy	1 Smothering System Co2 type	H. P. 5400	Mounting closed
4 Unlighted ring lifebuoys	5 Fire Axes	Number of Engine one	Maximum steam pressure allowed
	1 Fire Pumps	Date talkhaft withdrawn June 11, 1971	Date hydrostatic pressure applied
		Number of propellers One	

REPUBLIC OF THE PHILIPPINES } S.S.
 Port of MANILA
 HERMINIO S. FELICIANO
 Maritime Safety Engineer

Sworn to before me this 11th day of November 19 71 at Manila Philippines.

For the Commandant:
 APPROVED: (sd.) PONCIANO T. BAUTISTA
 Commander CDP PN (GSC)
 Commander First Coast Guard District
 BRIGIDO R. MUNCAL
 Chief Maritime Safety Division

P10.00 Paid under OR#674950 dtd 10 Nov '71 & .30 doc stamp on orig.

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

EXHIBIT "TC-3"

**LIBERATION STEAMSHIP COMPANY, INC.
PMI BLDG., 419 DAVID ST., MANILA PHILIPPINES
PHONES 40-65-68 OR 49-29-14 CABLE ADDRESS: LISTCO MANILA**

No. 19
Exhibit "TC-3"

CERTIFICATION

TO ALL WHOM IT MAY CONCERN:

This is to certify that the document attached hereto is a true and correct copy and reproduction of the original Certificate of Stability No. 7/64 which is on my office file and record.

Manila, Philippines, October 24, 1973.

10

COMPANY SEAL

LIBERATION STEAMSHIP CO., INC.

ADELGUNDO R. GULMATICO
Office Manager

REPUBLIC OF THE PHILS)
CITY OF MANILA) s.s.

SUBSCRIBED AND SWORN to before me this 24th day of October, 1973, affiant exhibiting to me his Res. Cert. No. A-5264333, issued on January 17, 1973, at Manila.

ORLANDO O. AILES
NOTARY PUBLIC
Until December 31, 1974
TAN 1905-294-3
PTR NO. E-7035927
JANUARY 30, 1973
M A N I L A

20

Doc. No. 305 ;
Page No. 62 ;
Book No. II ;
Series of 1973.

Republic of the Philippines
Department of Finance
BUREAU OF CUSTOMS
Manila

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

HULL AND BOILER INSPECTION DIVISION
CERTIFICATE OF STABILITY – No. 7/64

No. 19
Exhibit "TC-3"

Vessel: M/V "DAGOHOY" Class: Cargo
Gross Tonnage: 9,132.11 Official No.: 210153
Owner: Liberation Steamship Company Home Port: M a n i l a

10 The calculations based on the results of stability test of the subject vessel supervised by Maizuru Shipyard on Oct. 26, 1960 at Japan indicate that the vessel has satisfactory stability for all operating load conditions in waters of International under the following restrictions:

1. Service loading conditions indicated in the Stability Calculations of Various Conditions must be strictly followed and a copy must be on board for reference;
2. The number of persons on board must not exceed the authorized number stipulated in the Certificate of Inspection;
3. And that this certificate of stability be framed under glass and posted in the pilot house of the subject vessel.

20

APPROVED June 2, 1964

PABLO C. MARIANO
Deputy Commissioner of Customs

₱5.30 Customs & Doc. Stamps

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

EXHIBIT "TC-4"

**LIBERATION STEAMSHIP COMPANY, INC.
PMI BLDG., 419 DAVID ST., MANILA PHILIPPINES
PHONES 40-65-68 OR 49-29-14 CABLE ADDRESS: LISTCO MANILA**

No. 19
Exhibit "TC-4"

CERTIFICATION

TO ALL WHOM IT MAY CONCERN:

This is to certify that the document attached hereto is a true and correct copy and reproduction of the original Ship Radio Station License of the M/V "Philippine Admiral", issued by the Radio Control Office, Republic of the Philippines, which is on my office file and record.

10

Manila, Philippines, October 24, 1973.

COMPANY SEAL

LIBERATION STEAMSHIP CO., INC.

ADELGUNDO R. GULMATICO
Office Manager

REPUBLIC OF THE PHILIPPINES)
CITY OF MANILA) s.s.

SUBSCRIBED AND SWORN to before me this 24th day of October, 1973, affiant exhibiting to me his Res. Cert. No. A-5264333, issued on January 17, 1973, at Manila.

ORLANDO O. AILES 20
NOTARY PUBLIC
Until December 31, 1974
TAN 1905-294-3
PTR NO. E-7035927
JANUARY 30, 1973
M A N I L A

Doc. No. 306 ;
Page No. 63 ;
Book No. II ;
Series of 1973.

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF PUBLIC WORKS AND COMMUNICATIONS
RADIO CONTROL OFFICE
Quezon City

NO. 6092
5224
(Old License number)

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

No. 19
Exhibit "TC-4"

SHIP RADIO STATION LICENSE

..... DECEMBER 5, 19 68.....

THIS IS TO CERTIFY that LIBERATION STEAMSHIP COMPANY, INC.
a citizen of the)
incorporated under the laws of the) Philippines, is hereby
granted for a period of One (1) year, this license to operate a SHIP
RADIO STATION on board the M/S PHILIPPINE ADMIRAL (ex-DAGOHOY)

This license is effective from November 22, 1968 and to expire
on November 21, 1969 unless sooner suspended, cancelled or revoked.

AUTHORIZED PARTICULARS

Call sign DZYO Nature of service CP Ship charge ₱0.08 per
Hours of service CONTINUOUS DURING NAVIGATION word

FREQUENCIES (KHC)	TYPE OF EMISSION	POWER TO ANTENNA (KW)	REMARKS
500	101A1A, 202W1A	0.300	Gen. Calling & Int'l Distress
410	101A1A, 202W1A	0.300	Radio Direction Finder
468	101A1A, 202W1A	0.300	Air Sea Rescue Operation
425, 480	101A1A, 202W1A	0.300	MF Working (*Please see back hereof)
4180,6270,8360,12540,16720,*22232.5	101A1A	0.500	HF Calling
4188,6282,8376,12564,16752,*22270	101A1A	0.500	HF Working
4209,*6313.5,*8418,*12627,*16836,*22322.5	101A1A	0.500	HF Working
500/8364	202W1A	0.005	Lifeboat Emergency mtr.

PARTICULARS OF EQUIPMENT

Transmitters: JRC MSD-135, S/N S-30049, Range: 400-535 KHz; 4.0-23.0 MHz
(Emergency): JRC NSD-113-L, S/N S-10111, Range: 400-535 KHz; 2-3; 8-9 KHz
(Lifeboat): JRC NMR-209-A, S/N None, Range: Fixed at 500 & 8364 KHz
Receivers: JRC NMR-E, S/N R-30080, Range: 0.035-0.535; 1.5-24.0 MHz
(269-E)
JRC NMR-269E, S/N 30061, Range: 0.09-0.535; 6.0-28.0 MHz
Auto Alarm: JRC NMR-173E, S/N T-20088, Range: 492-508 KHz
Direction Finder: KEC. LTD. KS-262-UR-1, S/N 22020, Range: 285-585 KHz

This license is issued subject to the provisions of the Radio Control Law,
Act No. 3846 as amended and the regulations promulgated thereunder; the
International Telecommunication and Radio Conferences and the regulations
annexed thereto.

HENEDICTO C. DAVID
Radio Regulation Chief

LG/am

AMENDED MEMORANDUM OF APPEARANCE

No. 20
Amended
Memorandum of
Appearance
dated 16.11.1973

Liberation Steamship Company Inc. who claims

Please enter an appearance for ~~the abovenamed Defendant, the owners~~
to be a beneficial owner of the ship "Philippine Admiral" the Defendant in this action.
~~of the ship "Philippine Admiral" (Philippine Flag) in this action.~~

Dated the 11th day of June, 1973.

Amended as in red this 16th day of
November, 1973 pursuant to Order of
Hon. Mr. Justice Pickering dated 3rd
day of November, 1973

(*sd.*) S.H. Mayo
Acting Deputy Registrar

Wilkinson & Grist
~~Wilkinson & Grist~~
Solicitors for the Defendant
~~Solicitors for the Defendant~~

Whose address for service is Wilkinson
and Grist, Jardine House, Twelfth Floor
Pedder Street, Victoria in the Colony
of Hong Kong.

10

AFFIDAVIT OF FELICISIMO OCAMPO

I, FELICISIMO OCAMPO, of 571 Holy Cross Street, Green Hills, Mandaluyong, Rizal, Republic of the Philippines, now of Sunning House Hotel, Hysan Avenue, Victoria, Hong Kong, make oath and say as follows:

—
No. 21
Affidavit of
Felicisimo Ocampo
dated 30.11.1973

1.(a) I am a duly qualified lawyer and member of the Philippine Bar, a Commissioner of the Reparations Commission duly authorized to represent said Commission in these proceedings, a former member of the Philippine Judiciary and of the Congress of the Philippines.

10 (b) This affidavit is supplemental to my affidavit sworn herein on the 2nd day of November 1973.

(c) I have read what purports to be an affidavit of Struan Robertson sworn herein also on the 2nd day of November 1973.

(d) I have read what purports to be an affidavit of Mr. Tomas Cloma dated November 3, 1973 filed herein and intended as answer to the claim of the Republic of the Philippines as the registered and lawful owner at all material times of the vessel M/V "Philippine Admiral".

20 2.(a) Liberation Steamship Co., Inc. did not procure the M/V "Philippine Admiral" (formerly M/V "Dagohoy") from the Government of Japan. The Vessel was procured under Reparations Contract No.337 dated August 31, 1959, a copy of which is now produced and shown to me marked "FO-1", from Japan by the Republic of the Philippines, through the Philippine Reparations Mission, pursuant to the Reparations Agreement whereby Japan has agreed to supply to the Republic of the Philippines goods and services as restitution for the devastations wrought by the former upon the latter during the last World War.

Hence, the M/V "Philippine Admiral" is a product of Japan supplied under the Reparations Agreement between the governments of the Republic of the Philippines and Japan.

30 (b) The Reparations Commission is a State Organ of the Government of the Republic of the Philippines and a certificate to that effect is now produced and shown to me marked "FO-2".

3. It is the national policy declared by the Republic of the Philippines in Section One of Republic Act No.1789, otherwise known as the Reparations Law, "to utilize all reparations payments procured in whatever form under the terms of the Reparations Agreement between the Republic of the Philippines and Japan signed on May Nine Nineteen Hundred and Fifty six in such manner as shall assure

the maximum possible economic benefit to the Filipino People". For the implementation of the aforesaid national policy, the Philippine Government has ordained in Section Two of the same Republic Act No. 1789 that "the procurement, disposition and utilization of all goods and services procured from Japan under the terms of the Reparations Agreement shall be carried out as closely as possible to promote the economic rehabilitation and development of the country".

To effectively carry out the proper utilization of reparations goods for the maximum economic benefit to the Filipino people and to attain economic rehabilitation and development of the country, the Philippine Government prescribed in Republic Act No.1789 certain conditions, limitations and even penalties, among the more important of which are- 10

"The Commission shall conduct field examinations and evaluate actual utilization of reparations goods and services"

Section 17, End-Use Checks
Republic Act No. 1789

"no goods thus acquired shall be re-sold, leased or in any other manner disposed of except to Filipino citizens or to entities wholly owned by Filipino citizens"

Section 12. Terms of Sale
Republic Act No. 1789

20

"Any person who fails to utilize any capital goods acquired from the Commission for the purpose for which they are intended within a period of twenty-four months after actual complete physical delivery or does not continue to utilize the same without any reasonable cause as long as they are serviceable after having started operations, shall be subject to a fine of five per cent of the value of such goods for every year of default or fraction thereof and imprisonment for not less than five years nor more than ten years. In addition thereto, the goods, as well as the payments already made thereon, shall be subject to confiscation and forfeiture to the Government."

30

Section 19. Violations and
Penalties Republic Act No. 1789

A copy of the Reparations Law, as amended, is now produced and shown to me marked "FO-3".

4. It was necessary for the Liberation Steamship Company Inc. to satisfy the Reparations Commission that it possessed all the qualifications of an end-user of reparations goods by complying with all the prerequisites prescribed therefor by Republic Act No.1789, before the Reparations Commission awarded the operation and utilization of the M/V "Dagohoy" (now M/V "Philippine Admiral") to the Liberation Steamship Company, Inc. under a Contract of Conditional Purchase and Sale, which is now produced and shown to me marked "FO-4". 40

5. The Republic of the Philippines, as represented by the Reparations Commission, a state organ, is and has at all material times been the registered and lawful owner of the M/V "Philippine Admiral" and has been registered as such owner uninterruptedly ever since up to the present. In the aforesaid Contract of Conditional Purchase and Sale, it is explicitly stated that the title to and ownership of the vessel shall remain with the Reparations Commission until the same is fully paid for.

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

—
No. 21
Affidavit of
Felicisimo Ocampo
dated 30.11.1973

6. The Liberation Steamship Company, Inc. has never been in full possession and control of the M/V "Philippine Admiral" because of the limitations expressly
10 covenanted in the aforesaid Contract of Conditional Purchase and Sale and the Terms and Conditions annexed thereto and because of the provisions of the Republic Act No.1789 which effectively circumscribed and burdened its operation and utilization of said vessel. The effect of the aforesaid is such that the Liberation Steamship Company, Inc. (a) shall operate and utilize the vessel in accordance with Philippine law; (b) shall submit the vessel to examinations and evaluations of the actual condition and utilization thereof as the Reparations Commission will make thereon with or without prior notice, and (c) shall not permit any subsequent change in the control or ownership of the vessel as shall at any time thereafter
20 change the control or ownership of the same wholly held therein by Filipino citizens and that in case of any transfer of ownership, whether by virtue of a private contract or through court proceedings, the same shall be limited only to Filipino citizens or to entities wholly owned by Filipino citizens and (d) that the failure of Liberation Steamship Co., Inc. to comply with any of the terms and conditions thereof, such as failure to pay the amortizations on the vessel, shall render the contract automatically rescinded without need of further formality. Added to these contractual limitations are the aforesaid provisions of Republic Act No.1789 which permanently delimited and burdened the operation and utilization of the vessel to the ever-continuing purpose of utilizing the M/V "Philippine Admiral" for the economic rehabilitation and development of the Philippines and for the maximum
30 economic benefits to the Filipino people, the exercise by the Reparations Commission of its power to conduct field examinations and evaluations of the actual utilization of the vessel with or without prior notice thereof, the prohibition against changing the control or ownership of the vessel by Filipino citizens, and the fine, confiscation and imprisonment which the Liberation Steamship Company, Inc. and/or the officials thereof will have to suffer in the event that the vessel will not be utilized for the purpose for which it is intended.

7. The Reparations Commission was not informed of and had no knowledge of the charters made by Liberation Steamship Co., Inc. of the vessel in the past because it never asked the consent of the Reparations Commission relative thereto.
40 In fact, when the Reparations Commission learned of one such unauthorized charter it took steps for the repossession of the vessel for which reason Liberation Steamship Co., Inc. instituted Civil Case No.53607 in the Court of First Instance of Manila entitled "Liberation Steamship Co., Inc. versus Reparations Commission, et al." so as to stop the repossession of the vessel. A copy of the petition upon which Liberation Steamship Co., Inc. initiated said action is now produced and shown to me marked "FO-5" and a copy of the Answer of the Reparations Commission in said action is now produced and shown to me marked "FO-6".

8. While it is true that in the said Civil Case No.53607 the Court of First Instance of Manila issued an order requiring Liberation Steamship Co., Inc. to pay ₱30,000.00 monthly to the Reparations Commission, the said order did not vary or modify the payment terms of ₱724,686.19 a year for a period of ten (10) years in said contract because the said order directing the payment of ₱30,000.00 a month referred only to the counterclaim asserted by the Reparations Commission in its answer in the amount of ₱686,857.78, which was the arrearages of Liberation Steamship Co. at the time of filing said answer with counterclaim, a copy of the order is now produced and shown to me marked "FO-7". I have in my possession a copy of the record of proceedings duly authenticated.

10

9. It was only from report contained in the October 10, 1973 issue of the newspaper "Manila Bulletin" that the Reparations Commission learned for the first time of the contemplated sale of the M/V "Philippine Admiral" as ordered by this Honourable Supreme Court in these proceedings.

10. The Government of the Republic of the Philippines (Reparations Commission) intervened in these proceedings because it is the registered and lawful owner of the vessel and of the imminent danger of the vessel being sold to a foreigner or a foreign buyer in violation of the conditions of the contract of conditional Purchase and Sale subjecting said contract to the provisions of Section 12 of the Reparations Law, as amended. Said Section 12 provides, inter alia, that no capital goods acquired from reparations shall be resold, leased or in any other manner disposed of except to Filipino citizens or to entities wholly owned by Filipino citizens, and that any transfer of ownership, whether by virtue of a private contract or through court proceedings, shall be to Filipino citizens.

20

11. Furthermore, the sale of the vessel to a foreigner or a foreign buyer would violate Paragraph 5, Article 9 of the Reparations Agreement which provides that the products of Japan supplied under the Agreement shall not be re-exported from the territories of the Republic of the Philippines. A copy of said Reparations Agreement is now produced and shown to me marked "FO-8".

12. The Government of the Republic of the Philippines (Reparations Commission) was not informed of and had no knowledge of the other actions in the past involving the vessel. Under the contract of conditional purchase and sale, Liberation Steamship Co., Inc. was bound to provide the crew and pay their salaries and defray the other expenses for the vessel but the ownership of the said vessel remained in the Republic of the Philippines (Reparations Commission) and the utilization thereof by Liberation Steamship Co., Inc. was subject to the terms and conditions imposed by the Republic of the Philippines (Reparations Commission), any violation of which entitles the latter to an automatic rescission of the contract without need of further formality and to a peaceful repossession of the vessel.

30

13. The Certificate of Inspection, Certificate of Stability, and Ship Radio Station License of the vessel presented by Mr. Tomas Cloma indeed show Liberation Steamship Co., Inc. as the alleged owner of the vessel. These certificates are normally obtained by the operator of vessel and must have been secured by Liberation Steamship Co., Inc. upon the representation that it was the owner of the

40

vessel when in truth and in fact it is the Governemnt of the Republic of the Philippines (Reparations Commission) that is the registered owner of the vessel. These certificates cannot have more weight than the Certificate of Philippine Register, Certificate of Ownership, and Certificate of Change of Name of Vessel, all in the name of Reparations Commission, Republic of the Philippines, issued by the Philippine Coast Guard, the present duly authorized rigistering office of the Republic of the Philippines for all Philippine Flag vessels. A copy each of said Certificate of Philippines Register, Certificate of Ownership, and Certificate of Change of Name of Vessel has been produced by Philippine Consul Rodolfo Lamayo

10 Diaz in his affidavit sworn herein on the 30th October, 1973 and marked as "RLD-1", "RLD-2" and "RLD-3" thereof respectively.

14. Mr. Tomas Cloma admits that there was an intended contract of Conditional Purchase and Sale for the vessel which was not signed by the Reparations Commission. This contract was duly signed by a duly authorized officer of the Liberation Steamship Co., Inc. and his witness. The fact of the contract not having been signed by the then Chairman of the Reparation Commission was due to the requirement contained on page three thereof that it is subject to the prior examination and review by the Philippine Auditor General. The advice of said examination and review was not received by the Reparations Commissionn.

20 15. Although the contract of conditional purchase and sale was not signed by the then Chairman of the Reparation Commission, the contract is admitted by Mr. Tomas Cloma in his affidavit to have been complied with as to some of the terms thereof, which is an admission that Liberation Steamship Co., Inc. accepted the contract as binding. Furthermore, the signing thereof by the duly authorized officer of Liberation Steamship Co., Inc. bound said company to the terms and conditions of the contract. Again, the said contract was admitted by the Liberation Steamship Co., Inc. in its answer to the counterclaim of the Reparation Commission in Civil Case No.53607 of the Court of First Instance of Manila entitled "Liberation Steamship Co., Inc. versus Reparation Commission, et al.". A copy of said answer is
30 now produced and shown to me marked "FO-9".

16. It is not true that Liberation Steamship Co., Inc. petitioned for a reconstitution of said contract of conditional purchase and sale and that the Reparations Commission denied the petition on the ground that there was nothing in the files to show the existence of said contract because the same had been destroyed by fire. The request of Liberation Steamship Co., Inc. was for the reconstitution or confirmation by the Reparations Commission of a supposed renovated contract of conditional purchase and sale which was alleged to have superseded the old contract of conditional purchase and sale with a schedule of payment for ten (10) years. A copy of the letter of Liberation Steamship Co., Inc.
40 requesting confirmation of renovated contract is now produced and shown to me marked "F-10".

17. The Liberation Steamship Co., Inc. must have thought that because of the fire which gutted the offices of the Reparations Commission on April 6, 1968, there was no possibility for the Reparations Commission to ascertain whether or not the purported renovated contract of conditional purchase and sale (hereinafter referred as "Renovated contract") had been duly executed by the Reparations Commission.

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

—
No. 21
Affidavit of
Felicisimo Ocampo
dated 30.11.1973

However, not all the offices of the various departments of the Reparations Commission were burned, and a verification of the records found in another section of the Reparation Commission showed that the purported "renovated contract" claimed by Liberation Steamship Co., Inc. to have been executed had never been approved and/or executed by the Reparations Commission. Instead, the Reparations Commission in its resolution No.238(72) dated October 13, 1972, resolved to approve the renovation of its original contract of Conditional Purchase and Sale with the commission covering the said vessel in accordance with Section 21 of the Republic Act No.1789, as amended, subject to certain conditions. This resolution is now produced and shown to me and marked "FO-11". Liberation Steamship Co., Inc. was not able to comply with the said conditions. In a letter dated October 2, 1972, now produced and shown to me marked "FO-12", Liberation Steamship Co., Inc. asked for a reconsideration of the conditions for renovation but the Reparations Commission denied the same by resolution No.308(72) dated November 9, 1972, which is now produced and shown to me marked "FO-13". Due to the failure of the Liberation Steamship Co., Inc. to comply with the said conditions, the purported "renovated contract" was never entered into. Hence the original contract of conditional purchase and sale was not varied. 10

18. It is expressly stipulated inter alia in said original contract of Conditional Purchase and Sale, particularly in paragraph 11 of the Terms and Conditions thereof, that upon failure by the Liberation Steamship Company, Inc. to comply with any of the terms and conditions or to pay any of the yearly instalments when due, the aforesaid contract shall automatically and without further formality become ineffective and declared rescinded, and all sums so paid ... shall be considered as rental, and the Reparations Commission and its agents shall then and there be free to enter into the premises where said vessel is found, take possession thereof, and dispose of it in accordance with law. The Liberation Steamship Company, Inc. failed to comply with the aforementioned terms and conditions. It failed to pay certain yearly instalments specified in said Schedule of Instalment Payments. The legal and factual consequence which resulted from the failure to comply with said terms and conditions is the automatic cancellation of said Contract of Conditional Purchase and Sale. 20 30

19. By reason of the automatic cancellation of said original contract of Conditional Purchase and Sale resulting from the failure of the Liberation Steamship Company, Inc. to comply with the terms and conditions thereof, the Liberation Steamship Company, Inc. has thus been divested of its previous rights as end-user to operate and utilize the M/V "Philippine Admiral". Therefore the Liberation Steamship Company, Inc. and its officials now has no locus standi to represent said vessel.

20. The Government of the Republic of the Philippines (Reparations Commission) repossessed the vessel by Resolution No.368(73) dated October 10, 1973, which is produced and marked "FO-14" due to the violation by Liberation Steamship Co., Inc. of the terms and conditions of said original contract of Conditional Purchase and Sale, principally its delinquency in payment of its obligation which amount to ₱5,322,120.04 as of October 9, 1973. There is further produced and shown to me marked "FO-15" a true copy of a letter dated 11th October 1973 from Liberation Steamship Co. Inc. addressed to the Reparations Commission with its enclosure. There is further produced and shown to me marked 40

"FO-16" a letter dated 15th October 1973 in reply to "FO-15". The projected sale of the vessel as ordered in these proceedings would, if allowed, violate the provisions of the said Reparations Law, as amended, and the provisions of the said Reparations Agreement between the Governments of the Republic of the Philippines and Japan.

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

21. The repossession of the vessel by the Government of Republic of the Philippines (Reparations Commission) was given added sanction by the Court of First Instance of Manila in Civil Case No.92402 entitled "Reparations Commission versus Liberation Steamship Co., Inc. said Court issued an order dated November 3, 1973 pursuant to which the said Court likewise issued on the same date an order of
10 Seizure of said vessel and a Writ of Preliminary Prohibitory Injunction against Liberation Steamship Co., Inc. and all its agents or any persons acting in its behalf, from interfering in the release of the vessel by this Honourable Supreme Court upon the claim by the Republic of the Philippines as the registered and lawful owner of the vessel. A copy each of said orders is now produced and shown to me marked "FO-17" and "FO-18", respectively. The reason for the said orders are embodied in an order of the same date a copy whereof is produced and shown to me marked "FO-19".

No. 21
Affidavit of
Felicisimo Ocampo
dated 30.11.1973

22. A specific condition was imposed by the Reparations Commission and accepted by the Liberation Steamship Co., Inc. in said original contract of
20 Conditional Purchase and Sale that all legal actions arising out of said contract or in connection with the vessel Agreement, from the territories of the Republic of the Philippines.

SWORN at the Courts of Justice,)
Victoria, Hong Kong this 30th)
day of November, 1973.)

(*sd.*) Felicisimo Ocampo

Before me,

(*sd.*) K.H. Lam
A Commissioner for Oath.

This affidavit is filed on behalf of the Government of Republic of Philippines.

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

EXHIBIT "FO-1"

No. 22
Exhibit "FO-1"

Republic of the Philippines
PHILIPPINE REPARATIONS MISSION
Tokyo, Japan

C O N T R A C T
FOR GOODS AND/OR SERVICES UNDER
THE REPARATIONS AGREEMENT BETWEEN
THE REPUBLIC OF THE PHILIPPINES
AND JAPAN

Reparations Contract No. 337 10

Contractor
TOYO TRADING CO., LTD.
Tokyo, Japan

I N D E X

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

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Republic of the Philippines
PHILIPPINE REPARATIONS MISSION
Tokyo, Japan
CONTRACT
FOR GOODS AND/OR SERVICES UNDER
THE REPARATIONS AGREEMENT BETWEEN
THE REPUBLIC OF THE PHILIPPINES
AND JAPAN

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

—
No. 22
Exhibit "FO-1"

Reparations Contract No. _____

10 This Contract, entered into and executed at Tokyo, Japan this _____
day of _____, 1959, by and between the

GOVERNMENT OF THE REPUBLIC
OF THE PHILIPPINES

hereinafter referred to as the Government, represented by the Chief, Philippine
Reparations Mission, Contracting Official executing this Contract, on one part,

and

TOYO TRADING CO., LTD.

20 with offices at No. 2, 1-chome, Hongoku-cho, Nihon-bashi, Chuo-ku, Tokyo, Japan,
a corporation organized and existing under the laws of Japan, hereinafter referred to
as the Contractor, on the other part, for the supply of the products of Japan and
the services of the Japanese people in accordance with the Reparations Agreement
between the Republic of the Philippines and Japan,

WITNESSETH:

30 That for and in consideration of the terms hereinafter set, the Government
agrees to purchase and the Contractor agrees to sell one (1) Cargo Motor Vessel
described in Article I hereof (hereinafter referred to as the Vessel), to be built,
launched and completed by Iino Shipbuilding & Engineering Co., Ltd., with its main
offices at No. 6, 3-chome, Marunouchi, Chiyoda-ku, Tokyo, Japan, hereinafter
referred to as the Builder, in accordance with provisions set forth hereunder and
subject to, insofar as not contradictory to the provisions hereunder, the General
Provisions (Supply Contract) dated December 10, 1956, which is incorporated herein
and made a part of this Contract by reference:

ARTICLE I – DESCRIPTION AND CLASS

(1) DESCRIPTION:

One (1) Single Screw Motor Cargo Vessel of about 12,200 long tons dead-
weight which shall have the Builder's Hull Number 43 and shall be constructed,
equipped and completed in compliance with: (1) the Builder's General Arrange-
ment Plan No. S-34121 and (2) the Builder's Specifications No. S-34121; both
to be signed by the contracting parties for identification, the said Plan and

Specifications to be deemed incorporated into this Contract and to form an integral part hereof.

(2) **CLASS AND RULES:**

The Vessel shall be built in accordance with the following class: +100-A1 for the Hull and +LMC for the Machinery of the Lloyd's Register of Shipping, hereinafter referred to as the Classification Society, including any additional rules, regulations and recommendations in force at the date when the Contract is signed, and shall also comply with the followings:

- (A) Revised Philippine Merchant Marine Regulations (1947).
- (B) The Rules and Regulations of the Japanese Government for the Safety of the Ship (Senpaku Anzen-Ho). 10
- (C) International Convention for the Safety of Life at Sea of 1948.
- (D) Other rules and regulations described in the Specifications.

The decision of the Classification Society shall be final and binding as far as classification requirements are concerned. The fee for the inspection and survey to be rendered to the Classification Society shall be paid separately by the end-user to whom the Vessel will be allocated, and therefore, shall not be charged to reparations.

(3) **PRINCIPAL PARTICULARS AND DIMENSIONS OF VESSEL:**

The principal particulars and dimensions of the Vessel for Hull and Machinery shall be described in the Builder's Specifications No. S-34121 attached hereto as Annex "A". 20

(4) **DEADWEIGHT:**

The Vessel when completed shall be capable of carrying the total deadweight tonnage of 12,200 long tons on the mean draught of about 8.90 meters as closed shelter decker and in the sea water of 1.025 metric tons per cubic meter.

The term, "Deadweight", as used in this Contract shall be the same as defined in the Specifications attached hereto as Annex "A".

The actual deadweight of the Vessel expressed in long tons shall be based on the calculation by the Builder and approved by the Government's supervisors or the party authorized by them. The cost, if any, is to be for account of the Contractor. 30

(5) **MARKINGS:**

The vessel will be provided with two (2) brass plaques, on each side of the bow, of a size proportionate to the vessel, with the words JAPANESE REPARATIONS engraved thereon.

All machineries, and costly gears and equipments must be engraved thereon with the words REPARATIONS GOODS.

ARTICLE II – PRICE

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

- (1) The Contract Price shall not exceed YEN ONE BILLION TWO HUNDRED THIRTY-EIGHT MILLION FIVE HUNDRED FORTY-FOUR THOUSAND (¥1,238,544,000.00) computed as follows:

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For one (1) 12,200 deadweight long ton vessel (theoretical contract amount) ¥1,229,760,000.00

10 For beddings, cutleries, dishes, glass and earthen wares, linen, soap, navigation books and charts, initial provisions, uniforms for crew and other miscellaneous necessary supplies and spare parts as budgeted in the attached list marked Annex "B" not to exceed the amount of ¥ 8,784,000.00
¥1,238,544,000.00

- (2) The above price shall be subject to adjustment as hereinafter provided and does not include payment for services in the inspection, survey and classification of the Vessel subject of this Contract which may be rendered by the Classification Society. Payment for such services of the Classification Society shall not be charged to reparations.

ARTICLE III – ADJUSTMENT OF CONTRACT PRICE

20 The Contract Price shall be subject to adjustment in the following contingencies.

(1) DELAYED DELIVERY:

a. No adjustment shall be made, and the Contract Price shall remain unchanged, for the first thirty (30) days delay in delivery beyond the delivery date as defined in Article VII hereof (ending as of twelve midnight of the thirtieth (30th) day of delay).

30 b. If the delivery of the Vessel is delayed more than thirty (30) days due to fault of the Contractor, then in such event, beginning at midnight of the thirtieth (30th) day after delivery is required under this Contract, the Contract Price shall be reduced by deducting therefrom one thirtieth (1/30) of one percent (1%) for each full day of delay thereafter.

c. If the delay in delivery due to the fault of the Contractor continues for a period of more than one hundred and twenty (120) days from the thirtieth (30th) day after the date of delivery set forth in this Contract, after taking into full account extension of delivery date due to any agreed extension under this Contract, and/or by reason of permissible delays as provided in this Contract, then in such event after the expiration of said 120th day, the Government may, at its option, cancel this Contract by serving upon the Contractor written notice of cancellation. The Government may serve such written notice by

wiring a cable to that effect, to be confirmed by mailing a Registered Letter via Air Mail, directed to the Contractor at the address given in this Contract. Such cancellation will be effected as of the date any such notice thereof is received by the Contractor, or on the third (3rd) day following the sending of such cable or Registered Letter as aforesaid, whichever event shall take place earlier.

Upon said notice of cancellation becoming effective the Contractor shall promptly reimburse to the Government all payments made by means of an Authorization to Pay under this Contract. The aforementioned reimbursement by the Contractor to the Government shall forthwith discharge all obligations, and liabilities of each of the parties hereto to the other under this Contract. The Contractor may at any time after the expiration of the aforementioned one hundred and twenty (120) days period of delay in delivery, if the Government has not served notice of cancellation as above provided. Demand in writing that the Government shall make an election, in which case the Government shall within thirty (30) days after such demand is received by the Government, either notify the Contractor of its intentions to cancel or consent to delivery of the Vessel at an agreed future date, it being understood by the parties that, if the Vessel is not delivered by such future date, the Government shall have the same right of cancellation upon the same terms, as hereinabove provided.

d. For the purpose of determining the amount by which the Contract Price shall be reduced as provided in sub-paragraph (b) herein, the delivery of the Vessel shall be deemed to be delayed when and if the Vessel is not delivered by the date upon which delivery is originally stipulated under this Contract, after taking into full account extension of delivery date, due to modification of Specification, and/or by reason of permissible delays, as provided in this Contract.

(2) INSUFFICIENT SPEED:

a. The Contract Price shall not be affected, or changed, by reason of the actual speed, as determined by trial runs, being more than the guaranteed speed of sixteen and seven tenth (16.7) knots. Neither shall the Contract Price be affected or changed by a deficiency in the guaranteed speed, if such deficiency is less than 3/10th of a knot below the guaranteed speed.

b. However, if the actual speed of the Vessel is less than 16.4 knots, the Contract Price shall be reduced for such deficiency in speed of the Vessel as follows (disregarding fractions):

<u>Decrease in Speed</u>	<u>Total Corresponding Price Reduction</u>
For 3/10 of a knot	¥ 2,500,000.00
For 4/10 of a knot	¥ 5,000,000.00
For 5/10 of a knot	¥ 7,500,000.00
For 6/10 of a knot	¥10,000,000.00
For 7/10 of a knot	¥12,500,000.00
For 8/10 of a knot	¥15,000,000.00
For 9/10 of a knot	¥17,500,000.00
For 10/10 of a knot	¥20,000,000.00

c. If the deficiency in actual speed of the Vessel, upon said trial runs, is more than one (1) full knot below sixteen and seven tenth (16.7) knots, then the Government, at its option, may reject the Vessel and cancel this Contract or may accept the Vessel at a reduction of YEN TWENTY-FIVE MILLION (¥25,000,000.00) and a further reduction of an amount corresponding to the deficiency in excess of one full knot computed at YEN TWO MILLION FIVE HUNDRED THOUSAND (¥2,500,000.00) per 1/10 of a knot.

(3) EXCESSIVE FUEL CONSUMPTION OF MAIN ENGINE:

10 a. The Contract Price shall not be affected, or changed, if the actual fuel consumption of the main engine, as determined by the shop trial to be carried out as per the attached specifications, is not more than three percent (3%) above 0.346 lbs. (157 gram) per metric BHP/hour at 5,400 BHP output, using diesel oil of 18,000 B.T.U. per lb. (10,000 Kcal/Kg.) lower calorific value.

20 b. However, if the actual fuel consumption of the main engine, as determined by the shop trial as stated above, is more than three percent (3%) above the said specified fuel consumption, then the Contract Price shall be reduced by the sum of YEN ONE MILLION EIGHT HUNDRED THOUSAND (¥1,800,000.00) for each full one percent (1%) increase in fuel consumption of the main engine above said three percent (3%) (fractions of a percent to be prorated).

c. If such actual fuel consumption of the main engine exceeds seven percent (7%) above the specified fuel consumption, the Government, at its option, may reject the Vessel and cancel this Contract or may accept the Vessel at a total reduction of not less than YEN SEVEN MILLION TWO HUNDRED THOUSAND (¥7,200,000.00) in the Contract Price.

(4) DEADWEIGHT TONNAGE:

30 a. In the event that the actual deadweight tonnage of the Vessel as determined in the manner specified in the Specifications is less than the contracted deadweight tonnage specified and required under Paragraph (4) of Article I of this Contract and Specifications, and if such deficiency is more than one hundred (100) tons, then, commencing with, and including decrease of one hundred one (101) tons below the specified and required deadweight tonnage of the Vessel, the Contract Price of the Vessel shall be reduced for each full ton (but disregarding fractions of a ton) of such decreased deadweight in excess of one hundred (100) tons, by the amount of YEN ONE HUNDRED THOUSAND EIGHT HUNDRED (¥100,800.00). If the deficiency in the actual deadweight tonnage of the Vessel is more than two hundred (200) tons below the specified and required deadweight tonnage of the Vessel, then the Government at its option may reject the Vessel and cancel this Contract or
40 may accept the Vessel at a reduced price computed at the rate specified immediately above.

b. In the event that the actual deadweight tonnage of the Vessel is more by one hundred (100) tons over the contracted deadweight tonnage specified and required under Paragraph (4) of Article I of this Contract, then the Contract Price of the Vessel shall be increased by the amount of YEN FIFTY

THOUSAND FOUR HUNDRED (¥50,400.00) for each full ton (but disregarding fractions of a ton) in excess of one hundred (100) tons over the said contracted deadweight tonnage specified and required under Paragraph (4) of Article I of this Contract. The Contractor shall not in any case be entitled to any additional bonus, should the deadweight tonnage of the Vessel exceed two hundred (200) tons over the said contracted deadweight tonnage specified and required under Paragraph (4) of Article I of this Contract.

ARTICLE IV – SUPERVISION AND INSPECTION

(1) APPOINTMENT OF GOVERNMENT'S SUPERVISORS:

The Government may send to Japan and maintain, at its own expense, representatives in Japan (hereinafter called the "Supervisors") to supervise adequately the construction by the Contractor and/or the Builder of the Vessel, engines and all accessories thereof. 10

(2) AUTHORITY OF GOVERNMENT'S SUPERVISORS:

The Supervisors shall, at any time during working hours of the Contractor until delivery of the Vessel, have the right to inspect the Vessel, her engines and all accessories, and all work in progress, or material utilized, in connection with the construction of the Vessel, engines and accessories, wherever such work is being done, or such material is stored, for the purpose of determining that the Vessel, engines and accessories are being constructed in accordance with the terms of this Contract. 20

The Supervisors shall make decision or give advice to the Contractor promptly on problems arising during the course of construction of the Vessel, with a view to cooperating to the utmost in the Contractor's construction process and inspection schedule. All inspections and tests by the Government shall be performed in such a manner as not to unduly delay work. Failure of the Supervisors to perform the inspection and test promptly upon readiness as requested properly in advance by the Contractor and agreed to by the Supervisors shall entitle the Contractor to proceed with the construction schedule without further awaiting the particular inspection in question, and such performance of the construction schedule shall be deemed to have been made in the presence of the Supervisors appointed by the Government. In case that the Contractor and the Supervisors fail to agree as to the results of the tests and trials, the decision of the Classification Society shall be final. 30

The Supervisors will notify the Contractor promptly, in writing, in the event that they discover any construction, or material, which they believe does not, or will not conform to the requirements of the Contract, and shall, likewise advise and consult with the Contractor in all matters pertaining to the building of the Vessel, as may be required by the Contractor, or as they, or any of them, may deem necessary. 40

The Contractor shall comply with any such demands concerning alterations, which are not contradictory to this Contract, nor will cause increased cost or

delay to involve the Contractor: provided, however, that any and all demands of Supervisors, with regard to buildings, arrangement and outfit of the Vessel, shall be in writing and shall be submitted to specially authorized representatives of the Contractor, whom the Contractor shall designate for such purpose. However, in order not to confuse the building schedule of the Contractor, the Contractor shall have the right to carry out the works, demanded by the Supervisors, at the convenience of the Contractor.

*In the Supreme
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10 The supervision thus exercised on behalf of the Government shall not alter or diminish the responsibility of the Contractor with regard to the time of delivery and quality of the Vessel as provided for elsewhere in this Contract.

20 In the event that the Supervisors shall advise the Contractor as aforesaid that they have discovered construction or materials or both of which they believe do not or will not conform to the requirements of this Contract, and the Contractor thereafter shall fail to take effective measures to correct to the satisfaction of Supervisors such condition within a reasonable time, then either the Contractor or the Government may request an arbitration in accordance with the provisions of Article XI hereof, to determine whether there exists any non-conformity with the provisions of this Contract and the attached Specifications, (thereby entitling the Government to reject the Vessel under the provisions of this Contract, when delivery of the Vessel shall be tendered). In the event that the Arbitration Association shall enter an affirmative determination of this question, then this Contract shall be deemed to have been breached and the Government may cancel this Contract. In the event, however, that the Arbitration Association shall enter a negative determination of the foregoing question, then it shall state in its award the extension of time for delivery of the Vessel to which the Contractor shall be entitled by reason of delay in construction, if any, occasioned by such arbitration proceedings.

RESPONSIBILITY OF THE CONTRACTOR:

30 The Contractor shall be responsible for furnishing the Supervisors with an office space within the premises, or in the immediate vicinity of the Builder's Shipyard, and at all times during the Builder's working hours until delivery of the Vessel, the supervisors shall be given free and ready access to the Vessel, engines and accessories thereof, and to any other place where work is being done, or materials are being processed or stored, in connection with the construction of the Vessel including the yards, workshops, stores and offices of the Contractor, the Builder and the premises of sub-contractors of the Builder, who are doing work, or storing materials in connection with the construction of the Vessel under this Contract.

(4) LIABILITY OF THE CONTRACTOR:

40 The Supervisors engaged by the Government under this Contract shall at all times be deemed to be employees of the Government. The Contractor shall be under no liability whatsoever to the Government, or to its supervisors or employees, or agents, in Japan, for personal injuries, including death, to such

Supervisors, employees, or agents, or any of them, during the time they, or any of them, are on the Vessel, or within the premises of either the Contractor, or the Builder, or its sub-contractors, or are otherwise engaged in and about the construction of the Vessel, unless, however, such personal injuries, including death, were caused by the negligence of the Contractor, or the Builder, or its employees or agents. Nor shall the Contractor be under any liability whatsoever to the Government for damage to, or loss or destruction of property of the Government or its Supervisors, employees, or agents, which is in Japan, unless such damage, loss or destruction was caused by the negligence of the Contractor, or the Builder, or its employees or agents, while acting within the scope of their employment.

10

(5) NOTIFICATIONS OF APPROVAL OR DISAPPROVAL OF DRAWINGS:

a. The Supervisors shall, with a view to cooperating in the Contractor's construction process, approve or disapprove the Contractor's plans and drawings as promptly as possible, when such plans and drawings are submitted to them. Unless notification is given to the Contractor by the Supervisors of approval or disapproval of such plans and drawings within fifteen (15) days after submission, the said plans and drawings shall be deemed to have been approved. Plans and drawings submitted to the Government's Head Office for their approval shall be returned to the Contractor within thirty (30) days from the date of despatching of such plans and drawings by the Contractor as specified in the Specifications. Unless notification is given to the Contractor by the Government's Head Office of approval or disapproval of such plans and drawings within said thirty (30) days after despatching, the said plans and drawings shall be deemed to have been approved.

20

b. The plans and drawings which are approved by the Government or one of Supervisors shall be final. In cases the Government or the Supervisors demand of the Contractor to change or alter the plans or drawings which were already approved by the Government or one of Supervisors, the Contractor shall be able to reject such demands if the works have been already started according to the approved plans and drawings. Any alteration of the plans and drawings which are already approved by the Government or the Supervisors shall be regarded as modification specified in Article V of this Contract including extension of delivery date, cost and deadweight adjustment, if any.

30

(6) SALARIES AND EXPENSES:

All salaries and expenses of the Government's Supervisors, or others employed by the Government under this Article, shall be for the Government's account. If any inspection or test is made at a point other than the premises of the Contractor, or the Builder, or its sub-contractors, it shall be at the expense of the Government.

40

ARTICLE V – MODIFICATION: CHANGES AND EXTRAS

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

(1) HOW EFFECTED:

The Specifications and Plans, under which the Vessel is constructed, may be modified and changed at any time hereafter subject to the entire agreement of both parties hereto; provided, however, that any minor modifications or changes requested by the Government which are agreeable to the Contractor shall be effected by the Contractor if the Government shall assent to adjustment of the Contract Price, deadweight of the Vessel, time for delivery and other terms of this Contract, as hereinafter provided.

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10 Any such agreement for modifications and changes shall include an agreement as to the increase or decrease, if any, of the Contract Price, deadweight of the Vessel, together with an agreement as to any extension or reduction of time for delivery, or any other alterations under this Contract, or the attached Specifications or Plans occasioned by such modifications and changes.

Upon consummation of the foregoing agreement to modify and change the Specifications or Plans, the Contractor shall alter the construction of the Vessel in accordance therewith, including any additions to, or deduction from the work to be performed in connection with such construction.

20 In case the Government or the Supervisors request the Contractor to modify or change the approved plans or drawings, with which the Contractor has already arranged to start the works, the Contractor shall be able to reject such requirements for modifications or changes.

(2) CHANGES IN CLASS ETC.:

If, after the effective date of the Contract, any requirements as to class, or as to the rules and regulations with which the construction of the Vessel is required to conform, are altered or changed by the Classification Society or bodies authorized to make such alterations, or changes, the Contractor shall transmit such information in full to the Government in writing.

30 Or if, after the effective date of this Contract, interpretation of any existing rules or requirements as abovementioned which has been prevailing in Japan and accepted by the abovementioned Classification Society or bodies, has to be changed according to the new requirements, statements, or instructions by such Classification Society or bodies, then in such event also the Contractor shall transmit such information in full to the Government in writing.

The Contractor shall comply promptly with such alterations or changes if any in the construction of the Vessel; provided that the Government shall first agree:

a. As to any increase in the Contract Price of the Vessel that is necessarily occasioned by the cost of such compliance.

b. As to any extension in the time for delivery of the Vessel that is necessary due to such compliance and;

c. As to any decrease in the allowed deadweight tonnage of the Vessel if compliance results in reduced deadweight tonnage, or any other alterations in the terms of this Contract or of said Specifications and Plans or both, if compliance makes such alteration of terms necessary.

Such amendment in the Payment Terms as may be deemed necessary shall be made.

Such agreement by the Government shall be effected in the same manner as provided above for modification and change of the Specifications and Plans. 10

The Government shall instruct the Contractor in writing as to whether the Government will agree or disagree the above a, b, and c within thirty (30) days after receipt of the proposal, regarding the above a, b, and c, from the Contractor. In the event the Government disagrees, then either the Contractor or the Government may request an arbitration in accordance with the provisions of Article XI hereof.

(3) SUBSTITUTION OF MATERIALS:

In the event that any of the materials required by said Specification and Plans or otherwise under this Contract for the construction of the Vessel cannot be procured in time to effect delivery, or are in short supply, the Contractor may, provided the Government so agree in writing, use other materials available in Japan, capable of meeting the requirements of the Classification Society and of the rules and regulations with which the construction of the Vessel must comply. Any agreement as to such substitution of materials shall be effected in the manner provided in Paragraph (1) of this Article, and shall likewise, include adjustment in the Contract Price and other terms of the Contract effected by such substitution; provided, however, that there shall be no extra cost to the Government or extension of the time for delivery of the Vessel by reason of any substitution of materials unless the Government shall specifically agree thereto. 20 30

ARTICLE VI – TESTS AND TRIALS:

Progressive speed test
Steering test
Endurance test
Turning test

Astern test
Inertia test
Inclining test
Other tests

(1) NOTICE:

The Government shall receive from the Contractor at least thirty (30) days advance notice in writing, or by cable confirmed in writing, of the approximate time and place of the trial run of the Vessel and shall again receive from the Contractor at least three (3) days advance notice by cable confirmed in writing, of the definite time and place of the trial run of the Vessel.

*In the Supreme
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Such notices shall specify the Japanese port from which the Vessel will commence its trial run, and the representatives of the Government, who are to witness such trial run, and pass upon the performance of the Vessel during the same, shall be present at such port on the date specified in such notices.

10

In the event that the Government's representatives fail to be present after due notices to the Government, as provided above, the Government shall be deemed to have waived its right to have a representative on board the Vessel at the trial run, and the Contractor may conduct such trial run with available Surveyor or Surveyors of the Classification Society, without Government's representative being present, and in such case the Government shall accept the Vessel on the basis of a certificate issued by the Classification Society that the Vessel upon trial run is found to conform to the Specifications and is satisfactory in all respects. Whether the Government's representative is present or not, the Contractor shall inform the Government of the results of the trial run within five (5) days after the trial run, accompanied by a certificate issued by the Classification Society of the result of such trial run. In the event of unfavorable weather on the date specified for the trial run, the same shall take place on the first available day thereafter that the weather conditions permit. The parties hereto recognize that the weather conditions in Japanese waters in which the trial run is to take place are such that great change in weather may arise momentarily and without warning, and, therefore, it is agreed that, if, during the tests and trials run, such change of weather should occur which would have precluded the commencement of the tests and trials, then, in such event, the tests and trials shall be discontinued, and the date for the tests and trials shall be postponed until the first favorable day thereafter. In case that the commencement of the trial is postponed or the trial is discontinued, by reason of such unfavorable weather conditions, such delay shall be regarded as a cause of permissible delay for which delivery date of the Vessel is subject to extension.

20

30

(2) HOW CONDUCTED:

All expenses in connection with the trials of the Vessel are to be for account of the Contractor, which during the trials and when delivering the Vessel for trials, agrees to provide at its own expense the necessary crews to comply with conditions of safe navigation. The trials shall be conducted in the manner prescribed in the Specifications. All trials of the Vessel shall be conducted in Japanese waters.

40

(3) DRYDOCKING:

Prior to the trial run, the Vessel shall be dry-docked. All expenses of said dry-docking shall be for the account of the Contractor.

In the Supreme Court of Hong Kong Admiralty Jurisdiction

No. 22

Exhibit "FO-1"

(4) TRIAL LOAD DRAFT:

The Contractor shall provide the Vessel with the necessary quantity of fuel oil, lubricating oils and greases, fresh water, and other stores for the conduct of the trials. The necessary ballast (fuel oil, fresh water and such other ballast as may be required) to bring the Vessel to the trial load draft shall be for the Contractor's account.

(5) METHOD OF ACCEPTANCE FOR REJECTION:

(A) Within fifteen (15) days after the Contractor has informed the Government of the completion of the tests and trials of the Vessel, the Government shall notify the Contractor by cable, confirmed by Registered Mail, of the Government's acceptance or rejection of the result of the tests and trials of the Vessel. Unless the notification of the Government's acceptance or rejection is given to the Contractor by the Government within said fifteen (15) days, the result shall be deemed to have been accepted. 10

(B) If the Government rejects the Vessel after the trial run, the Government shall indicate in its written notice of rejection the reason for said rejection, whether it be for non-conformity to the Contract, or for the failure of the Vessel to meet the performance requirements or other requirements as set forth in the Specifications.

(C) However, should the result of the trial run indicate that alterations or corrections of the Vessel, or any part thereof, including its equipment, are required, then the Contractor and the Government are to jointly agree as to the additional number of days the Contractor may have within which to make such alterations or corrections. The time agreed upon shall not operate as an extension of the delivery date set forth in Article VII, Paragraph (1) of this Contract. 20

(D) After the alterations and corrections are completed by the Contractor within the time allotted, then the Government shall inspect the Vessel after expiration of the time allotted. After such inspection, the Government may accept or again reject the Vessel, or within its discretion, the Government may demand a new trial run, which shall be conducted by the Contractor in the same manner and under the same terms and conditions as is provided for the first trial run. 30

(E) After such second trial run, or if a second trial run was not requested, then after inspection of the alterations and corrections, the Government may accept or again reject the Vessel by sending notice to the Contractor by cable, confirmed in writing by Registered Mail. If the Government again rejects the Vessel, the notice of rejection shall state the reason for said rejection, and if a third or subsequent trial runs are necessary, with or without further alterations or corrections, such trial runs shall be carried out in the same manner and under the same terms and conditions as provided in this Article VI. 40

(6) EFFECT OF ACCEPTANCE:

The Government's written or cabled notification of acceptance, delivered to the Contractor as above provided, shall be final and binding in so far as conformity of the Vessel to the Specifications is concerned, and shall preclude the Government from refusing the result of said tests and trials of the Vessel, as hereinafter provided.

ARTICLE VII – DELIVERY

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

(1) TIME AND PLACE:

The Vessel shall be delivered by the Contractor to the Government at the date not later than Oct. 31, 1960, except that, in the event of delays in performance under this Contract due to causes which, under the terms hereof, permit extension of the time for delivery, the aforementioned period for delivery shall be extended accordingly. The Vessel, at the time of delivery being effected hereunder, shall be at Maizuru Shipyard, Maizuru City, Kyoto Fu, Japan, unless, the parties hereto shall hereafter agree otherwise. The Government shall receive from the Contractor at least twenty (20) days advance notice in writing, or by cable confirmed in writing, of the approximate time and place of the delivery of the Vessel and shall again receive from the Contractor at least three (3) days advance notice by cable confirmed in writing, of the definite time and place of the delivery of the Vessel.

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(2) WHEN AND HOW EFFECTED:

(a) The delivery of the Vessel shall be forthwith effected by the concurrent delivery by each of the parties hereto to the other of the PROTOCOL OF DELIVERY AND ACCEPTANCE acknowledging delivery of the Vessel by the Contractor and acceptance thereof by the Government.

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(b) No extra charge shall be made, and the Contract Price shall remain unchanged for the first thirty (30) days after failure to take actual physical delivery of the Vessel after the Protocol of Delivery and Acceptance has been effected, ending as of twelve (12) midnight of the thirtieth (30th) day.

(c) If the acceptance of the Vessel is delayed more than thirty (30) days then, in such event, beginning with the thirtieth (30th) day after delivery is required under this Contract, the Government shall be liable for any expenses entailed by such failure.

(3) DOCUMENTS TO BE DELIVERED TO GOVERNMENT:

30

The Contractor agrees to deliver to the Government, and the acceptance of the Vessel by the Government shall be conditioned upon receipt by the Government of the following duly authenticated documents, which shall accompany the aforementioned PROTOCOL OF DELIVERY AND ACCEPTANCE.

(a) PROTOCOLS OF TRIAL of the Vessel made pursuant to this Contract.

(b) PROTOCOLS OF INVENTORY of the equipment of the Vessel including spare parts and the like, all as specified in the attached Specifications.

(c) FINISHED DRAWINGS PLANS AND INSTRUCTION BOOKS pertaining to the Vessel, as specified in the Specifications, prepared by the Builder, or by its sub-contractors.

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(d) ALL CERTIFICATES required to be furnished upon delivery of the Vessel pursuant to the Contract and according to customary shipbuilding practice, including but not limited to:

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No. 22
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*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

No. 22
Exhibit "FO-1"

- 1) Builder's Certificate issued by Ino Shipbuilding & Engineering Co., Ltd.
- 2) Classification Certificates issued by the Lloyd's Register of Shipping.
- 3) Admeasurement Certificate issued by L. R. S.
- 4) Suez Canal Special Tonnage Certificate.
- 5) Panama Canal Tonnage Certificate.
- 6) Safety Equipment Certificate issued by Japanese Government.
- 7) International Load Line Certificate issued by L. R. S.
- 8) Survey and Inspection Certificates issued by L. R. S.
- 9) Certificate for Wireless equipments issued by the Regional Radio Regulatory Bureau. 10
- 10) Deratting Certificate issued by the Quarantine Station of the Ministry of Welfare.
- 11) Commercial invoice prepared by the Contractor.
- 12) Consular invoice prepared by the Philippine Consul.
- 13) Certificate as to seaworthiness issued by L. R. S.
- 14) Certificate as to fitness to carry refrigerated cargo issued by L. R. S.
- 15) Safety Radiotelegraphy Certificate issued by Japanese Government.
- 16) Other certificates, i.e., anchors and cables, life saving appliances, signals and signal lamps, compressors, etc.
- 17) Provisional load line certificate issued by L. R. S. 20
- 18) Tonnage certificate for foreign ship (closed) issued by Director of Regional Maritime Bureau.
- 19) Tonnage certificate for foreign ship (open) issued by Director of Regional Maritime Bureau.
- 20) Japanese certificate for foreign ship (closed) issued by Director of Regional Maritime Bureau.
- 21) Calculation sheets for tonnage measurement.
- 22) Tonnage plan showing half-breadth of the sections at the points of division of the tonnage length of the Vessel to the calculation sheet.

23) Provisional certificate of Philippine Registry issued by the Philippine Ambassador.

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

(e) **DECLARATION OF WARRANTY** of the Contractor that the Vessel is delivered to the Government free and clear of any liens, claims, mortgages, or other encumbrances upon the Government's title thereto, and, in particular, that the Vessel is absolutely free of all burdens in the nature of impositions, taxes or charges imposed in Japan as well as of all liabilities of the Contractor to the Builder, its sub-contractor, employees, and crew, and of all liabilities arising from the operation of the Vessel in trial runs, or otherwise, prior to delivery.

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No. 22
Exhibit "FO-1"

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(f) Bill of Sale with list of inventory of ships equipment prepared by the Contractor.

(4) **TITLE AND RISK:**

Title shall pass to the Government upon delivery of the Vessel being affected, as stated above, it being expressly understood, however, that, until actual physical delivery is effected, the Vessel and equipment thereof, is at the entire risk of the Contractor including, but not confined to, risks or war, insurrection and seizure by governments or authorities, whether Japanese or foreign, and whether at war or at peace.

20 (5) **REMOVAL OF VESSEL:**

The Government shall take possession of the Vessel immediately upon actual physical delivery thereof, and if so requested shall remove the Vessel from the Contractor's or the Builder's Shipyard within seven (7) days after the actual physical delivery thereof is effected. If the Government is so requested and fails to remove the Vessel within the said period of days, the Government shall be liable for any expenses entailed due to such failure.

**ARTICLE VIII – DELAYS AND EXTENSIONS OF DELIVERY
TIME (FORCE MAJEURE)**

(1) **CAUSES OF DELAY:**

30 The term "Force Majeure", as employed in this Contract, shall be deemed to mean the causes which are beyond the control of the Contractor or its sub-contractors as the case may be and may cause delay either of the construction schedule of the Vessel or of any performance of the Contractor or of its sub-contractors required as a pre-requisite of delivery of the Vessel, such as Acts of God, Princes or Rulers, war, blockade, revolution, insurrection, mobilization, civil commotions, riots, general strikes, strikes in any shops of the Contractor or its sub-contractors, lockouts, acts of the public enemy, plagues, or other epidemics, quarantines, prolonged failure of electric current, freight embargoes, import and export clearances, earthquakes, tidal waves, typhoons, hurricanes, unusually severe weather,
40 destruction of the yards or works of the Contractor and/or its sub-contractors, or of the Vessel or any part thereof, by fire, flood or other causes beyond the control of the Contractor, mishaps of castings or forgings which were determined as defective

by the Classification Society and/or representative of the Government after being passed by the said inspecting authorities, accidental breaking of tools, or other accidents of workmanship not due to negligence, war between Japan and any foreign country, preparation for war, and intervention of the Philippine or Japanese Government over which the Contractor and/or the Builder and/or its sub-contractors have no control, and other causes which are specified in this Contract as causes of permissible delays of delivery of the Vessel, or any other causes, whether of the nature indicated by the foregoing words or not, which under the terms of this Contract authorize and permit extension of the time for delivery of the Vessel, and are to be distinguished from unauthorized delays on account of which the Contract Price is subject to adjustment, as provided in Article III hereof. The Contractor is to produce within a reasonable time a certificate from the Japanese Chamber of Commerce certifying to the existence of the "Force Majeure". 10

(2) NOTICE OF DELAYS:

The Contractor shall promptly notify the Government in writing of the beginning and termination of any delay caused by "Force Majeure". Provided such notice shall have been given, the date for delivery of the Vessel shall be extended for such time as the Contractor shall have been actually delayed in delivering the Vessel by reason of such "Force Majeure", and the Contractor shall not be liable for any excess costs if any failure to perform the Contract arises out of such "Force Majeure". 20

In the event that the parties hereto shall be unable to agree that the cause of delay is "Force Majeure", or as to the extent of the resulting delay, the matter shall be referred to arbitration as provided in Article XI hereof. Failure of the Government to acknowledge the Contractor's notification of any claim for extension of the delivery date within thirty (30) days after receipt by the Government of such notification shall be deemed to be a waiver by the Government of its right to object to such extension.

ARTICLE IX – WARRANTY OF QUALITY

(1) GUARANTEE OF MATERIAL AND WORKMANSHIP:

The Contractor, for a period of twelve (12) months after the date of actual physical delivery of the Vessel, guarantees the Vessel, and all parts and equipments of the Vessel that are manufactured or furnished or supplied by the Contractor under this Contract, against all defects, provided such defects are proved to be due to defective material and/or poor workmanship, and not attributable to incompetence, mismanagement, negligence, accident, wilful neglect or other improper acts or commission of the Government (which terms, in this Article, includes its successors and assigns after the delivery of the Vessel), or its agents or employees, nor caused by perils of the sea, river or navigation, or by normal wear and tear, or by alteration or addition by the Government. The provisions set forth herein as to the Guarantee of the Contractor do not apply to any items supplied by the Government except as to the proper installation made by the Contractor. The Contractor shall furnish the Government with a performance bond issued by any authorized agent banks of the Philippine Reparations Mission equivalent to ten (10%) per cent of the final cost of the Vessel under this Contract for a period covering the entire gua- 40

rantee period of twelve (12) months from the date of delivery of the Vessel.

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

(2) NOTICE OF DEFECTS:

The Government, or its duly authorized representatives, shall notify the Contractor in writing, or by cable confirmed in writing, as promptly as possible after discovery of any defect or deviation for which claim is to be made under this guarantee. The Government's written notice shall include full particulars as to the nature of the defect, and the extent of the damage caused thereby, but excluding consequential damage, as hereinafter provided. The Contractor shall have no obligation under this guarantee for any defects discovered prior to the expiration date of the guarantee, unless notice of such defects is received by the Contractor not later than thirty (30) days after such expiration date. Cabled advise within thirty (30) days that a claim is forthcoming shall be sufficient compliance with the requirements as to time.

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No. 22
Exhibit "FO-1"

(3) EXTENT OF THE CONTRACTOR'S LIABILITY:

The Contractor shall have no obligation with respect to defects discovered after the expiration of the period of guarantee specified above. Nor shall the Contractor be liable for any consequential damages occasioned by any such defects or for any loss of time in operating or repairing the Vessel, or both, caused by such defects.

The Contractor shall not be obliged to repair, or be liable for, damage to the Vessel, or any part of the same, or the equipment thereof, which after delivery of the Vessel, is caused by any other reason than the defects of the nature specified above; nor shall there be any liability hereunder for defects in the Vessel, or any part of equipment thereof, caused by fire or accidents at sea or elsewhere, subsequent to acceptance of the Vessel by the Government, or by mismanagement, accidents, negligence, or wilful neglect on the part of the Government, its employees or agents, or of any persons, including the Vessel's officers, crew and passengers, other than employees or agents or sub-contractors of the Contractor, on, or doing work on the Vessel.

Likewise, the Contractor shall not be liable for defects in the Vessel or any part of equipment thereof, that are due to repairs which were made by other than the Contractor, at the direction of the Government as hereinafter provided.

(4) REMEDY OF DEFECTS:

The Contractor shall remedy at its expense any defects against which the Vessel, or any part or equipment thereof, is guaranteed under this Article, by making all necessary repairs and replacements in the Builder's Shipyard, unless the Vessel cannot be conveniently brought to such Shipyard for such repairs. However, if the Vessel is not in Japanese Waters, and/or it is inconvenient to bring the Vessel to the Builder's Shipyard, and if it is likewise not feasible for the Contractor to forward replacements, parts and materials to effect the repair, so as to avoid impairment or delay to the operation or working of the Vessel, then, in any such events, the Government shall cause the necessary repairs or replacements to be made elsewhere at the discretion of the Government; provided however, that the Government

shall, if possible, first but in all events as soon as possible, give the Contractor notice in writing, or by cable confirmed in writing, of the time and place such repairs will be made, and, if the Vessel is not thereby delayed, or her operation or working is not thereby impaired, the Contractor shall have the right to verify by its own representative the nature and extent of the defects complained of. The Contractor shall, in such cases, promptly advise the Government, by cable, after such verification has been completed, of its acceptance or rejection of the defects as one that is subject to the guarantee herein provided. In all minor cases, the Guarantee Engineer will act for and on behalf of the Contractor. Any dispute between the parties as to the aforesaid rejection by the Contractor of the defects shall be referred to Arbitration as provided herein. Upon receipt by the Government of the Contractor's cabled acceptance of the defect as one justifying remedy under this Article, or upon Arbitration Award in favor of the Government being rendered, the Contractor shall pay to the Government for such repairs or replacements a sum equivalent to the making the same repairs or replacements at the Builder's Shipyard, based upon the rate of exchange then current and authorized in Japan. 10

(5) GUARANTEE ENGINEER:

The Contractor shall appoint Guarantee Engineer to serve on the Vessel as its representative during the guarantee period of the Vessel.

The Government and its employees shall give such Guarantee Engineer full cooperation in carrying out his duties as such representative of the Contractor on board said Vessel, including freedom to report to the Contractor any matters which the Guarantee Engineer deem to be necessary to perform his duties. 20

It is understood that the payment for salary, and expenses of the Guarantee Engineer shall not be paid out of the Reparations Funds.

ARTICLE X – CONTRACTOR'S INSURANCE

(1) EXTENT OF INSURANCE COVERAGE:

From the time the Contractor deems necessary, but not later than keel-laying, until the delivery of the Vessel to the Government, the Contractor shall, at its own cost and expense, keep the Vessel and all machinery, materials, equipment, appurtenances and outfit, delivered for, built into installed in or upon the Vessel insured under the "Institute Clause for Builder's Risk" including Strikes, Riots and Civil Commotions with responsible Japanese insurance companies or underwriters approved by the Government for the full contract value of the Vessel. From the time of launching, the Contractor shall also insure the Vessel against War Risks. 30

The policies shall be in the name of the Contractor and/or the Builders and shall be endorsed to the effect that loss, if any, should be payable to the Government as its interests may appear. The Contractor shall furnish the Government immediately upon keel-laying with the original of the insurance policy.

(2) APPLICATION OF RECOVERED AMOUNTS:

In the event that the Vessel shall be damaged from any insured cause whatsoever prior to acceptance thereof by the Government, and in the further event that such damage shall not constitute a constructive total loss of said Vessel, the Contractor shall apply the amounts recovered under the insurance policies referred to in Paragraph (1) of this Article to the satisfactory repair of such damage, satisfactory to classification requirements without marks, that is without remarks, exceptions or recommendations. However, in the event that the Vessel is determined to be a constructive total loss, or a total loss, the Contractor, with respect to such Vessel at the election of the Government, shall either

- 10
- A. Proceed in accordance with the terms of this Contract, in which case the amount recovered under said insurance policies shall be applied to the reconstruction and repair of the damage of the Vessel, provided the parties hereto shall have first agreed in writing as to such reasonable extension of time for delivery as may be necessary for the completion of such reconstruction and repair; or
- B. Refund promptly to the Government the payments to the Contractor under this Contract, in which case this Contract shall be deemed to be rescinded and all rights, duties, liabilities and obligations of each of the parties to the other shall forthwith terminate.
- 20

Within thirty (30) days after receiving notice of any damage to the Vessel constituting a constructive total loss, or a total loss, the Government shall notify the Contractor in writing or by cable confirmed in writing of its election under this paragraph.

In the event the Government fails to so notify the Contractor, then in that event it shall be construed as an election on the part of the Government to rescind and cancel the Contract and to receive the refund as provided for herein.

(3) INDEMNITY PROVISION:

30 The Contractor agrees to and shall indemnify the Government against and hold it harmless from all claims and damages arising from injuries to or death of any person or persons or from damages to property, in, or about, or connected with the fabrication, erection, construction, building, launching and trial, equipment and operation of the Vessel until delivery of the Vessel to the Government.

(4) TERMINATION OF THE CONTRACTOR'S OBLIGATION TO INSURE:

The Contractor shall be under no obligation to insure the Vessel hereunder after the delivery to and acceptance thereof by the Government.

ARTICLE XI – ARBITRATION

(1) HOW EFFECTED:

40 All disputes, controversies or differences which may arise between the contracting parties hereto out of in relation to or in connection with this Contract, or for the breach thereof, shall be referred to the Japan Commercial Arbitration Association and settled by arbitration in Japan in accordance with the rules of the said Association. The arbitral award shall be final and binding on the contracting parties hereto.

(2) ALTERATION OF SHIP DELIVERY:

In the event of the arbitration of any dispute or disputes arising or occurring prior to delivery to or acceptance by the Government of the Vessel, the award by the Arbitration Association of said dispute or disputes shall include a finding as to whether or not the delivery date of the Vessel is in any way altered thereby.

ARTICLE XII – TAXES AND DUTIES

The Contractor shall pay all taxes and other government impositions applied or made applicable by the Japanese Government or its municipalities upon the production, manufacture sale and shipment of the Vessel covered by this Contract.

It is understood that all taxes, duties and other charges in the Philippines are 10 for the account of the Philippine Government.

ARTICLE XIII – PATENTS: TRADE MARKS: COPYRIGHTS

The Contractor shall all times after acceptance by and delivery of the Vessel to the Government defend, save harmless and indemnify the Government against all claims, charges, costs and expenses resulting from any infringement or alleged infringement of any letters, patents, trade-marks, copyrights or other similar rights incident to any articles, devices, processes or features introduced in the Vessel by the Contractor whether in connection with its material or construction or use and operation. Nothing contained herein shall be construed as transferring any patent or trademark rights or copyright in equipment covered by this Contract, and all such 20 rights are hereby expressly reserved to the true and lawful owners thereof.

ARTICLE XIV – WAR CLAUSE

In the event that Japan, Philippines or any of the major powers is involved in a war or hostilities, declared or undelcared, and it becomes impossible or difficult to perform the duties, liabilities and obligations under this Contract, then in such event, both parties shall have the right to request for revisions of terms of this Contract, and both parties shall give due consideration to and discuss on such request.

ARTICLE XV – NOTICE

(a) MANNER:

Whenever any notice is required under this Contract to be given by one party to 30 the other, such notice is to be given by Registered Mail, and sent to its address hereunder stated.

(b) EFFECTIVE DATE OF NOTICE:

The effective date of any notice under this Contract shall be the date of receipt of such notice or on the third day following the date of the placing of said notice in the mails for delivery to the other party whichever date is earlier.

(c) ADDRESS:

Until such time as a different address is furnished by either party to the other, all notices required to be given hereunder shall be addressed as follows.

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

TO THE CONTRACTOR: Toyo Trading Co., Ltd.
No. 2, 1-chome, Hongoku-cho, Nihonbashi,
Chuo-ku, Tokyo, Japan.

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No. 22
Exhibit "FO-1"

TO THE GOVERNMENT: The Philippine Reparations Mission
Central Apartments
90, 1-chome, Onden,
Shibuya-ku, Tokyo, Japan.

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ARTICLE XVI – IDENTIFICATION OF MATERIALS:

The Contractor undertakes and agrees that all parts, equipments and machineries except raw materials shall be identified as belongings to the Vessel by having plainly marked either with hull number or with other appropriate markings or symbol of identification.

ARTICLE XVII – INTERPRETATION

In the event of a conflict or inconsistency between the terms of this Contract and any of the terms of the agreed Plans and Specification, the Plans and the Specification shall prevail in technical matters and the Contract shall prevail in other matters.

20

The agreed Plans and Specifications are intended to explain each other and anything shown upon the Plans not stipulated in the Specification or stipulated in the Specification and not shown in the Plans shall be deemed and considered as if embodied in both, but if there are in the Plans and the Specification that cannot be reconciled, the Specification shall prevail.

ARTICLE XXIII – CANCELLATION

Whenever the Government has a right to cancel this Contract, in accordance with the provisions of this Contract, and exercises such right, all moneys advanced to the Contractor shall be reimbursed to the Government within thirty (30) days after the Government's notice of cancellation is received by the Contractor, with interest at the rate of six (6) per cent per annum.

30

ARTICLE XIX – PAYMENT

The Contractor shall be paid in the manner and as stipulated in the Payment Terms attached to and made an integral part of this Contract an amount not to exceed the Contract Price of YEN ONE BILLION TWO HUNDRED THIRTY-EIGHT MILLION FIVE HUNDRED FORTY-FOUR THOUSAND (¥1,238,544,000.00).

ARTICLE XX – PERFORMANCE BOND

The Contractor shall submit to the Government a performance bond, either in cash certified check or letter of guarantee from any bank duly authorized by the Philippine Reparations Mission in an amount equivalent to ten per cent (10%) of the total contract price, before submission of the Contract for verification by the Japanese Government, to guarantee full compliance with all the drawings and specifications and/or faithful performance with all the terms and conditions of this Contract.

The Performance Bond shall be posted before the proposed Contract is submitted to the Japanese Government for verification. Upon failure to post the Performance Bond within the time specified, the Government may elect to cancel the award. Failure to comply with the prescribed specification and/or default in the performance of any of the conditions herein shall cause forfeiture of the said bond in favor of the Government. 10

Approval or certification of the Vessel by the Classification Society shall not relieve the Contractor of any of its obligation under this Contract nor under the Performance Bond which it has filed with the Government, should it be discovered after delivery that the Contractor failed to comply with its obligation under this Contract or that the Vessel is not in accordance with the plans and specifications.

ARTICLE XXI – DAMAGES

20

The Contractor shall be liable for damages, exceeding the amount of the Performance Bond, due to its failure to comply with the prescribed specifications and/or due to default and/or negligence in the performance of any of the terms and conditions of this Contract.

ARTICLE XXII – END-USER

The Vessel subject matter of this Contract is being procured under the Reparations Agreement for the Liberation Steamship Co. of Manila, Philippines.

ARTICLE XXIII – EFFECTIVE DATE

This Contract shall become effective upon the verification thereof by the Japanese Government. 30

IN WITNESS WHEREOF, the parties have hereunto set their hands at the place and on the day and year first above written.

GOVERNMENT OF THE
REPUBLIC OF THE PHILIPPINES

(*sd.*) TOYO TRADING CO., LTD.

By:

(*sd.*) CAESAR Z. LANUZA
Chief, Philippine Reparations Mission

(*sd.*) HISASHI NOMURA
Managing Director

CONSTRUCTION SCHEDULE OF
12,200 DWT CARGO VESSEL

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

Date of the Keel-laying February 28, 1960. No. 22
Date of Launching. June 30, 1960. Exhibit "FO-1"
Date of Delivery (not later than) October 31, 1960.

ANNEX "B"

APPROXIMATE COST OF NECESSARY SUPPLIES
AS PER ARTICLE TWO IN THIS CONTRACT

Deck Part Division	¥2,800,000.00
10 Engine Part Division (Including Spare Parts)	¥2,000,000.00
Wireless Telegraph Division	¥ 100,000.00
Business Part Division	¥1,620,000.00
Boarding Division	¥1,000,000.00
Medical Division	¥ 64,000.00
Provisions (food)	<u>¥1,200,000.00</u>
	<u>¥8,784,000.00</u>

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

—
No. 22
Exhibit "FO-1"

General Provisions
(Supply Contract)
Dated December 10, 1956

Republic of the Philippines
PHILIPPINE REPARATIONS MISSION
Tokyo, Japan

CONTRACT FOR ARTICLES, EQUIPMENT, SUPPLIES AND RELATED SERVICES
FOR PROCUREMENT UNDER THE REPARATIONS AGREEMENT
BETWEEN THE REPUBLIC OF THE PHILIPPINES AND JAPAN

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A. GENERAL PROVISIONS
(December 10, 1956)

10

1. REQUIREMENT:

The Contractor shall furnish and deliver, complete in accordance with these specifications, the articles, equipment and supplies described in the List, and hereinafter further specified. Unless otherwise specified all of the articles, equipment and supplies will be installed by the Government.

2. CHANGES:

(a) The Government may at any time, after consultation with the contractor, by written order, make changes, within the general scope of this Contract, in any one or more of the following: (i) drawings, designs or specifications where the articles, equipment and supplies to be furnished are to be specially manufactured for the Government in accordance therewith; (ii) method of shipment, packing, or marking; and (iii) place of delivery.

20

(b) If any such change causes an increase or decrease in the cost of or the time required for performance of this contract, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change: Provided however, that the Chief of Mission, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be deemed a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes" However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

30

(c) No change in the Supply Contract specifications shall be accepted without prior written approval of the Government.

3. EXTRAS:

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefore has been authorized in writing by the Chief of Mission.

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

4. VARIATION IN QUANTITY:

No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping or packing, or allowance in manufacturing processes, and, if any, then only to the extent as specified in this contract.

No. 22
Exhibit "FO-1"

10 5. INSPECTION:

(a) All supplies (which terms throughout this clause includes without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to inspection and test by the Government or its duly authorized representatives, to the extent practicable at all times and places, including the period of manufacture and in any event prior to final acceptance.

(b) In case any item of supplies or lots of supplies are found defective in material or workmanship or otherwise not in conformity with the requirements of this contract, the Government shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction. Promptly after notice from the Chief of Mission, supplies or lots or supplies which have been rejected or required to be corrected shall be removed or corrected in place, by and at the expense of the Contractor and not again be proposed for acceptance unless the Contractor offer-in same, discloses the cause of rejection and/or requirement for correction. If the Contractor fails to remove promptly such supplies or lots of supplies when requested by the Chief of Mission, and to proceed promptly with the replacement or correction thereof, the Government either (i) may, by contract or otherwise purchase replacement of or cause the correction of defects or such supplies and charge to the Contractor the cost occasioned the Government thereby or (ii) may terminate this contract for default as provided in the clause of this contract entitled "Default". Unless the Contractor corrects or replaces the supplies which the Government has a right to reject and is able to make such correction or replacement within the required delivery schedule, the Chief of Mission may require the delivery of such supplies at a reduced price which is equitable under the circumstances. Failure to agree to such reduction of price shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes".

(c) The Government and the Contractor agree that when the Government elects to exercise its option to inspect in accordance with subclause (a) or as specifically provided elsewhere in this transaction, the Contractor shall notify the Government of the readiness of the subject of inspection sufficiently in advance to permit attendance of inspectors appointed by the Government; and the Government shall provide such inspectors at the times and during the periods when the subject is ready for inspection; provided, however, that the Government reserves the right to charge the Contractor any additional cost of inspection and test when supplies are

not ready at the time of during the periods when inspection is requested by the Contractor; and provided further that failure of the inspectors appointed by the Government to perform the inspection and tests promptly upon readiness of the subject as requested properly in advance by the Contractor and agreed to by the Government shall entitle the Contractor to proceed with the manufacture, assembly, fabrication packing, or shipping without further awaiting the particular inspection in question, and such manufacture, assembly, fabrication packing or shipping shall be deemed to have been made in the presence of the inspectors appointed by the Government. The Contractor shall forthwith forward to the Chief of Mission duly certified copies of the test readings, which he should bring to the attention of the inspectors. If the inspector finds such test readings or data objectionable, his objection should be brought to the attention of the Contractor immediately. 10

(d) If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor, without additional charge, shall provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. If Government inspection or test is made at a point other than the premises of the Contractor or a subcontractor, it shall be at the expense of the Government: Provided, that in case of rejection the Government shall not be liable for any reduction in value of samples used in connection with such inspection or test. All inspections and tests by the Government shall be performed in such a manner as not to unduly delay work. 20

The Contractor shall be liable for the cost of additional inspection occasioned by negligence or indifference of the contractor or subcontractors to effect the necessary remedies or corrections on defects or deficiencies (noted in previous inspections) before requesting re-inspection thereby necessitating extraneous re-inspection(s). Final acceptance or rejection of the supplies shall be made within thirty (30) days after delivery, except as otherwise provided in this contract; but failure to inspect and accept or reject supplies shall neither relieve the Contractor from responsibility for such supplies as are not in accordance with the contract requirements nor impose liability on the Government therefor. 30

(e) The inspection and test by the Government of any supplies or lots thereof does not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to final acceptance. Except as otherwise provided in this contract, final acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

(f) The Contractor shall provide and maintain an inspection system covering the supplies hereunder. Records of all inspection work by the Contractor shall be kept complete and shall be made available to the Government during the performance of this contract and for such longer period as may be specified elsewhere in this contract. 40

6. RESPONSIBILITY FOR SUPPLIES:

Except as otherwise provided in this contract, (i) the Contractor shall be responsible for the supplies covered by this contract until they are delivered at the designated delivery point, regardless of the point of inspection; and (ii) the Contractor shall bear all risks as to rejected supplies after notice of rejection. Where final inspection is done at some point but delivery by Contractor is to be made at some other point, the Contractor's responsibility shall continue until delivery is accomplished.

*In the Supreme
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Jurisdiction*

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No. 22
Exhibit "FO-1"

7. DELIVERY:

10 The delivery of the articles, equipment and supplies subject of this contract will be made _____/ in accordance with schedule of delivery attached hereto. Unless otherwise specified, the point of delivery shall be the port of shipment from Japan.

8. INSPECTION REQUIREMENT:

Articles, equipment, and supplies to be furnished under this Contract shall be inspected and tested by inspectors appointed by the Government as follows:-

(a) As further specified in these and accompanying supplemental specifications.

20 (b) By tests of physical and chemical properties of materials or elements incorporated in the item to be furnished, where such properties and elsewhere specified in these and accompanying supplemental specifications.

(c) By inspection and tests of workmanship and quality entering into the construction, fabrication, and assembly of any items being specially manufactured under the provisions of this Contract.

(d) By shop assembly and inspection of items required to be shipped disassembled for subsequent assembly at destination.

(e) By performance tests and operating trials of items subject to such tests and trials and being specially manufactured under the provisions of this Contract.

30 (f) By inspection of all items immediately prior to shipment or to preparation for shipment, where such preparation would prevent full examination of the items.

(g) By final inspection, assembly, performance tests, and operating trials at destination.

The Contractor shall notify the Government of the time and places for the inspection, tests, obtaining of samples, and operating trials required in the foregoing sub-clauses (b), (c), (d), (e) and (f) in accordance with clause 5(c) hereof. No work shall be considered completed in accordance with the terms of this Contract until

the inspectors appointed by the Government shall have certified in writing that it has been inspected and approved by them.

9. MATERIALS AND WORKMANSHIP:

All materials used in the manufacture of the articles, equipment and supplies shall be selected as the best available for the purpose for which they are used, considering the best engineering and industrial practice and such physical and chemical properties of the materials as strength, hardness, ductility, durability, corrosion, resistance and composition. Liberal factors of safety shall be used throughout the designs of structural and mechanical articles. All materials incorporated in the product shall conform the most appropriate and generally recognized specifications of the country of manufacture, unless and to the extent that such specifications may conflict with other provisions of these specifications. The Contractor shall include, for the approval of the Chief of Mission, in the information submitted as required by Clause 1 of Special Provisions, a statement of the specifications under which the articles furnished have been manufactured and to which they conform. All work shall be performed and completed in a thorough a workmanlike manner and shall follow the best modern practice in the manufacture of high grade products of the type to be furnished, notwithstanding any omissions from the specifications. All works shall be performed by mechanics or craftsmen skilled in their various trades. All parts shall be made accurately, and where applicable, to standard gauges to facilitate replacement and repair.

10. RIGHT TO USE UNSATISFACTORY PRODUCTS:

If the operation or use of the articles, equipment and supplies, after being placed in service, proves unsatisfactory (to the Chief of Mission), the Government shall have the right to operate and use the articles, equipment, and supplies until they can be taken out of service, without injury to the Government, for correction of latent defects, errors, or omissions; provided that the period of such operation or use pending the correction of latent defects, errors, or omission shall not exceed one year without the written consent of the Government and the Contractor. In such case the Government shall notify the contractor as soon as possible.

11. DEFAULT:

(a) The Government may, subject to the provisions of paragraph (b) below, by written Notice of Default to the Contractor terminate the whole or any part of this contract in any one of the following circumstances:

(i) If the Contractor fails to make delivery of the supplies within the time specified herein or any extension thereof; or

(ii) If the Contractor fails to perform any of the other provisions of this contract, and so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Chief of Mission may authorize in writing) after receipt of notice from the Chief of Mission specifying such failure.

(b) The Contractor shall not be liable for any excess costs if any failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes include, but are not restricted to acts of God or of the public enemy, acts of the Japanese or Philippine Government fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, and defaults of subcontractors due to any of such causes unless the Chief of Mission shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

10 (c) In the event the Government terminates this contract in whole or in part as provided in paragraph (a) of this clause, the Government may procure, upon such terms and in such manner as the Chief of Mission may deem appropriate, supplies or services similar to those so terminated and the Contractor shall be liable to the Government for the excess costs for such similar supplies or services, provided that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

20 (d) If this contract is terminated as provided in paragraph (a) of this clause, the Government, in addition to any other right provided in this clause, may require the Contractor to transfer title and delivery to the Government, in the manner and to the extent directed by the Chief of Mission (i) any completed supplies, and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter call "Manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this Contract as has been terminated; and the Contractor shall upon direction of the Chief of Mission, protect and preserve property in possession of The Contractor in which the Government has an interest. The Government shall pay to the Contractor the contract price for completed supplies delivered to and accepted by the Government; and the amount
30 delivered to and accepted by the Government; and for the protection and preservation of property. Failure to agree shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes".

(e) If, after notice of termination of this contract under the provisions of paragraph (a) of this clause, it is determined that the failure to perform this contract is due to causes beyond the control and without the fault or negligence of the Contractor pursuant to the provisions of paragraph (b) of this clause, such Notice of Default shall be deemed a "Termination for Convenience of the Government", and the rights and obligations of the parties hereto shall in such event be determined equitably.

40 (f) The Contractor's failure to make delivery when due will authorize the Chief of Mission to, in his discretion, made an open market purchase of the supplies the Contractor failed to deliver and charge to him (the Contractor) the excess in price, if there is any; or allow acceptance of late delivery subject to a penalty of 1/10 of 1% of the total amount involved in the default for each day of delay, as

liquidated damages, except that when the amount involved in the default is less than NINE MILLION YEN (¥9,000,000) in which case the liquidated damages will be NINE THOUSAND YEN (¥9,000) a day. In no case, however, will the total amount of the penalty exceed 4% percent of the total consideration of the contract.

(g) The rights and remedies of the Government provided in this clause shall not be exclusive of any other rights and remedies provided by law of under this contract.

12. DISPUTES:

All disputes, controversies or differences which may arise between the parties out of or in relation to or in connection with this contract or for the breach thereof shall be referred to the Japan Commercial Arbitration Association and settled by arbitration in Japan in accordance with the rules of the said Association. The arbitral award shall be final and binding on both parties. 10

13. PAYMENTS:

The Contractor shall be paid as stipulated in the "Payment Terms" attached to each contract for articles, equipment and supplies, delivered and accepted and services rendered, less deductions, if any, as the Contract provides. Payment of the total contract price shall be in the basis of F.O.B. Japan port, or C.I.F. Manila, and shall be made in installments or in lump sum against the Contractor's signed receipts in duplicate, upon presentation of the documents called for in the "Payment Terms" at a Bank named by the Government. 20

INSURANCE:

Where insurance shall be for the account of the Contractor, the same shall be effected by him for the full amount of the invoice value of the supplies, subject to the following clauses:

15. ADDITIONAL BOND SECURITY:

If any surety upon any bond furnished in connection with this contract becomes unacceptable to the Government, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by the Government, the Contractor shall promptly furnish such additional security as may be required by the Government. 30

16. TAXES:

(a) The Contractor warrants that the contract prices, including the prices in subcontracts hereunder, do not include any tax or duty which are not applicable

to expenditures in Japan by the Philippine Government or any tax or duty from which the Contractor, or any subcontractor hereunder, is exempt under the laws of Japan. If any such tax or duty has been included in the contract prices through error or otherwise, the contract prices shall be correspondingly reduced.

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Jurisdiction*

(b) If, for any reason after the contract date, the Contractor is relieved in whole or in part from the payment or the burden of any tax or duty included in the contract prices, the contract prices shall be correspondingly reduced.

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Exhibit "FO-1"

17. RECOVERY OF SUMS DUE:

Whenever under this Contract any sum of money shall be recoverable from
10 or shall be payable by the Contractor, the same may be recovered from the Performance Bond or from any sum then due, or which at any time thereafter may become due to the Contractor under this Contract or any other Contract with the Government. In the event of the Performance Bond being reduced by reason of any such recovery as aforesaid, the Contractor shall within ten days from the date of his being called upon to do so by the Government replenish the Performance Bond to the original sum.

18. OFFICIALS NOT TO BENEFIT:

No member of the Philippine Reparations Mission or any employee of the Government of the Philippines shall be admitted to any share or part of this
20 contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with corporation for its general benefit.

19. COVENANT AGAINST CONTINGENT FEES:

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bonafide employees or bonafide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach of violation of this warranty the Government shall have the right to annul this contract without liability; or, in its discretion, to deduct from the contract price or
30 consideration the full amount of such commission, percentage, brokerage, or contingent fee.

20. NOTICE TO THE GOVERNMENT OF LABOR DISPUTES:

Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Chief of Mission.

21. SHIPMENT:

The Contractor shall prepare all articles, equipment, and supplies for shipment in such manner as to protect them from damage in transit, and shall be responsible for and shall correct, restore, repair, or replace any and all damage or articles damaged as the result of improper or inadequate preparation or loading for shipment. Where necessary, heavy parts or machines shall be mounted on skids, crated, or adapted to the attachment of slings, and any articles, equipment, or supplies that might otherwise be lost shall be boxed or wired in bundles and plainly marked for identification. Shipments for separate Departments of the Government, when so directed by the Chief of Mission, shall be separately packed, grouped, and documented to permit separate receiving and processing at the designated point of delivery. Identification markings will include the address shown herewith and the item code numbers assigned in the specifications, and shall conform to the accompanying Specifications for Marking of Packages, unless otherwise specified. 10

Republic of the Philippines
PHILIPPINE REPARATIONS MISSION, TOKYO
(Details)
FOR: THE REPARATIONS COMMISSION
Manila, Philippines

All articles, equipment, and supplies will be packed for ocean shipment and protected by moisture-proofing and rust-and corrosion-prevention materials and methods as required, and will be adapted to and protected from conditions or operation in and exposure to tropical temperature and humidities and, where applicable, from rain and from sea water if deck loaded. 20

The Contractor shall inform the Government in advance of the name of the overseas vessel in which the articles, equipment and supplies will be transported to their destination; the approximate date of departure from the shipping port and the expected time of arrival at the destination, so as to allow immediate clearance on arrival.

22. NOTICE AND ASSISTANCE REGARDING PATENT INFRINGEMENT: 30

(a) The Contractor agrees to report to the Chief of Mission promptly and in reasonable written detail, each claim of patent infringement based on the performance of this contract and asserted against it, or against any of its subcontractors if it has notice thereof.

(b) The Contractor shall hold and save the Government, its offices, agents, servants, and employees harmless from liability of any nature of kind, including costs and expenses, for and on account of Contractor's infringement of any third parties' rights and interests protected under Japanese laws of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article, or appliance manufactured or used for the purpose of this Contract including their use by the Government, unless otherwise specifically stipulated in this Contract. 40

23. TROPICAL SERVICEABILITY:

Unless otherwise specified, all supplies, materials, and equipment furnished under this Contract shall be suitable for and where necessary specially treated and processed for delivery, storage, and service under tropical conditions of high temperature, high humidity, heavy rainfall, and mildew and fungus-conductive environment. Tropicalizing materials and processes shall be in accordance with best commercial and industrial practices and shall be subject to approval of the Government.

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24. WRENCHES AND TOOLS:

10 All wrenches and special tools necessary for the erection, operation, and maintenance of equipment furnished under this Contract shall be supplied by the Contractor at no expense to the Government.

25. GUARANTEE: (For the purpose of this clause the word "article" refers to articles, equipment, or supplies furnished under this Contract.)

(a) The Contractor guarantees that at the time of receipt thereof at delivery point and for a period of twelve (12) months from the date of such receipt, the articles provided under this Contract will be free from any defects in materials or workmanship; will conform to the requirements of the Contract and will be adequately in design. Notice of any such defects, non-conformance, inadequacy of
20 design or non-performance will be given by the Government to the Contractor within the period of such guarantee.

(b) Should any defect, non-conformance, inadequacy of design or non-performance become apparent within the specified period, the Contractor shall, at his own expense, with all possible speed take such measure as required or directed by the Government to correct or replace including dismantling, testing and reinstalling as required, the defective, non-conforming, inadequate or non-performing article, articles or parts thereof. When such correction or replacement requires transportation of the article, articles, or parts thereof, shipping costs shall be borne by the Contractor. The guarantee shall continue as to corrected or replacing parts,
30 until twelve (12) months after the date of acceptance thereof. If the Government does not require correction or replacement of a defective, non-conforming, inadequate or non-performing article, the Contractor, if required by the Government, shall repay such portion of the price as is equitable in the circumstances as determined by the Government.

(c) If, after due notice, the Contractor should refuse or persistently neglect to undertake the correction or replacement measure specified above, the Government may proceed at its own expense to take such measures and deduct from any payments or moneys due the Contractor an amount equal to the actual expense so incurred.

40 26. SERVICES TO BE JAPANESE:

In cases where the costs of incidental and supporting services, such as transportation, insurance and inspection are to be borne by the Contractor under the terms of reparations contracts, such services will be performed by Japanese nationals or juridical persons controlled by Japanese nationals.

PAYMENT TERMS OF THE
REPARATIONS CONTRACT NO. _____
DATED _____, 1959

No. 22
Exhibit "FO-1"

PAYMENT TERMS

of Contract No.337..... datedAugust 31, 1959..... between the Government of the Republic of the Philippines, hereinafter referred to as the Government and the Toyo Trading Company, Ltd., with offices at No. 2, 1-chome, Hongoku-cho, Nihonbashi, Chuo-ku, Tokyo, hereinafter referred to as the Contractor, for the construction and delivery ex-Maizuru Shipyard, Maizuru City, Kyoto-Fu, Japan, of one (1) single screw motor driven cargo ship of approximately Twelve Thousand Two Hundred (12,200) deadweight long tons, not later than October 31, 1960. 10

The Government shall pay to the Contractor a sum of sums not exceeding the total contract amount of YEN ONE BILLION TWO HUNDRED THIRTY-EIGHT MILLION FIVE HUNDRED FORTY-FOUR THOUSAND (¥1,238,544,000.00) for the delivery of the ship specified above, computed as follows:

For one 12,200 deadweight long ton ship at ¥100,800.00 per deadweight long ton (theoretical contract amount)	¥1,229,760,000.00	20
For beddings, cutleries, dishes, glass and earthen wares, linen, navigation books and charts, initial provisions, uniforms for crew and other miscellaneous necessary supplies and spare parts, per Annex "B", not exceeding ¥8,784,000.00 to be supported by commercial invoices duly itemized	¥ 8,784,000.00	
Total:	<u>¥1,238,544,000.00</u>	

Payment shall be made to the Contractor by the Fuji Bank, Ltd., upon due authorization by the Philippine Reparations Mission by means of an Authorization to pay in accordance with the following: 30

1) The amount of YEN THREE HUNDRED SEVEN MILLION FOUR HUNDRED FORTY THOUSAND (¥307,440,000.00), being twenty-five (25%) per cent of the theoretical contract amount, shall be paid upon verification of this Contract against the Contractor's signed receipts in duplicate addressed to the Mission, accompanied by a certificate in one original and one copy, duly signed by the Chief of the Mission, or an authorized senior official of the Mission, to the effect that the Contractor has submitted to the Government the Performance Bond required in the Contract.

The receipt must be submitted to the paying bank upon verification of the Contract. 40

2) The amount of YEN THREE HUNDRED SEVEN MILLION FOUR HUNDRED FORTY THOUSAND (¥307,440,000.00), being twenty-five (25%) per

cent of the theoretical contract amount, shall be paid against the Contractor's signed receipts in duplicate addressed to the Mission, accompanied by a certificate in one original and one copy, duly signed by the Chief of the Mission, or an authorized senior official of the Mission, to the effect that the Contractor has submitted to the Mission the following documents:

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A certificate signed by the Contractor accompanied by a certificate issued by the Lloyd's Register of Shipping to the effect that the keel of the ship has been laid, in one original and one copy.

10 The receipts and documents must be submitted to the paying bank within 30 days after the Keel-laying but not earlier than February 28, 1960.

3) The amount of YEN THREE HUNDRED SEVEN MILLION FOUR HUNDRED FORTY THOUSAND (¥307,440,000.00), being twenty-five (25%) per cent of the theoretical contract amount, shall be paid against the Contractor's signed receipts in duplicate addressed to the Mission, accompanied by a certificate in one original and one copy, duly signed by the Chief of the Mission, or an authorized senior official of the Mission, to the effect that the Contractor has submitted to the Mission the following documents:

20 A certificate signed by the Contractor accompanied by a certificate issued by the Lloyd's Register of Shipping to the effect that the ship has been launched, in one original and one copy.

The receipts and documents must be submitted to the paying bank within 30 days after the launching but not earlier than June 30, 1960.

4) The amount of not more than YEN THREE HUNDRED SIXTEEN MILLION TWO HUNDRED TWENTY-FOUR THOUSAND (¥316,224,000.00), computed as follows:

Twenty-five (25%) per cent of the theoretical
contract amount ¥ 307,440,000.00

Supplies for the ship more specifically
enumerated in Annex "B" hereof, not more than . . . 8,784,000.00

30 ¥ 316,224,000.00

shall be paid against the Contractor's signed receipts in duplicate addressed to the Mission accompanied by the following documents covering delivery of the Vessel:

A certificate in one original and one copy, duly signed by the Chief of the Mission or an authorized senior official of the Mission to the effect that the Contractor has submitted to the Mission all the documents required in the Contract.

The receipts and documents must be presented to the paying bank not earlier than August 1, 1960, but not later than November 30, 1960.

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Jurisdiction*

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No. 22
Exhibit "FO-1"

The parties hereto hereby agree to this Payment Terms.

IN WITNESS WHEREOF, the parties hereto have executed this Payment Terms of the aforementioned Contract as of the day and year first above written at Tokyo, Japan.

THE GOVERNMENT OF THE
REPUBLIC OF THE PHILIPPINES

TOYO TRADING COMPANY, LTD.

By:

By:

(sd.) CAESAR Z. LANUZA
Chief, Philippine Reparations Mission

(sd.) HISASHI NOMURA
Managing Director

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

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No. 22
Exhibit "FO-2"

EXHIBIT "FO-2"

10

Office of the President
of the Philippines
Malacañang

CERTIFICATION

THIS IS TO CERTIFY:

1. That the Reparations Commission is a state organ of the Government of the Republic of the Philippines empowered to implement the Reparations Agreement with Japan and Republic Act No. 1789, as amended, otherwise known as the Reparations Law.

2. That up to the present the Reparations Commission, Republic of the Philippines, is the registered owner of the vessel M/S "PHILIPPINE ADMIRAL" (formerly M/S "Dagohoy") per the records of the Bureau of Customs and the Philippine Coast Guard. 20

3. That the authority to register Philippine vessels previously exercised by the Bureau of Customs, Republic of the Philippines, was transferred to the Philippine Coast Guard, Republic of the Philippines, pursuant to Republic Act No. 5173.

4. That at no time has a certificate of registry of ownership of the vessel M/S "PHILIPPINE ADMIRAL" been issued to any other person or company other than the Reparations Commission by the Bureau of Customs and the Philippine Coast Guard. 30

November 1, 1973.

(sd.) RONALDO B. ZAMORA
Assistant Executive Secretary

EXHIBIT "FO-3"

CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
Fourth Session)

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

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No. 22
Exhibit "FO-3"

REPUBLIC ACT 1789
(As amended by R.A. 2611 and R.A. 3079)

AN ACT PRESCRIBING THE NATIONAL POLICY IN THE PROCUREMENT AND UTILIZATION OF REPARATIONS AND DEVELOPMENT LOANS FROM JAPAN, CREATING A REPARATIONS COMMISSION TO IMPLEMENT THE POLICY,
10 PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Policy – It shall be the policy of the Government of the Philippines to utilize all reparations payments procured in whatever form from Japan under the terms of the Reparations Agreement between the Republic of the Philippines and Japan signed on May nine, nineteen hundred and fifty-six, in such manner as shall assure the maximum possible economic benefit to the Filipino people and in as equitable and widespread a manner as possible.

SECTION 2. Implementation – To implement the policy declared in
20 Section one hereof, the procurement, disposition and utilization of all goods and services procured from Japan under the terms of the Reparations Agreement shall be carried out as closely as possible to promote the economic rehabilitation and development of the country and in accordance with the broad program, criteria and priorities established by the National Economic Council, in addition to the following criteria:

(a) Capital Goods and Services – Pursuant to the policy declared in Section one hereof; the capital goods and services received as reparations shall be made available only after due compliance with all the conditions specified in this Act to approved government projects for each year included in the economic and
30 social development program adopted by the National Economic Council upon application from the agency concerned and duly endorsed by the proper department head concerned and the National Economic Council, as well as to Filipino citizens and entities wholly owned by Filipino citizens, whose applications must be accompanied in each case by the requisite project study prepared in accordance with the form prescribed for the purpose by the Commission and approved by the National Economic Council and a sworn statement as to whether the applicant has already been granted any previous application and procurement order and the value of the reparations goods and/or services involved and actually delivered, and who will themselves utilize such goods and/or services as bona fide producers or
40 manufacturers: Provided, That the value of goods and services procured for non-revenue producing government projects shall not exceed ten per cent of the

value of the annual reparations schedule: Provided, further, That the government shall not procure or utilize reparations goods for the purpose of entering into business in competition with private industries, where such industries have shown their capacity and readiness to serve the public fairly and adequately: Provided, further, That reparations intended for electrification, educational, materials, equipment and machinery, including those for fishing and vocational schools, cottage industries, fire-fighting equipment, telecommunications, railroad, base metal mining, steel and cement manufacturing, logging and shipping shall be given top priority. The list of projects shall be given the widest dissemination and publicity possible. (First amended by R.A. 2611 then further amended by R.A. 3079).

10

(a-1) All applications for reparations shall be accompanied by project studies with an evaluation report on the estimated cost of the project together with a detailed breakdown thereof based on the specifications. The evaluation report and its supporting documents shall be made under oath certifying to the genuineness of the information, data, figures, or other evidences submitted. (Inserted by R.A. 3079).

(b) Goods other than capital goods – Goods other than capital goods that may be procured from reparations shall be limited to such goods as may not be obtainable from normal sources of imports and to highly essential consumer goods and construction materials not classified as capital goods, the total value and detailed listing of which shall be made by the Commission created in Section 5 hereof and approved by the President upon recommendation of the National Economic Council. Such goods shall be sold through the National Marketing Corporation (NAMARCO) or in case of its inability, through any other agency selected by the Commission, only to bona fide retailers who are Filipino citizens or entities wholly owned by Filipino citizens who shall resell the same directly to consumers or end-users.

20

(b-1) An evaluation report under oath on the estimated cost of the consumer goods shall accompany every application for goods other than capital goods. (Inserted by R.A. 3079).

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(c) Limitations – In any case, no goods or services shall be procured under the Agreement of the domestic supply thereof is adequate. No goods except those that are brand new and of the latest model shall be procured.

(d) Cash Payment – The twenty million dollars cash payment shall accrue to a Trust Fund to be used exclusively for the benefit and rehabilitation of veterans of the Philippines in World War II, and their widows and orphans, as Congress may from time to time provide: Provided, That the procurement of consumer goods intended for veterans, their orphans and widows, of World War II shall be undertaken by the Reparations Mission upon the recommendation of and in consultation with the NAMARCO, and the same shall be disposed by the latter and the proceeds thereof shall be deposited in accordance with the provisions of this section. There shall be advanced from the Special Economic Development Fund created in Section three of this Act such amounts as may be needed to complete the scheduled cash payments of four million United States dollars every year for a

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period of five years in such manner that the total cash payments of twenty million United States dollars shall have been collected at the end of five years. (As amended by R.A. 3079).

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(e) Private Sector Preferred – In general, preference in the procurement of reparations goods and services shall be given to private productive projects: Provided, That during the first year of the effectivity of the Agreement all reparations goods and services which may be procured shall be earmarked exclusively for government projects, and, thereafter, government projects shall be given preference only if they concern electrification, educational materials, equipment and machineries, cottage
10 industries, fire-fighting equipment, telecommunications or railroad or would foster the growth of private productive capacity, or are needed in the performance of essential public services, or involve productive projects which private enterprises, is not yet capable or desirous of developing but which are urgently necessary in the interest of over-all national economic growth and only when there are appropriations providing for their procurement already embodied in existing law: Provided, further, That where goods are procurable under the Agreement in sufficient quantities, no dollar allocation shall be made, nor any bond debenture, or bond issues be floated for the importation of such goods for use in any government projects: Provided,
20 further, That not more than sixty per cent of the total value of the reparations to be paid by Japan during the twenty-year period shall be allocated to the private sector: Provided further, That no private person, private company, establishment, or entity shall be granted more than one application for reparations goods and services and in no case the aggregate total of reparations goods and services granted be more than one and a half million dollars, except when a greater amount is necessary for the realization of any project certified by the President of the Philippines after consultation with the National Economic Council to be vital to the economic development of the country and except further that the applicant may further apply for expansion or development purposes when so authorized by the President of the Philippines after consultation with the National Economic Council: Provided,
30 further, That if the private sector does not or cannot make full use of its allocations, then the portion not used shall be made available to the government: Provided, finally, That where there are two applicants for the same reparations goods, all other things being equal, the person who first applied shall be given preference. (First amended by R.A. 2611 then further amended by R.A. 3079).

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(f) Disposition of proceeds from sale of reparations goods – The proceeds from the sale of reparations goods or the utilization of the services shall be placed in a Special Economic Development Fund and shall be used only for the purpose specified hereunder.

(g) Any provision of law to the contrary notwithstanding, the government
40 shall, in the purchase of supplies, equipment and materials, other things being equal, give preference to supplies, equipment and materials made, produced and manufactured out of capital goods obtained from reparations. (Inserted by R.A. 3079).

(h) Size of the Tentative Schedule – Effective July 23, nineteen hundred sixty two, the value of the tentative schedule including any and all additional projects, to be submitted to the Japanese Government, and any and all changes

therein, whether by way of addition, substitution or deletion, whether in kind, quantity, or value, whether partial or total, whether made before or after the conclusion of the agreed schedule, as may be authorized pursuant to this Act, shall not in any case exceed the total of (1) the funds available for the corresponding reparations year, and (2) one half of the funds available for one reparations year, as certified by the Chief of the Philippine Reparations Mission: Provided, That no item which can be manufactured in a single year shall be spread out in more than one year's schedule. (Inserted by R.A. 3079).

SECTION 3. Special Economic Development Fund – The proceeds from the sale of reparations goods and utilization of services (excluding the sum referred to in Section two, paragraph (d) hereof) together with interests earned, shall be constituted into a Special Economic Development Fund, out of which Congress may appropriate by special laws, from time to time, such amounts as may be necessary to constitute a Special Trust Fund which shall be available to the Development Bank of the Philippines and the Philippine National Bank for loans for economic and industrial projects as well as for construction, reconstruction, repair and/or improvement of public school buildings in amounts not exceeding eighty per cent of the value of the securities and payable within a period not exceeding twenty years depending upon the kind of the loans and with interest at a rate not exceeding four per cent per annum: Provided, That the Development Bank of the Philippines and the Philippine National Bank shall charge for their services only the actual cost thereof and shall not make any profit therefrom: Provided, further, That fifty per cent of such Special Trust Fund shall be available for industrial loans, thirty per cent for agricultural loans (but not more than twenty per cent of such agricultural loans may be granted on any single agricultural crop), and the remaining twenty per cent, which shall be given top priority, for public school buildings, constructions, reconstructions, repair and/or improvement, as Congress may provide from time to time. The sum of twenty million pesos shall likewise be set aside from the said Special Economic Development Fund to constitute a revolving fund which shall be used exclusively to aid in the establishment of rural banks, subject to the provisions of Republic Act Numbered Seven Hundred Twenty, otherwise known as the "Rural Banks Act", as amended, and the further sum of fifty million pesos for the purchase of landed estates as provided for in the Land Tenure Act and such other landed estates as provided for by other Special Act. (As amended by R.A. 3079).

SECTION 4. Procurement of Services – Unless otherwise provided in this Act, the services to be procured from Japan shall be limited to such services of Japanese technicians as are needed in the installations of the capital goods and in the initial operation thereof, and in other specialized fields in industry and agriculture, and such services shall continue only as long as there exists definite need therefor: Provided, That the services of the Japanese technicians concerned shall be utilized within one month after their arrival in the Philippines: Provided, further, That no Japanese technicians shall be allowed to enter the Philippines if any qualified and equally competent Filipino citizen is available for the work to be performed by the Japanese technicians: Provided, finally, That the entry of Japanese technicians shall be subject to the immigration laws, rules and regulations.

SECTION 5. The Implementing Machinery – (a) For the purpose of

implementing the provisions of this Act, the Reparations Agreement, and the exchange of notes on reparations loans, there is hereby created the Reparations Commission, hereinafter referred to as the Commission, which shall be composed of a Chairman and four other members, at least one of whom shall belong to the minority party whose presidential candidate obtained the second largest number of votes in the presidential election immediately preceding his appointment, to be appointed by the President of the Philippines, with the consent of the Commission on Appointments who shall serve until removed for cause or by reason of death or disability. The Chairman shall receive a salary of eighteen thousand pesos per annum and the other members, fifteen thousand pesos per annum each. All decisions of the Commission shall be made by majority vote. (First amended by R.A. 2611 then further amended by R.A. 3079).

(b) Subject to the provisions of the Reparations Agreement, there is hereby also created a Mission in Japan, hereinafter referred to as the Mission. The Chief of Mission and the senior officials thereof shall be appointed by the President of the Philippines with the consent of the Commission on Appointments. The Chief of Mission shall receive a compensation of twelve thousand pesos per annum and shall be a career minister of the Philippine Foreign Service. The compensation and corresponding diplomatic ranks of the senior officials shall be determined and fixed by the President of the Philippines. The Chief of the Legal Section of the Mission shall be appointed by the President of the Philippines with the consent of the Commission on Appointments, and his compensation shall be fixed by the President of the Philippines, but shall not be accorded any diplomatic rank or status. (As amended by R.A. 3079).

(c) All subordinate officials and employees of the Commission shall be appointed and their compensations fixed, by the Commission. All subordinate officials and employees of the Mission shall be appointed by the Chief of Mission and their compensation fixed by the Commission upon recommendation of the Chief of Mission. All subordinate officials and employees of both the Commission and the Mission, except these whose positions are policy determining, primarily confidential or highly technical in nature shall be subject to the Civil Service Law. Provided, That their compensations and positions shall be exempt from standardization and classification by the Wage and Position Classification Office (WAPCO). (As amended by R.A. 3079).

(d) All officials and employees of both the Commission and the Mission shall be properly bonded in the amount to be determined by the Commission subject to the approval by the Auditor General according to the rank and responsibilities of the position of each official and employee. They shall, before assuming their office and every six months thereafter, file with the Office of the President a schedule under oath of their assets and liabilities. (R.A. 2611)

(e) The officials and employees of the Mission shall be granted allowances and benefits similar to those granted members of the foreign service of equal or similar rank, pursuant to the provisions of the Foreign Service Act, with the Chief of the Philippine Reparations Mission enjoying allowances and benefits equal to that of the Chief of Mission. The Chief and the two senior officials shall be entitled to commutable transportation allowance in an amount not exceeding two hundred

pesos a month. (First amended by R.A. 2611 then further amended by R.A. 3079).

(f) The Chairman and the other member of the Commission, as well as the Chief and senior officials of the Mission, shall devote their full time to their duties and shall not, during their continuance in office, nor after separation therefrom, be interested, financially or otherwise, directly or indirectly, in any business or transaction relating to the goods and services that may be received by the Philippine Government as reparations from Japan nor in any loans that may be effectuated under the exchange of notes on reparations loans. The relatives of such officials within the third degree of consanguinity or affinity shall likewise be prohibited from having any interest, financial or otherwise, direct or indirect, in any business or transaction relating to such reparations goods or services. 10

SECTION 6. Powers, functions and duties of the Commission – The Commission shall administer the acquisition, utilization and distribution of the reparations goods and/or services subject to the provisions of the Reparations Agreement and this Act. In line with the overall economic program and the policy set in this Act, the Commission shall prepare and submit for approval of the President of the Philippines, upon recommendation of the National Economic Council, (a) a five-year reparations program to be revised yearly as conditions warrant, consisting of a broad list of eligible projects, which shall be strictly priority-rated from the first to the last item in accordance with the system of priorities established by the National Economic Council, of which the first year shall be made as firm as possible and in sufficient detail to form the preliminary basis for the schedule of goods and services called for in Article four of the Reparations Agreement: Provided, That in the reparations program to be adopted priority shall be given to projects already approved by the Commission and already included in the schedule agreed upon between the Philippines and the Japanese Governments and for which Procurement Orders have already been issued to the end that complete and full payments shall be effected on such projects which have been given priority by the National Economic Council before procurement orders for new projects shall have been issued by the Commission: Provided, further, That no project shall be included in the tentative schedule unless it has previously been priority-rated as part of the five-year reparations program: Provided, further, That the priority rating of the projects in such a program shall determine and control the order or priority of each project in the tentative and agreed schedule which order may not be altered without prior notice to and approval of the corresponding change or amendment by the National Economic Council and the President, and it shall be mandatory on the Reparations Commission to furnish the National Economic Council such information as will enable the National Economic Council to implement this proviso: (b) the amount, extent, and conditions including the terms of payment under which reparations shall be procured, distributed and utilized; (c) the rules and regulations to be followed in administering the procurement, distribution, and utilization of reparations, including the procedure and forms of application thereof. Such reparations program, conditions of procurement, distribution and utilization, and the rules and regulations governing the administration, distribution and utilization of reparations shall be duly published once a week for three consecutive weeks, in two newspapers, one in Tagalog and another in English, of general circulation in the Philippines: Provided, That the Commission may submit 20 30 40

proposed amendments to the rules and regulations, the reparations program and the yearly schedule, as circumstances in the future may require, for approval of the President of the Philippines, upon recommendation by the National Economic Council. (As amended by R.A. 3079).

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In addition, the Commission shall have the following specific powers, functions and duties:

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(a) To prepare sufficiently in advance of need, on the basis of the previously approved reparations program and approved applications for reparations goods and services, a tentative schedule of goods and services clearly indicating thereon the name of the applicant end-users and the amount allocated for each project, to be procured from Japan every year which, when approved by the President of the Philippines upon recommendation of the National Economic Council, shall form the basis of consultation between the Philippine and Japanese Governments towards the formulation of the schedule called for in Article four of the Reparations Agreement. A copy of each, duly certified by the Commission, of the approved applications and studies of the projects included in the tentative schedule shall be transmitted to the Mission together with the tentative schedule. No additional project, and no change involving any item or project in a tentative schedule, whether by addition, substitution or deletion, whether in kind, quantity, or value, whether partial or total, shall be submitted to the Japanese Government until the same has been endorsed by the National Economic Council and approved by the President in accordance with the foregoing, except in cases where the proposed change involves only the increase or decrease in the amount allocated for a specific item or project listed in the tentative or agreed schedule, and does not involve any addition of, or change in any other item or project as provided above, and the total of such increase or decrease, whether effected at one time or several times, does not exceed ten per cent of the amount originally allocated for the corresponding item or project in the tentative schedule: Provided, That in any case, any increase or decrease in allocation must be within the limits set forth in paragraph (g) of Section Two of this Act. The Agreed Schedule, and any addition, substitution or deletion herein above referred to, as may thereafter be made in accordance with this Act and agreed to by the Japanese Government, shall, after its conclusion with the Japanese Government, be immediately published in full, indicating clearly the name of the end-users concerned, for three consecutive times every other day in two newspapers of general circulation, one in Tagalog and one in English by the Commission in the Philippines, and both in English by the Philippine Reparations Mission in Japan. (As amended by R.A. 3079).

(a-1) To issue procurement orders for the acquisition of reparations goods and/or services on the basis of the agreed schedule. The procurement order shall specify, among others, the following: (1) the name of the applicant end-user; (2) the item in the agreed schedule; (3) the name of the project; (4) the amount of the procurement order; and (5) the date of issuance of the procurement order. The amount of each procurement order shall be strictly in accordance with the allocation for each project as agreed upon between the Philippine and Japanese Governments. The procurement orders for all the projects shall be issued only after the conclusion of the agreed schedule, but in no case later than forty-five days thereafter. No

procurement order for the acquisition of goods and/or services intended for government agencies shall be issued by the Commission until after it shall have duly ascertained and verified that the agencies concerned have (1) the capacity and have duly provided for the repayment of the goods and/or services, in the event that such agencies are required to pay for the same; and (2) the technical capacity to take delivery and utilize efficiently the goods applied for, and unless all the following conditions shall have been previously complied with: (1) the government agency concerned must have previously prepared and submitted to the satisfaction of the Commission a financial economic and technological study concerning the feasibility of the project together with the complete plans and specifications thereof; (2) the application must have been previously approved by resolution of the Commission; (3) the project must be among those specifically included in the reparations schedule agreed upon and effective between the Philippine and Japanese Governments at the time of the issuance of the procurement order; and (4) the agreed schedule showing the names of the applicant end-users must have been published in accordance with this Act. No procurement order for the acquisition of reparations goods and/or services intended for private parties shall be issued by the Commission until after it shall have duly ascertained and verified that the applicant concerned (1) has enough financial resources and capacity to pay, and (2) has the technical capacity to take delivery and utilize efficiently the goods applied for, and unless all the following conditions shall have been previously complied with: (1) the private applicant end-users concerned must have previously prepared and submitted to the satisfaction of the Commission a financial, economic and technological study of the project together with the complete plans and specifications thereof favourably endorsed as prescribed in Section two of this Act, and a certification from the Securities and Exchange Commission or the Bureau of Commerce, as the case may be, attesting that the applicant end-user concerned is qualified under this Act; (2) the application must have been previously approved by resolution of the Commission; (3) the project concerned must be among those specifically included in the reparations schedule agreed upon and effective between the Philippines and Japanese Governments at the time of issuance of the procurement order: Provided, That no procurement order shall be issued until after the private applicant end-user concerned shall have made a down payment for the project applied for which shall not be less than two per cent of the value of the project if it does not exceed fifty thousand pesos and five per cent if the value of the project exceeds fifty thousand pesos; and (4) the agreed schedule showing the names of the applicant end-users must have been published in accordance with this Act. The private applicant shall be required to submit proof to substantiate that both his financial resources and capacity to pay are commensurate with the value of the goods and/or services applied for, and that he has had experience or has contracted an appropriate number of experts in the particular field. Notwithstanding the foregoing, no procurement order shall take effect until after the lapse of one week after its final publication indicating the name and address of the applicant end-user, the name of the project subject of the procurement order, and the specific item in the reparations schedule agreed upon and effective between the Philippine and Japanese Government at the time of issuance of the procurement order, three successive times every other day in two newspapers of general circulation, one in Tagalog and one in English, in the Philippines, and both in English in Japan, by the Commission and the Mission, within one week after receipt of the procurement order. Any procurement order

which does not wholly comply with all the above requirements shall ipso facto be considered null and void, if such non-compliance has been through the fault or negligence of the applicant end-user. After the procurement order for reparations intended for a specific end-user has been properly issued in accordance with the foregoing, such procurement order may not be revoked or suspended except when the end-user in whose favor the procurement order has been issued is adjudged, after due investigation wherein he has been given the opportunity to be heard and represented by counsel, to be disqualified or found guilty of fraud in connection with his application under this Act: Provided, That pending final decision, the procurement of the goods, except actual delivery thereof to the end-user concerned, shall not be suspended; Provided, however, That an end-user who has been found disqualified by the Commission may appeal to the President within thirty days from the receipt of the Commission's decision. The decision of the President which must be made not later than thirty days after the submission of the appeal to him, shall be final, and shall become effective upon receipt thereof by the end-user concerned. In case the end-user fails to appeal, the decision of the Commission shall become final immediately after the lapse of the period for appeal. A party who has been adjudged disqualified shall forfeit the down payment without prejudice to any action, criminal or otherwise, which may be taken against him by the proper government agency. The Commission is hereby required to render a decision on any complaint submitted to it regarding the qualifications of an end-user within ninety days from the date of the formal submission of such complaint in writing. (First inserted by R.A. 2611 then amended by R.A. 3079).

(b) To verify, alter and approve all proposed contracts and bids between the Mission in Japan and Japanese firms before the Mission accepts any bid, concludes any contract or sends it to the representative of the Japanese Government, so as to ascertain their compliance with the terms of the Reparations Agreement with Japan, and with all the provisions of this Act, and to give opportunity to the Philippine entity or persons for whom the goods or services are being procured as reparations to examine all bids, make observations thereon, with the cooperation of the Commission's technical staff, and verify the final contract specifications and terms thereof. (As amended by R.A. 2611).

(c) To accept all goods and services and cash which may be procured by the Philippine government as reparations.

(d) To provide for the care, custody, protection and proper delivery to end-users of all such reparations goods as provided in this Act. In the performance of this function, the Commission and the Mission together shall endeavor to have the end-user inspect the goods with the assistance of reputable establishments engaged in marine cargo survey and superintendence doing business in the Philippines, the cost for whose services shall form part of the value of the goods procured, accept them, and provide for their expeditious shipment from Japan to the point of installation in the Philippines in order to minimize; if not altogether eliminate, storage costs, extra handling costs, deterioration and damage in transit. (As amended by R.A. 3079).

(e) To collect and accept all moneys due by way of payment for

reparations goods and services delivered to end-users and to deposit the same with the Central Bank, which is hereby authorized upon consultation with the Commission, to determine whatever portion thereof may be placed as time deposit with such commercial banks as the Central Bank may designate.

(f) To enter into contract and to sue and be sued in Philippine Courts.

(g) To publish every month in two newspapers, one in Tagalog and another in English, of general circulation in the Philippines a list of the goods disposed of by it and services required, including those which remain undisposed of, indicating the nature of the goods, the names and addresses of the persons in whose favor the disposition was effected, and the amount of the consideration.

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(h) To hear and decide all questions and controversies regarding the rules and regulations which it shall issue to carry out the purposes of this Act, its decisions in all such cases being appealable directly to the President.

(h-1) To utilize such portion of the annual reparations payments from Japan corresponding to the government sector as may be necessary to guarantee payments of the loans extended by any Japanese financial institution or institutions for the financing of the Marikina River Multi-Purpose, the telecommunications, and railroad expansion and improvement projects as may be agreed upon between the Government of the Republic of Philippines and the Government of Japan: Provided, That the authority provided in this paragraph shall be exercised only to guarantee loans authorized by law: Provided, further, That procurement of goods under said loans shall begin the manner provided for in the procurement of any reparations goods by any government agency as provided for in this Act, any provision of Republic Act Number Two Thousand Six Hundred Twelve to the contrary notwithstanding. (First inserted by R.A. 2611 then amended by R.A. 3079).

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(i) To perform such other functions as may be found necessary or as may be imposed upon it by law or executive order.

SECTION 7. Powers, functions and duties of the Mission – The Mission shall be, pursuant to paragraph one, Article Seven, of the Reparations Agreement, the sole and exclusive agent of the Philippine Government in Japan charged with the implementation of the said Agreement, including the conclusion and performance of reparations contracts, and as such shall serve as the procurement branch of the Commission and shall undertake the procurement of all goods and services requisitioned from reparations by the Commission, including calling for bids, verification of bids against approved plans and specifications, inspections, award of contracts and supervision of the shipment to the Philippines, subject to the direct supervision and control of the Commission: Provided, That the Mission shall cooperate with and, in appropriate cases, consult the Embassy where its work required high level diplomatic intervention beyond its powers. To this and the Mission shall keep the Embassy fully informed of its activities, maintain constant liaison therewith and furnish it with copies of its reports to the Commission.

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In addition, the Mission shall have the following specific powers, functions

and duties:

*In the Supreme
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(a) To negotiate and conclude with the Japanese Government the agreed annual schedule on the basis and within the limits of the tentative annual schedule of goods and services prepared by the Commission. The Mission shall not negotiate with the Japanese Government for the inclusion of any item or project in the annual reparations schedule unless (1) it has previously received a copy of the application therefor and the required project study duly certified by the Commission, and (2) the item or project is included in the tentative schedule, both duly approved in accordance with this Act. (As amended by R.A. 3079).

10 (b) To conclude, on behalf of the Philippine Government, contracts directly with any Japanese national or any Japanese entity controlled by Japanese nationals in order to procure the desired goods and/or services. The Mission shall procure goods and services on the basis of the agreed schedule and the procurement order received from the Commission. The Mission shall prepare proposed contracts only after all the requirements specified in this act shall have been complied with. The amount of the contract for each project shall not in any case exceed the amount specified in the corresponding procurement order.

20 No official or employee of the Government of the Philippines or of any of its subdivision or instrumentalities, including government-owned or controlled corporations, shall intervene in any manner whatsoever in procurement of reparations goods and/or services or in negotiating or concluding reparations contracts with any Japanese national or entity unless such intervention is in connection with an application from the government sector and is expressly requested by the Mission with the approval of the President.

In procuring goods and services from any Japanese national or entity whether through public bidding or negotiated sale, the Mission shall in no case entertain any bid nor negotiate any sale with any Japanese national or entity who had once been discovered in any previous contract with the Mission to have unduly overpriced goods or delivered goods of inferior quality or not according to the agreed specifications or unreasonably delayed delivery of goods or for any similar reason. (As amended by R.A. 3079).

(c) To exercise the necessary supervision and control in the selection, inspection and shipment of the goods.

40 (d) To conduct public bidding or to procure directly from specific manufacturers, producers, or suppliers concerned as provided herein. With respect to the procurement order both of Philippine Government offices, agencies and instrumentalities, including government-owned or controlled corporations, and/or private parties no award shall be made by the Mission except after a public bidding with sealed bids: Provided, That where the bids are unsatisfactory, as when the goods are unduly overpriced, or of inferior quality, or when the suppliers combine to defeat the purpose of public bidding or for any other like reasons, the Mission may conduct another public bidding, or procure the goods by negotiated sale: Provided, further, That when no bid is submitted after two consecutive, invitations to bid are

issued for the same goods with an interval of not less than thirty days, the Mission may, with the approval of the Commission, procure the goods by negotiated sale, for the purpose of protecting the interest of the Government. The Mission shall publish invitation to bid in three newspapers of general circulation in Japan every other day for three consecutive times: Provided, That the specifications and descriptions of the goods for which bids are called shall be sufficiently general to permit more than one supplier and/or manufacturer to bid, and that the bidding shall be held not earlier than fifteen days after the last publication. The Mission shall endeavor to procure the goods directly from the Manufacturers, producers or through their duly authorized representatives. (As amended by R.A. 3079).

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(e) To fix, in consultation with authorized representatives of the Japanese Government, the details of the cash payment (in pesos) of twenty million dollars under the Agreement.

(f) To enter into payments agreements with authorized Japanese foreign exchange banks.

(g) To conduct such negotiations with the Japanese Government, as may be necessary to effect the expeditious and satisfactory survey and salvaga of sunken vessels in Philippine waters.

(h) To conduct negotiations with authorized representatives of the Japanese Government for the purpose of fixing such other details as may be necessary for the purpose of implementing the Agreement. the Chief and Senior Officials of the Mission shall be members of the Philippine Panel to the Joint Committee created under Article Ten of the Agreement. the Chief of Mission may designate from the other members of the staff of the Mission such additional members of the Philippine Panel of this Committee as he may deem necessary to meet the exigencies of the service.

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(i) Only the Chief of the Legal Section may sue and be sued in Japanese Courts.

(j) To submit an annual report of its operations and such other reports as may be required from time to time to the Commission.

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(k) To procure under the Agreement the necessary immovable property, equipment, supplies and other goods and services, which it shall need exclusively for its official use.

(l) To perform such other functions as may be imposed upon by it by law or executive order.

SECTION 8. Technical Personnel – The Commission shall provide itself with a competent technical staff to determine the soundness and technical feasibility of projects involved in applications for reparations goods and services, evaluate them in accordance with the criteria or program approved by the National Economic Council, evaluate plans and/or specifications in terms of suitability for bidding

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purpose, and submit its findings and recommendations for appropriate action by the Commission. The Mission in Japan shall likewise be provided with a competent staff of engineers, inspectors and economists, supplemented wherever necessary by use of inspection and testing services of internationally recognized licensed commercial organizations, in order to insure compliance with plans and specifications. Until such times as the Commission and the Mission shall have their own trained technicians, the technical staffs of other government offices or institutions shall be utilized and the corresponding expenditures shall be provided for in the budget of the Commission and the Mission.

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

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No. 22
Exhibit "FO-3"

10 **SECTION 9. Preparation of Annual Budget** – The Commission shall prepare and submit for approval by the President of the Philippines its plantilla and annual budget for the first year. Thereafter, the Commission shall prepare and submit through the Budget Commission to the President of the Philippines for inclusion in the budget to be submitted to Congress, its plantilla and annual budget: Provided, That the preparation of the plantilla and the portion of the budget pertaining to the Mission shall be made upon the recommendation of the Chief of Mission. That portion of the budget of the Mission payable in Japanese yen shall be included in the agreed schedule. All financial transactions of the Commission and the Mission shall be subject to existing budgetary and fiscal controls, including
20 accounting and auditing as provided by law.

SECTION 10. Operating Funds – The funds for the approved budget of the Commission shall be provided for in the annual General Appropriations Act. The Commission is empowered to impose a service fee not greater than two per cent on all transactions except these where the reparations goods and/or services are used for government non-revenue producing projects. For its initial operating fund, the Commission is hereby authorized to obtain from the Central Bank temporary advances not exceeding a total sum of one million pesos, which shall be reimbursed out of the proceeds from reparations. (As amended by R.A. 3079).

30 **SECTION 11. Terms of Procurement** – As a general rule, reparations goods shall be procured on an F.O.B. (free-on-board) Japanese port basis, Provided, that the Mission may, if circumstances so warrant, procure such goods on c and f (cost and freight) Philippine port, ex-factory or c, i, f, (cost, insurance and freight) Philippine port basis, in which case the supplier shall be required to quote separately expense for freight. When reparations goods shall be paid in installments, only the f.o.b. cost thereof, exclusive of the insurance, ocean freight and other expenses incident to importation shall be considered in computing the amount of the installments. The insurance shall be obtained from domestic insurance companies wholly owned by Filipino citizens: Provided, That upon delivery of reparations
40 goods, whether partial or complete, pursuant to contract, to the end-user, whether a government agency or a private person or entity, the end-user shall insure at his expense said goods or parts thereof or attachment thereto, against loss or damage due to any/or all causes, including but not limited to war, theft, robbery, unauthorized dismantling, with the Government Service Insurance System pursuant to the provisions of Republic Act Numbered Six Hundred Fifty Six, or with any private domestic insurance company eighty per cent of the capital of which is owned by Filipino citizens and the management of which is vested in such citizens, the

policy to be endorsed in favor of the Commission to the extent of its insurable interest, for as long as the government has any insurable interest on such goods. The insurance, ocean freight and other expenses incident to importation shall be paid by the end-user in accordance with usual business practices. As much as possible, in the transportation of reparations goods from Japan to the Philippines, carriers of Philippine Registry shall be preferred. The inspection and testing of reparations goods, whether intended for the government for the private sector, shall be undertaken only by agencies specifically designated by the Philippine Government through the Mission: Provided, That preference shall be given to Philippine registered and internationally recognized inspection and testing firms. Nothing herein shall be construed as exempting the end-user from paying in full all the necessary costs, charges and expenses incident to the application for and the procurement, production, delivery and acquisition of, the goods concerned. (As amended by R.A. 3079).

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SECTION 12. Terms of Sale – Capital goods and complementary services intended for non-revenue producing government projects or for projects intended for public benefit and welfare shall be transferred to the agencies concerned without cost, and those intended for revenue producing government projects at procurement cost, the incidental expenses being payable in cash by the end-user before delivery. Capital goods and complimentary services disposed of to private parties as provided for in subsection (a) of Section two hereof shall be sold on cash or credit basis under rules and regulations as may be determined by the Commission. Sales on credit basis shall be payable on installments: Provided, That in case of capital goods for the utilization of which an initial investment before operation of not more than twenty per cent of the cost of such goods is required, the first installment shall be paid on the third month after complete delivery of the goods, and in the case of capital goods for the utilization of which an initial investment before operation of more than twenty per cent of the cost of such goods is required, and also in the case of ocean-going vessels the first installment shall be paid on the twelfth month after complete delivery of the goods, extendible when deemed to be justified by the Commission not exceeding one year. The balance, in both cases, shall be paid in equal installments with interest at three per cent per annum within a period to be fixed by the Commission considering the economic life expectancy of the goods but in no case exceeding ten years from the date the first installment falls due: Provided, That in the case of vessels, the procurement cost thereof shall be paid within the period provided for in Republic Act Numbered Fourteen Hundred and Seven. The Commission may provide for the payment of additional interest at the rate not exceeding three per cent per annum for delinquency in the payment of installments. Goods other than capital goods procured as reparations shall be sold for cash only at prevailing prices for similar goods.

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In all transactions involving the transfer of capital goods and/or services from reparations to the authorized private parties specified in this Act, the sale shall be directly to end-users and not through middlemen. The contract of the sale shall bear the conditions that no capital goods thus acquired shall be resold, leased or in any other manner disposed of except to Filipino citizens or to entities wholly owned by Filipino citizens who shall continue the utilization thereof in the projects for which the goods were originally intended or in similar projects included in the economic development program or a similar priority, subject, however, to the further

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condition that groups, associations and corporations which are recipient of such goods shall not permit any subsequent change in ownership or control as shall at any time thereafter change the control or ownership wholly held therein by Filipino citizens. It shall further contain a provision that any transfer of ownership, whether by virtue of private contract or through court proceedings; shall be to Filipino citizens or entities wholly owned by Filipino citizens who shall begin utilizing them in such projects as the National Economic Council shall determine within one year from notice of the Council's decision (As amended by R.A. 3079).

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

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No. 22
Exhibit "FO-3"

10 SECTION 12-A. Performance Bond – Before delivery of the reparations goods, the private end-user shall file a performance bond in favor of the Commission in an amount equivalent to ten per cent of the f.o.b. cost, or in lieu thereof, it shall be sufficient if the private end-user shall execute in favor of the Commission a guaranty secured by real estate or any other property acceptable to the Commission in an amount equivalent to ten per cent of the total f.o.b. cost, Japanese port, of the capital goods to be delivered to end-user. The conditions of said bond shall be as prescribed by rules and regulations of the Commission. (As amended by R.A. 3079).

20 SECTION 13. Award of Contract – In evaluating bids received from prospective manufacturers and suppliers of reparations goods and services or in negotiations with the Government of Japan for the procurement of goods and services not to be procured through contracts, the Mission in Japan shall consider as a basis for award such factors as (1) prevailing expert prices for similar goods and services, (2) world market prices for similar goods and services, (3) delivery dates, and (4) availability of spare parts and service arrangements. In all awards of contracts, and in accordance with commercial practice normally observed in such transactions, the Mission shall require the awardee to provide a suitable guarantee for faithful performance of the contract.

30 The Commission shall include in the contract between the Mission and the Japanese supplier the following provisions: that the supplier agreed to allow the Auditor General or his duly authorized representative to have access to and examine any directly pertinent books, documents, papers and records of the supplier involving transactions related to this contract within three years from time of final payment. (As amended by R.A. 3079).

SECTION 14. Exemption from tax – All reparations goods obtained by the government shall be exempt of all duties, fees and taxes. Reparations goods obtained by private parties shall be exempt from the payment of customs duties, compensating tax, consular fees and the special import tax. (As amended by R.A. 3079).

40 SECTION 15. Relation to the foreign exchange budget – Reparations should be regarded as part of the foreign exchange budget, according to principles and priorities laid down for foreign exchange policy as a whole.

In order that the foreign exchange budget and the timetable for implementing the economic development program may not be adversely affected in case the aggregate value of reparations and services may fall in any year substantially

below the yearly totals envisioned in the Reparations Agreement, it is hereby provided that if at the end of any year during the effectivity of the said Agreement it is found that the aggregate value of reparations goods and services received during that year is lower by fifteen per cent or more than the average yearly total receivable for that year under the same, provided that the deficiency is not due to a lack of demand on the part of the Philippine Government, the Central Bank of the Philippines shall reduce the allocation for the ensuing year of foreign exchange for the importation of Japanese goods and services not chargeable to reparations by an amount equal to the difference between the aggregate value of reparations goods and services actually received and the applicable average total annual amount provided for in the Agreement, and the Central Bank shall then make the corresponding foreign exchange available for importation from other sources of the goods and services that would have been received under reparations but were not received.

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SECTION 15-A. Foreign Exchange Requirements – Every application for reparations shall specify the foreign exchange requirements, if any, of the project in terms of the goods and/or services which can not be procured as reparations under the reparations agreement. No application shall be approved until after all the foreign exchange requirements of the project shall have been ascertained and shown in the project study and a certificate of the Central Bank secured attesting to the availability, when and as required, of the required exchange for the project. (Inserted by R.A. 3079).

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SECTION 16. Designation of Japanese Foreign Exchange Banks – Reparations payments to be made by the Japanese Government to the Philippine Government shall be deposited in any authorized Japanese foreign exchange banks as the official depository of the Philippine Government in Japan, which may be ready, willing and able to help finance the reparations requirements of the Philippine Government to the extent not covered or coverable by Japanese Government payments in any single year, at the prevailing rate of discount and for a period of time not exceeding the period of reparations payments. The Mission shall, subject to the approval of the Commission, designate the Japanese banks which shall act as official depositories of the Philippine Government in Japan.

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SECTION 17. End-Use Checks – The Commission shall conduct field examinations and evaluate actual utilization of reparations goods and services obtained. It shall submit to the President of the Philippines, to the Senate through its President, to the House of Representatives through its Speaker, and to the National Economic Council through its Chairman, an annual report of the status and progress of the distribution and utilization of reparations, including an analysis of results and whatever recommendations are necessary. The Commission may also be requested to prepare such other periodical reports as may be necessary.

SECTION 18. Economic Development Loans – It shall be the policy of the Philippine Government not to authorize any development loan in capital goods under the executive agreement contained in the exchange of notes on development loans, where such capital goods can be procured by way of reparations, Pursuant thereto the Commission shall not authorize, sanction or abet any development loan in capital goods, where such capital goods are procurable by way of reparation.

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10 The Commission shall determine the fields of investments in the various industries for which the loans may be granted under the criteria and priorities established in the economic development program of the government. In determining the field of investment for which development loans may be granted, the Commission shall include and give priority to private financial institutions and industries liquidated and commandeered by the Japanese Imperial Army of occupation and/or Japanese military administration and which private financial institutions and industries have not as yet been rehabilitated or otherwise granted benefits, Provided, That the activities to be financed with such loans shall not result in unwise depletion of the country's natural resources: And provided, further, That the recipient of such loans shall be Filipino citizens or entities wholly owned by Filipino citizens. To such effect, it shall be the duty of the Commission: (a) To publish as often as may be deemed necessary the fields of investments and projects for which the Government will be prepared to expedite the extension of development loans from Japanese financing agencies under the terms of the exchange of notes on development loans and (b) the conditions under which the government shall facilitate the extension of development loans and the fields of investments in which the loans may be utilized.

20 SECTION 19. Violations and Penalties – (a) Any person who fails to utilize any capital goods acquired from the Commission for the purpose for which they were intended within a period of twenty four months after actual complete physical delivery or does not continue to utilize the same without any reasonable cause as long as they are serviceable after having started operations, shall be subject to a fine of five per cent of the value of such goods for every year of default or faction thereof and imprisonment for not less than five years nor more than ten years. In addition thereto, the goods, as well as the payments already made thereon, shall be subject to confiscation and forfeiture to the Government. (As amended by R.A. 3079).

30 (a-1) The government officials charged with the proper utilization of reparations goods acquired for the use of the government sector shall suffer the same penalties provided for in paragraph (a) for private persons who fail to utilize any capital goods acquired from the Commission for the purpose for which they were intended.

If the failure to utilize can be attributed to any legitimate reason, the official shall be exempt from said penalty, but should the failure to utilize reparations goods for the government sector be attributed to the culpable neglect of the officials, technical advisers, or both, responsible for the procurement of same, the latter shall bear the responsibility and suffer the penalty. (Inserted by R.A. 3079).

40 (b) Any person who does not utilize the services of any technician within one month after his arrival in the Philippines, or who utilizes his services, whether partly or wholly, for any purpose other than that for which he was allowed entry, shall be punished by a fine of not less than five thousand pesos nor more than ten thousand pesos and by imprisonment for not less than five years nor more than ten years, and the technician concerned shall be subject to immediate deportation, and

in addition thereto, whatever payments already made for such service shall be deemed forfeited to the government. (As amended by R.A. 3079).

(b-1) Failure by the end-user to take delivery of the goods allocated at the time and place designated by the Commission pursuant to its regulations shall be punished by confiscation of the down payment, a fine of two per cent of the whole value of the project, and, in addition, the end-user shall thenceforth be barred from applying for reparations: Provided, That the imposition of such fines and penalty shall be without prejudice on the part of the Commission to require the end-user transferee concerned to pay all charges in connection with the project which are chargeable against the original end-user. In addition thereto the Commission shall have the right to immediately transfer the project to any other qualified end-user under the same terms and conditions. (Inserted by R.A. 3079).

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(c) It shall be unlawful for any member of the Commission or Mission, or for any employee, agent, or clerk of the Commission or Mission, to divulge, or to make known in any manner whatsoever not provided for by law, to any person, the trade secrets, or processes of any person, firm, copartnership, corporation, or association embraced in any examination or investigation conducted by the Commission or by order of the Commission or by order of any member thereof; Provided, however, That the Commission or Mission may make reasonable use of the specifications furnished by the end-users for the purpose of canvassing current price to determine whether the prices offered by manufacturers or suppliers are reasonable and not excessive. Any offense against this provision shall be penalized by dismissal from the service with prejudice to reinstatement, subject, to whatever action the aggrieved party may take against the offender (As amended by R.A. 3079).

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(d) No fee, charge, or commission in any form shall be exacted, demanded or paid for obtaining reparations directly or indirectly, by any person, officer, member, employee or agent of the Commission, of the Mission in Japan or of banks or financial institutions handling reparations funds, except as authorized in this Act. Any such person, officer, member, employee or agent who violates or permits the violation of this subsection or any person aiding or abetting such violations, shall be punished by a fine of not less than ten thousand pesos nor more than thirty thousand pesos and imprisonment of not less than five years nor more than fifteen years.

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(e) No official or employee of the government, its subdivision or instrumentalities shall appear as counsel for, or act as agent or representative or in any manner whatsoever shall intervene or intercede, directly or indirectly, in behalf of, any party in any transactions with the Commission regarding the procurement and utilization of reparations goods and/or services and loans. Neither shall such official or employee of the government, its subdivision and instrumentalities, directly or indirectly, be interested, financially or otherwise, in any transactions with the Commission involving reparations goods and/or service. Any person violating this provision shall be subject to the penalty provided in subsection (c) of this section.

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(f) Any person violating or aiding or abetting the violation of any provision of this Act or any of the rules and regulations issued pursuant to the

provisions of this Act in any other manner shall be punished by a fine of not less than four thousand pesos nor more than eight thousand pesos and/or imprisonment of not less than four nor more than eight years with subsidiary imprisonment in case of insolvency, and if the guilty party were an appointive official or employee, he shall in addition, be dismissed from the service with prejudice to appointment to any public office. If the violation is committed by the Commission or the Mission or by any of its members, the member or members thereof who have committed the violation shall be responsible and punished with double the penalty hereinabove provided.

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

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No. 22
Exhibit "FO-3"

10 In all cases, the guilty parties shall in addition, be disqualified from subsequently applying for and/or utilizing any reparations or loans, whether in the form of goods or services, or the proceeds from the sale of reparations goods or the utilization of services. (As amended by R.A. 3079).

20 SECTION 20. Anti-Dummy – In all cases in which any provision of this Act requires Philippine or any other specific citizenship as a requisite for the exercise or enjoyment of right, franchise, privilege, reparations goods, machineries or services, of whatever nature, any citizen of the Philippines or any other specific country who allows his name or citizenship to be used for the purpose of evading such provision, and any alien or foreigner profiting thereby, shall be punished by imprisonment of not less than ten nor more than twenty years, and by a fine of not less than the value of the right, franchise, privilege, reparations goods, machinery, equipment or services, which is enjoyed or acquired in violation of the provision hereof, but in no case less than ten thousand pesos. In all cases of violations hereof, the pertinent provisions of Commonwealth Act Numbered One Hundred Eight, as amended by Republic Act Numbered One Hundred Thrity Four and Republic Act Numbered Eleven Hundred Thirty, whenever applicable, are hereby extended thereto. (As amended by R.A. 3079).

30 SECTION 21. This Act shall take effect upon its approval, except that the amendment contained in Section Seven hereof relating to the requirements for procurement orders including the requirement of down payment by private applicant end-users shall not apply to procurement orders already duly issued and verified at the time of the passage of this amendatory Act, and except further that the amendment contained in Section Ten relating to the insurance of the reparations goods by the end-users upon delivery shall apply also to goods covered by contracts already entered into by the Commission and the end-user prior to the approval of this amendatory Acts as well as goods already delivered to the end-user, and except further that the amendments contained in Section Eleven and Twelve hereof relating to the terms of installment payments on capital goods disposed of to private parties, and the execution of a performance bond before delivery of reparations goods, shall not apply to contracts for the utilization of reparations goods already entered into by the Commission and the end-users prior to the approval of this amendatory Act: Provided, That any end-user may apply for the renovation of his utilization contract with the Commission in order to avail of any provision of this amendatory Act which is more favorable to an applicant end-user than has heretofore been granted in like manner and to the same extent as an end-user filing his application after the

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In the Supreme Court of Hong Kong Admiralty Jurisdiction approval of this Amendatory Act, and the Commission may agree to such renovations on condition that the end-user shall voluntarily assume all the new obligations provided for in this amendatory Act. (As amended by R.A. 3079).

No. 22 Exhibit "FO-3"	<u>Reparations Law</u>	<u>Approved</u>
	R. A. 1789 (original)	- June 21, 1957
	R. A. 2611 (amend.)	- July 20, 1959
	R. A. 3079 (amend.)	- June 17, 1961

EXHIBIT "FO-4"

**CONTRACT OF CONDITIONAL PURCHASE AND SALE OF
REPARATIONS GOODS (M/S "DAGOHOY")**

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

No. 22
Exhibit "FO-4"

KNOW ALL MEN BY THESE PRESENTS:

This AGREEMENT, made and executed in the City of Manila Philippines, this 16th day of November, 1960, by and between:

10 The REPARATIONS COMMISSION, a government entity vested with juridical personality to enter into contract, being domiciled at and with head office at the 5th Floor DBP Bldg. No. 2, Port Area, Manila, Philippines, represented in this instance by Chairman Rodolfo Maslog, acting for and by authority of said Commission and hereinafter referred to as the CONDITIONAL VENDOR,

a n d

The LIBERATION STEAMSHIP COMPANY, INC., a corporation duly organized and existing under the laws of the Philippines, domiciled at and with head office at Rooms 304-305 RMC Bldg., Bonifacio Drive, Port Area, Manila, Philippines, represented in this instance by Don Jose Ma de Amusatogu, Chairman of the Board of Director of said corporation, hereinafter referred to as the CONDITIONAL VENDEE,

20 WITNESSETH:

WHEREAS, it is the declared policy of Republic Act No. 1789, as amended, to utilize all reparations payments in such manner as shall assure the maximum possible economic benefit to the Filipino people and in as equitable and widespread a manner as possible;

30 WHEREAS, the Conditional Vendor, through its Philippine Reparations Mission in Tokyo, Japan, has entered into contract for the procurement of one (1) ocean-going vessel with the Toyo Trading Co. Ltd., with principal office at No. 2, 1-Chome, Mongohu-cho, Nihonbashi, Chuo-Ku, Tokyo, Japan, under Reparations Contract No. 337, dated August 31, 1959 and verified by the Japanese Government on the same date, bearing Verification No. 58VP 36;

WHEREAS, in pursuance of the Basic contract above referred to, there is now to be delivered in Japan one (1) ocean-going vessel donominated as the M/S "DAGOHOY" with specifications more particularly described as follows:

One (1) Single Screw Motor Cargo Vessel 12,200 long tons dead weight (per procurement contract); Builders Hull No. 43, and Class * 100-A1 for the Hull and * LMC for the Machinery including furnishing, fixture, navigation charts and other appurtenance thereto.

WHEREAS, the f.c.b. cost, Japanese port of the aforesaid vessel to be paid by the herein Conditional Vendee to the Conditional Vendor is THREE MILLION FOUR HUNDRED THIRTY FOUR THOUSAND TWO HUNDRED EIGHTY-EIGHT DOLLARS AND EIGHTY-NINE CENTS. (\$3,434,288.89) U.S. dollars, or its equivalent in Philippine Pesos, SIX MILLION EIGHT HUNDRED SIXTY-EIGHT THOUSAND FIVE HUNDRED SEVENTY SEVEN PESOS AND SEVENTY-EIGHT CENTAVOS (₱6,686,577.78);

WHEREAS, the Conditional Vendee is a Filipino entity wholly owned by Filipino citizens and the conditions requisite for the award of contract required by law had been complied with;

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NOW, THEREFORE, for and in consideration of the above premises, and of the payments to be made by the herein Conditional Vendee to the herein Conditional Vendor as herein stipulated and agreed upon, the herein Conditional Vendor, does, by these presents, hereby conditionally CEDE, TRANSFER and CONVEY unto the herein Conditional Vendee the utilization of the vessel above described, subject to the following terms and conditions;

That the herein Conditional Vendor retains title to and ownership of the above-described vessel until the same is fully paid for;

It is also agreed upon that the herein Conditional Vendee will take delivery and possession of the aforesaid vessel at the port of Japan, and put the necessary officers and crew aboard the same before delivery of subject vessel in order to operate and utilize the same in accordance with Philippine laws; further, that the herein Conditional Vendee hereby recognize that this contract shall be subject on the provisions of R. A. 1789, as amended, to the terms and conditions provided for in Annex "A" hereof which is made an integral part of this contract; to the examination and review by the General Auditing Office pursuant to Administrative Order No. 290, series of 1959, of the President of the Philippines, and to such other terms and conditions as having been agreed upon by the parties, particularly the following:

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It appears in the records of the Conditional Vendor that the Conditional Vendee has already posted a performance bond issued by the Standard Insurance Co., Inc. under Board No. B-1975, dated Oct. 18, 1960, and to expire October 18, 1961, in the amount of ₱686,857.77, equivalent to 10% of the f.o.b. cost, Japanese port of the vessel subject of this contract, which bond shall bear the conditions that if the herein Conditional Vendee shall well and fully keep, do and perform, each and every, all and singular, its obligations under this contract and that if it shall go comply with its obligations, then this bond shall be released, otherwise, said bond shall ipso facto be forfeited in full in favor of the Conditional Vendor; that upon the expiration of the said bond, same shall be renewed or a new one taken under the same terms and conditions stipulated, for as long as the Conditional Vendor has interest in said vessel;

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Likewise, it appears in the record of the Conditional Vendor that the Conditional Vendee has already paid the following charges and expenses incident to

the application for, the procurement, delivery and acquisition of the subject vessel, to wit:

In the Supreme Court of Hong Kong Admiralty Jurisdiction

Food Provisions	₱ 12,222.22
Bank Commission	3,450.30
50% of 2% Service fee	69,040.63
Inspection fee	<u>19,812.80</u>
Total	<u><u>₱104,525.95</u></u>

No. 22
Exhibit "FO-4"

as per Official Receipt No. B-9125045, dated Oct. 26, 1960 issued by the Conditional Vendor;

10 It is also covenanted and agreed upon between the parties herein that the Conditional Vendee shall pay for fuel, lubrication, food provisions and other consumable goods and supplies which may be required for the voyage of the said vessel, including salaries of the crew and documentary stamps, if any;

That it is further understood and agreed upon by the parties that the balance of the 50% service fee in the amount of ₱69,040.63 shall be paid within six (6) months from the date of delivery of the aforesaid vessel;

20 That it is made of record that the herein Conditional Vendee has already insured, at its own expense, the said vessel with the Government Service Insurance System under Marino Hull Cover Note No. 5044, dated Oct. 19, 1960, in the amount of \$3,477,000.00 or ₱6,954,000.00, covering a period of twelve (12) months from Oct. 31, 1960, against loss or damage due to any and/or all causes, including, but not limited to war, theft, robbery, unauthorized dismantling, and that the parties further agree that upon the expiration of said marino insurance coverage, the Conditional Vendee shall secure a new one and have the said vessel so insured in accordance with the Rules and Regulations of the Commission for as long as the Government has an insurable interest on the same;

30 That it is likewise agreed upon that the purchase price of the said vessel shall be payable in installments, the first installment shall be paid within twenty-four (24) months after delivery of the said vessel and the balance to be paid in equal yearly installments within a period not exceeding ten (10) years; Provided, that the unpaid balance shall bear an interest at the rate of three (3%) percent per annum. The Schedule of Installment Payments marked as Annex "B" is hereto attached and made integral part of this contract;

That the Conditional Vendee agrees that it shall maintain the present state of classification of the said vessel;

40 That the Conditional Vendee likewise agrees to the direct examination and audit of its books, documents, papers and other records involving transactions related to this contract by the Commission Auditor or the Director, Accounting, Finance & Budget Operation Department of the Conditional Vendor, or their representatives, until the Conditional Vendee has fully paid its obligations to the

In the Supreme Court of Hong Kong Admiralty Jurisdiction

former.
IN WITNESS WHEREOF, the parties have hereunto signed and affixed their signatures on the date and place first above written.

No. 22
Exhibit "FO-4"

LIBERATION STEAMSHIP COMPANY, INC.
Conditional Vendee

REPARATIONS COMMISSION
Conditional Vendor

By:

By:

JOSE MA. DE AMUSATEGUE
Chairman, Board of Directors

RODOLFO MASLOG
Chairman

SIGNED IN THE PRESENCE OF:

ACKNOWLEDGMENT

10

REPUBLIC OF THE PHILIPPINES)
CITY OF MANILA) S.S.

At the City of Manila, Philippines, this _____ day of _____, 1960, personally appeared before me Chairman Rodolfo Maslog, for and by authority of the Reparations Commission, who exhibited his Res. Cert. No. _____, issued at Manila _____, 1960; and Don Jose Ma. de Amustegue, Chairman of the Board of Directors of the Liberation Steamship Co. Inc., who likewise exhibited his Res. Cert No. A-_____, issued at _____; on _____, 1960; both known to me to be the same persons who executed the foregoing document in the presence of two witnesses and they acknowledge the same to be their free will, act and deed. 20

This instrument refers to a contract of Conditional Purchase and Sale of Reparations Goods (M/S "Dagohoy"), consisting of five (5) pages including this page where the acknowledgment is written and each and every page hereof bears my notarial seal. Annexes "A" & "B" are included as integral parts hereof.

IN TESTIMONY WHEREOF, I have hereunto affixed my signature and notarial seal in the place and date first above written

NOTARY PUBLIC
Until December 31, 196__

Doc. No. _____
Page No. _____
Book No. _____
Series of 1960.

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REPUBLIC OF THE PHILIPPINES
REPARATIONS COMMISSION
Manila

TERMS AND CONDITIONS

10 1. It is herein covenanted and agreed upon that the title to and ownership of the reparations goods subject of this contract shall remain with the Conditional Vendor until the same shall have been fully paid for, and upon the full payment of the purchase price as hereinbefore mentioned, this conditional deed of sale shall become absolute, subject only to the limitations established by Republic Act No. 1789 with respect to inspection, transfer and utilization of said reparations goods.

2. The Conditional Vendee hereby acknowledges to have received the said reparations goods in good state and condition and to its absolute satisfaction.

20 3. The goods which are the subject matter of this contract shall not be resold, leased, or in any other manner disposed of within five (5) years from the date of acquisition, except when the resale, lease or other disposition is to Filipino citizens, who shall continue the utilization thereof in the projects for which the goods were originally intended or in similar projects included in the economic development program of a similar priority, subject, however, to the further condition that the resale, lease or other disposition be approved by the Conditional Vendor upon good and reasonable grounds, such as death or bankruptcy of the original buyer.

4. The Conditional Vendee hereby allows the Conditional Vendor to examine periodically the said goods with or without notice to evaluate the actual condition and utilization thereof until the same shall have been fully paid for.

30 5. The Conditional Vendee agrees to pay the Conditional Vendor whatever is due in favor of the latter at its office in the City of Manila, and shall pay the documentary stamp tax and notarial fees for this contract; pay the insurance premiums, freight and other expenses incident to importation, production, delivery and acquisition of the reparations goods subject of the basic contract;

6. The Conditional Vendee shall not permit any subsequent change in ownership or control of the goods, as shall at any time thereafter change the control or ownership of the same wholly held therein by Filipino citizens. In case of any transfer of ownership, whether by virtue of a private contract or through court proceedings, the same shall be limited only to Filipino citizens or to entities wholly owned by Filipino citizens who shall begin utilizing them in such projects as the National Economic Council shall determine within one year from notice of the Council's decision.

7. The Conditional Vendee agrees to utilize the reparations goods for the

purpose of which they are intended within a period of 24 months after complete delivery therein, and to continue utilizing such capital goods as long as the same are serviceable after having started operation; otherwise, the Conditional Vendee shall be subject to a fine of 5% of the value of such goods for every year of default or fraction thereof, and the goods for every year of default or fraction thereof, and the goods, as well as the payments already made thereon shall be subject to confiscation and forfeiture by the Conditional Vendor.

8. It is hereby covenanted and agreed upon that the Conditional Vendee shall not transfer the reparations goods to other place from where they were originally installed, without the knowledge and consent of the Conditional Vendor, and not to remove, alter, deface the name-place, number or other identification marks affixed or stamped on the capital goods.

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9. All rights and powers of the Conditional Vendor hereunder shall remain in full force and effect notwithstanding any neglect or delay in the enforcement thereof, or of any indulgence or forbearance given or continued to be given to the Conditional Vendee, or in the return of the reparations goods subject matter of this agreement.

10. It is expressly agreed upon that all legal actions arising out of this contract or in connection with the reparations goods made subject hereof, may at the option of the Conditional Vendor be brought in and submitted to the jurisdiction of the proper courts in the City of Manila, or in the municipality, city, or province wherein the Conditional Vendee may reside.

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11. Should the Conditional Vendee fail to pay any of the yearly installments when due, or otherwise fail to comply with any of the terms and conditions herein stipulated, as provided in R. A. No. 1789, or any of the Rules and Regulations issued pursuant thereto, then this Deed of Conditional Sale shall automatically and without any further formality become ineffective and declared rescinded, and all sums so paid by the Conditional Vendee before rescission by reason thereof shall be considered as rentals and the Conditional Vendor and its agents shall then and there be free to enter into the premises where such goods are found, take possession of the same and dispose them according to law.

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12. It is hereby agreed, covenanted and stipulated by and between the parties hereto that should the Conditional Vendor rescind this Deed of Conditional Sale for any of the reasons stated in the preceding paragraphs, the Conditional Vendee, by these presents, obligates itself to peacefully deliver the property subject of this contract to the Conditional Vendor, and in the event that the Conditional Vendee refuses to peacefully deliver the possession of the property subject of this contract to the Conditional Vendor and a suit is brought to court by the Conditional Vendor to seek judicial declaration of rescission and to take possession of the goods subject of this contract, the Conditional Vendee hereby obligates itself to pay all the expenses to be incurred by reason of such suit and in addition, obligates itself to pay as liquidated damages, penalty and attorney's fees, a sum corresponding to ten percent (10%) of the value of the goods subject of this contract.

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13. It is also agreed, covenanted and stipulated by and between the parties hereto that in the event that the Conditional Vendor cancels or rescinds this contract in accordance with Section 11 hereof, and the Conditional Vendor decides to sell the said reparations goods in other parties at a price less than the consideration herein stipulated, the Conditional Vendee hereby obligates itself to pay the Conditional Vendor the difference in price in concept of penalty or liquidated damages.

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

—
No. 22
Exhibit "FO-4"

10 14. It is further covenanted and agreed upon that in the event of an increase or decrease in the total price of the reparations goods described in the contract, as evidence by a "Modified Summary Statement of Cost of Reparations goods" submitted by the Tokyo Mission, the parties herein bind themselves to enter into a Supplemental Contract embodying any change in the actual price of said goods.

15. If any term or condition of this agreement is held invalid or contrary to law, the validity of the other terms and conditions of the same shall not be affected thereby.

Manila, Philippines, _____, 1960.

LIBERATION STEAMSHIP COMPANY, INC.

REPARATIONS COMMISSION
(Conditional Vendor)

20 _____
(Conditional Vendee)

By:

By:

DON JOSE MA. DE AMUSATEGUE

ROFOLFO MASLOG
Chairman

Chairman, Board of Directors
(Designation)

PMM/JVR

sc-

REPUBLIC OF THE PHILIPPINES
REPARATIONS COMMISSION
Manila

SCHEDULE OF INSTALLMENT PAYMENTS

NAME OF END-USER LIBERATION STEAMSHIP COMPANY, INC. -
ADDRESS Rms. 304-305 RMC Bldg., Bonifacio Drive, Port Area,
NATURE OF CAPITAL GOODS/SERVICES One (1) ocean-going vessel,
denominated M/S "DAGOHOY", 8,500 G.T.; 12,200 DWT, including spare parts and 10
appurtenances.
DATE OF COMPLETE DELIVERY October 31, 1960
TOTAL F.O.B. COST ₱6,868,577.78
AMOUNT OF LIST INSTALLMENT (10% OF F.O.B. COST ₱686,857.78
DUE DATE OF 1ST INSTALLMENT October 31, 1962
TERM: Ten (10) EQUAL YEARLY INSTALLMENTS
RATE OF INTEREST: THREE PERCENT (3%) PER ANNUM

<u>NO. OF INSTALLMENTS</u>	<u>DATE DUE</u>	<u>AMOUNT</u>
1	<u>October 31, 1963</u>	<u>₱724,686.19</u>
2	<u>" " 1964</u>	<u>724,686.19</u>
3	<u>" " 1965</u>	<u>724,868.19</u>
4	<u>" " 1966</u>	<u>724,868.19</u>
5	<u>" " 1967</u>	<u>724,868.19</u>
6	<u>" " 1968</u>	<u>724,868.19</u>
7	<u>" " 1969</u>	<u>724,868.19</u>
8	<u>" " 1970</u>	<u>724,868.19</u>
9	<u>" " 1971</u>	<u>724,868.19</u>
10	<u>" " 1972</u>	<u>724,868.19</u>

MANILA, PHILIPPINES _____, 1960.

LIBERATION STEAMSHIP COMPANY, INC.
END-USER

By:

DON JOSE MA. DE AMUSATEGUE
Chairman, Board of Directors

REPARATIONS COMMISSION

By:

RODOLFO MASLOG
Chairman

EXHIBIT "FO-5"

**REPUBLIC OF THE PHILIPPINES
COURT OF FIRST INSTANCE OF MANILA
BRANCH NO. _____**

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

—
No. 22
Exhibit "FO-5"

**THE LIBERATION STEAMSHIP CO., INC.
Petitioner,**

— versus —

**THE REPARATIONS COMMISSION,
BENEDICTO PADILLA,
JUAN M. ALBERTO,
GREGORIO G. ABAD,
CALIXTO O. ZALDIVAR,
HERMENEGILDO ATIENZA, and
MAURICIO O. BAS,
THE HONOURABLE EMMANUEL PELAEZ,
SECRETARY OF THE DEPARTMENT
OF FOREIGN AFFAIRS,
MINISTER SIMEON ROXAS,
Respondents.**

**CIVIL CASE NO. 53607
CERTIORARI AND PRO-
HIBITION WITH APPLI-
CATION FOR WRIT OF
PRELIMINARY INJUNC-
TION, EX-PARTE.**

10

X-----X

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P E T I T I O N

COMES NOW the petitioner, LIBERATION STEAMSHIP COMPANY, INC., in the above-entitled case, through the undersigned counsel, and, as causes of action against the respondents, to this Honorable Court respectfully alleges:

1. That the petitioner is a corporation duly organized under the laws of the Philippines, with postal address at No. 419 David Street, Manila;

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2. That the respondent REPARATIONS COMMISSION is an instrumentality of the Government of the Republic of the Philippines created by Republic Act No. 1789, vested with the attribute to sue and burdened with the obligation to be sued, with offices at the Development Bank Building, Port Area, Manila, where it may be served with summons;

3. That respondents Benedicto Padilla, Juan M. Alberto, Gregorio D. Abad, Calixto O. Zaldivar and Hermenegildo Atienza are members of the respondent REPARATIONS COMMISSION, and that Mauricio O. Bas is the Executive Director and Secretary of the respondent REPARATIONS COMMISSION, all of whom have their offices at the address of the latter as given in the next preceding paragraph, where they may be served with summons; that they are sued in their capacity as members of the said COMMISSION;

4. That respondent Emmanuel Pelaez is the Secretary of Foreign Affairs,

while respondent Simeon Roxas is the head of the Legal Division of the Department of Foreign Affairs, with offices at the Foreign Affairs Building located on Padre Faura Street, Manila, where they may be served with summons; that they are sued in their official capacity;

No. 22
Exhibit "FO-5"

5. That the petitioner is engaged in international shipping and operates the M/S "DAGOHOY", a vessel engaged in international "tramp" maritime service, for the transportation of cargo from and to any port; that the said vessel is of Philippine registry, flies the Philippine flag and manned by Filipino officers and sailors under the employ and, therefore, control of the petitioner;

6. That on or about January 12, 1963, the petitioner, acting through its duly constituted agent, the Australia Pacific Shipping Co., (H.K.) Ltd., represented by its Managing Director, James Lee, entered into a time charter party (not bareboat lease) which is denominated in the international maritime trade as Uniform Time Charter, Baltic and International Maritime Conference, known as Baltime Charter, with the Shipping Corporation of India, Ltd., a very substantial corporation engaged in international shipping, with offices at Bombay, India, with the petitioner agreeing to let, and the charterer to hire, the entire freight space of the M/S "DAGOHOY" for the transportation of the cargo of the charterer to and from any given port, as agreed by the parties, for a period of twelve (12) to eighteen (18) months;

7. That the rate agreed upon by the petitioner and the charterer for the hire of the entire freight space of the M/S "DAGOHOY" is Sterling fifteen shillings and three pence per ton on the vessel's summer deadweight of 12,200 tons, per month, or pro rata for any part thereof, which is equivalent to ₱98,194.00, more or less, per month, or a total of ₱1,767,497.00, more or less, for the eighteen (18) months duration of the charter party; that a photostat of the said charter party is attached hereto as Annex "A" and made an integral part of this petition;

8. That, under the terms of the said charter party, the petitioner is obligated to place the entire freight space of the M/S "DAGOHOY" at the disposal of the charterer, at Calcutta, India, on March 12, 1963, to enable the latter to load its cargo on the said vessel, for transportation to Australia, the port of discharge, and return to Calcutta;

9. That on January 25, 1963, before the petitioner could comply with its aforementioned obligation to the charterer, which is to make the entire freight space of said vessel available to the latter for the legitimate transportation of its cargo, in consideration of the payment to the petitioner of the corresponding amount for freight, Mauricio O. Bas, Executive Director and Secretary of the respondent REPARATIONS COMMISSION, addressed a letter to respondent Simeon Roxas, head of the Legal Division of the Department of Foreign Affairs, requesting the said official "to make the necessary representations for and in behalf of the REPARATIONS COMMISSION and/or the Philippine Government, with the end in view of locating the said vessel and through diplomatic means to facilitate its sailing back to the Philippines", on the argument that the petitioner leased the M/S "DAGOHOY" to the said charterer Shipping Corporation of India, Ltd.; that a true copy of the said letter is attached hereto as Annex "B" and made an integral part of this petition;

10 10. That it must be pursuant to the aforementioned request of respondent Mauricio O. Bas to respondent Simeon Roxas that Philippine Ambassador Mauro Calingo, who is stationed in India, made representations with the Indian Government and/or the charterer, advising that the said charter party is violative of certain provisions of the Reparations Act (Republic Act No. 1789); that, reacting to the said advice, the charterer desisted from loading its cargo on board the M/S "DAGOHOY" which was ready to receive the same; that the aforementioned facts, came to the knowledge of the petitioner from the charterer who sent a radiogram to the former, dated March 21, 1963, informing it of the action of Ambassador Calingo and the reasons therefor; that the contents of the said radiogram is reproduced hereunder:

20 "UMN761 KU148
BOMBAY 64/59 1 2220
LISTCO MANILA
DAGOHOY PHILIPPINE EMBASSY NEWDELHI INFORMS
CHARTERPARTY DAGOHOY ILLEGAL AS IT VIOLATES
SECTIONS ONE AND TWELVE REPARATION LAW STOP WE
VERY MUCH DISTURBED ABOVE NEWS VIEW OUR DE-
FINITE COMMITMENT TOTRADE REQUEST APPROACH
AUTHORITIES YOUR END SORTOUT MATTER STOP MEAN-
TIME HOLDING YOU RESPONSIBLE FOR ALL COST CON-
SEQUENCES INCLUDING LOSS WE MAY SUFFER INCASE
VESSEL WITHDRAWN STOP CONFIRMATION TAKEN
SHIPINDIA
COLL UMN761";

that a photostat of the said radiogram is attached hereto as Annex "C" and made an integral part of this petition;

30 11. That the petitioner was also informed by the master of the M/S "DAGOHOY", in a radiogram, dated March 21, 1963, that Ambassador Calingo informed the India External Ministry that the charter party involving the M/S "DAGOHOY" is illegal; that the contents of the said radiogram are reproduced hereunder:

40 "BHPL9/S299
URGENT CALCUTTA 66 2φ 17φ5 PAGE 1/5φ
URGENT
— LISTCO MANILA —
PHILIPPINE GOVERNMENT THROUGH AMBASSADOR
GOLINGA ORDERED INDIA EXTERNAL AFFAIRS MINISTRY
DAGOHOY CHARTER CONTRACT ILLEGAL UNDER
PHILIPPINES LAWS STOP SHIP CAN NOT BE CHARTERED
UNLESS PERMISSION GRANTED REPARATIONS COMMIS-
SION STOP DELIVERY NOT ACCEPTED DUE ABOVE REA-
SONS LATEST ORDERS FROM SHIPINDIA BOMBAY QUOTE
DO NOT ACCEPT DELIVERY DO NOT LOAD TILL MATTER
CLARIFIED UNQUOTE ADVISE URGENT GUIDANCE AMBAS-
SADOR GOLINGA IN CALCUTTA TILL FRIDAY 22ND
DAGOHOY
BRPL9 LISTCO PAGE 2/16
COL 22ND";

that a photostat of the said radiogram is attached hereto as Annex "D" and made an integral part of this petition;

12. That the desistance of the charterer to load its cargo on the M/S "DAGOHOY" must have been the result of the diplomatic representations made by Ambassador Calingo to the Government of India, as evidenced by the latter's radiogram to the petitioner, dated March 23, 1963, a photostat of which is attached hereto as Annex "E" and made an integral part of this petition;

13. That the aforementioned action of respondent Mauricio O. Bas is not authorised in any resolution of the respondent REPARATIONS COMMISSION, as required by law, considering that it is the said Commission, as the governing body of the said government instrumentality, which has the exclusive authority, therefore, the power to act in the premises, which fact clearly shows that the said action of respondent Mauricio O. Bas was taken without authority of law, therefore, without jurisdiction and/or with grave abuse of authority amounting to lack of jurisdiction, consequently, the said action is null and void; and that the corresponding official of the Department of Foreign Affairs, who directed Ambassador Calingo to make representations with the Indian Government and/or the charterer for the purpose of preventing the enforcement and implementation of the aforementioned charter party involved, which was followed by the said ambassador, likewise, acted without authority of law, therefore, without jurisdiction and/or with grave abuse of authority amounting to lack of jurisdiction, for which reason, it is respectfully submitted that the said action is also null and void, with the petitioner having become the victim of the said illegal acts, for which reason it is believed entitled to the corresponding legal remedies; consisting of actual, moral and exemplary damages;

14. That there is no provision in the Contract of Sale covering the M/S "DAGOHOY" between the respondent REPARATIONS COMMISSION and the petitioner which authorizes even the latter to summarily take possession of the said vessel or, otherwise, interfere with its operations on the exclusive belief that the use of the vessel is violative of the Reparations Act; therefore, on the assumption that the aforementioned action of respondent Mauricio O. Bas was with the implied consent of the REPARATIONS COMMISSION the aforementioned summary and coercive action taken against the petitioner was without authority of law, therefore, without jurisdiction and/or with grave abuse of authority amounting to lack of jurisdiction, the correction of which is a justiceable matter;

15. That in the charter party involving the M/S "DAGOHOY", contrary to the claim of respondent Mauricio O. Bas, the petitioner did not lease the said vessel to the Shipping Corporation of India, Ltd., but only let for hire to the charterer the entire freight space of the said vessel for the legitimate transportation of the cargo of the latter to the ports agreed by the parties, which obligation expressly excludes "Communist ports and Communist dominated areas", as provided in Clauses 21 and 2, respectively, of the charter party;

16. That the hire of the entire freight space of a vessel is altogether different and distinct from a bareboat lease, because in the former, the possession and control of the vessel remains with the owner who operates the vessel with

officers and sailors employed by it/him; flying the flag of the country of its registry; and liable to the maritime laws of the country of registration, while in the case of a bareboat lease, it is the entire boat that is physically delivered to the charterer-lessee who takes possession and control thereof, with the right to employ the officers and sailors of lessee's choice to man the vessel, consequently, the respondents Mauricio O. Bas and the officials of the Department of Foreign Affairs, particularly, respondent Simeon Roxas, committed a grave error when they qualified and considered the charter party between the petitioner and the charterer as a lease of the M/S "DAGOHOY", without confirmation by a competent court, because the possession and control thereof remains with the petitioner; that the vessel is manned and controlled by Filipino officers and sailors under the employ of the petitioner and responsible to the latter, exclusively, in the operation of the said vessel, with no other obligation to the charterer than to accept the latter's cargo for transportation to the ports designated and agreed upon by the parties to the said charter party;

17. That the aforementioned illegal acts of the respondents, which prevented the implementation of the terms and conditions of the aforementioned charter party, deprived the petitioner of its benefits which it would have derived from the said charter party, thereby inflicting upon it, instead, substantial irreparable damages upon the petitioner, consisting in the serious injuries to its business standing and prestige, not only domestically, but in the international maritime trade, and in pecuniary losses, the exact amount of which is not yet ascertained, although it can not be less than One Thousand Five Hundred Dollars (US\$1,500.00) daily, since March 12, 1963, which continued until March 23, 1963, when the petitioner was advised by the charterer that it started loading its cargo on the M/S "DAGOHOY" preparatory to the transportation thereof to Australia, as right-fully claimed by the charterer in its radiogram, dated March 24, 1963, the contexts of which are reproduced hereunder:

30 "ZCZC
UMN1447 KU252/S165
BOMBAY 10 23 1630
LISTCO MANILA
DAGOHOY ARRANGING ACCEPT DELIVERY AND START
LOADING SHIPINDIA";

that a photostat of the said radiogram is attached hereto as Annex "F" and made an integral part of this petition;

18. That after the respondents have taken the aforementioned action to prevent the implementation of the charter party by the parties thereto, resulting in the desistance of the charterer to load its cargo on board the M/S "DAGOHOY", which was then anchored at Calcutta, the petitioner, through its President and General Manager, Tomas Cloma, made representations with the respondent REPARATIONS COMMISSION for the recognition of the right of the petitioner to implement the charter party, communicating to its members the argument specified hereinabove;

19. That the Acting Chairman of the respondent REPARATIONS COM-

MISSION, acting upon the note of the Embassy of India, addressed a letter to the Department of Foreign Affairs, dated March 22, 1963, a true copy of which is attached hereto as Annex "G" and made an integral part of this petition, wherein he advised the said department that respondent REPARATIONS COMMISSION offered no objection to the trip of the M/S "DAGOHOY" from Calcutta to Australia and return as agreed by the petitioner and the charterer;

20. That the aforementioned conduct of the respondent REPARATIONS COMMISSION, in modifying its original summary coercive action against the petitioner and the charterer, which brought about the aforementioned diplomatic incident consisting in the informal representation made by the Embassy of India to our Government for the protection of the rights of the charterer, a corporation existing under the laws of the Indian Government, could be reasonably attributed not only to the said diplomatic incident, but the possible realization by the respondent REPARATIONS COMMISSION that the interpretation of the charter party involved by respondent Mauricio O. Bas might be incorrect, therefore, the existence of a probability that the rights of the petitioner and the charterer to the benefits of the charter party have been impaired illegally and that the summary and coercive action of the respondents, without previous notice to the petitioner is violative of its constitutional right to due process of law; because the argument of "a gesture of international comity and goodwill" does not make an illegal contract legal, to warrant a modification of the aforementioned original action of the respondents;

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21. That the modification of the original conduct of the respondents in the manner indicated hereinabove still retains the unwarranted restriction of the petitioner's right to the benefits of the charter party involved; that, considering the fact that the respondents relented its original summary and coercive action only to the extent of the first round trip of the M/S "DAGOHOY", the termination of the round trip would again subject the petitioner to the illegal injurious effects of the aforementioned summary and coercive action of the petitioner, unless restrained by this Honorable Court;

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22. That the petitioner, through its President and General Manager, Tomas Cloma, exerted efforts consisting in representations made with the Department of Foreign Affairs, to secure certified true copies of communications exchanged between it and the respondent REPARATIONS COMMISSION; of certified true copies of communications exchanged between it and the Embassy of India; and of certified true copies of communications exchanged between it and Ambassador Mauro Calingo who is stationed in India, on the charter party involving the M/S "DAGOHOY", for the purpose of annexing the same to this petition in order to enable this Honorable Court to dispose of this case with all the pertinent documents, but was unsuccessful, which fact is believed to entitle the petitioner to a writ of certiorari requiring respondent Emmanuel Pelaez, Secretary of Foreign Affairs, to transmit the said documents to this Honorable Court for examination, assessment and evaluation in connection with this petition, because the same are material to this case;

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23. That the facts recited hereinabove from which the aforementioned

conclusions were drawn, to the effect that the respondents noted without authority of law, therefore, without jurisdiction and/or with grave abuse of authority amounting to lack of jurisdiction, clearly satisfy the requirements of Section 3, Rule 60 of the Rules of Court, which only require that the commission or continuance of the act complained of would probably (not a certainty) work injustice to the petitioner; that the acts complained of are probably (not a certainty) in violation of the rights of the petitioner; and that the acts complained of, if not restrained, would tend to render the judgment in favor of the petitioner ineffectual, which means that the injuries inflicted, in the meantime, would be irreparable, consequently, the petitioner is believed entitled to the ancillary relief of a writ of preliminary injunction,

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1. Because the acts of the respondents complained of actually, not only probably, violated the right of the petitioner to the benefits of the aforementioned charter party, and its constitutional right to due process of law;

2. Because the acts of the respondents complained of, if, not restrained, will continue, not only probably, to work injustice upon the petitioner; and

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3. Because, even if the petitioner obtains a favorable decision, the injuries suffered by the petitioner, in the meantime, are irreparable in character, thereby tending to render the judgment ineffectual;

24. That, in the light of the facts and legal considerations recited hereinabove, it is respectfully submitted:

a. That the petitioner is believed entitled to the ancillary relief of a writ of preliminary injunction, ex parte, restraining the respondents from interfering with the operation of the M/S "DAGOHOY", after the filing of a bond in the amount which this Honorable Court may fix as reasonable;

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b. That the petitioner is believed entitled to a writ of certiorari directing the respondent Secretary of Foreign Affairs, Emmanuel Pelaez, to transmit to this Honorable Court all the communications exchanged between the Department of Foreign Affairs and the REPARATIONS COMMISSION; between the Department of Foreign Affairs and the Embassy of India; and between the Department of Foreign Affairs and Ambassador Calingo;

c. That, after due hearing, the petitioner is believed entitled to a writ of prohibition enjoining the respondents, perpetually, from interfering with the operation of the M/S "DAGOHOY" under the terms and conditions of the aforementioned charter party;

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d. That the petitioner is believed entitled to the payment by the respondents, jointly and severally, for actual damages suffered from

the illegal acts of the latter; and also for moral and exemplary damages;

25. That, by reason of the arbitrary and unlawful acts of the respondents executed without jurisdiction and with grave abuse of authority and/or discretion, the petitioner was compelled to engage the services of the undersigned counsel for ₱30,000.00 to enforce its rights and protest its interest;

26. That the petitioner has no other plain, speedy and adequate remedy in the ordinary course of law other than this special civil action;

27. That the petitioner is ready and willing to file a bond in the amount which this Honorable Court may fix as a condition to the issuance of a writ of preliminary injunction.

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P R A Y E R

WHEREFORE, IN VIEW OF ALL THE FOREGOING, it is respectfully prayed:

1. That a writ of preliminary injunction be issued, ex parte, after the filing of the requisite bond for the amount which this Honorable Court may fix, restraining the respondents from interfering with the operation of the M/S "DAGOHOY" in connection with the terms and conditions of the aforementioned charter party;

2. That a writ of certiorari be issued directing the respondent Secretary of Foreign Affairs, Emmanuel Pelaez, to transmit to this Honorable Court all the communications exchanged between said department and the respondent REPARATIONS COMMISSION; between it and Ambassador Mauro Calingo; and between it and the Embassy of India;

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3. That, after due hearing a writ of prohibition be issued enjoining the respondents, perpetually, from interfering with the operation of the M/S "DAGOHOY" in connection with the terms and conditions of the aforementioned charter party;

4. That, after due hearing the respondents be ordered, jointly and severally, to pay the petitioner the amounts called for by the following damages illegally inflicted upon the petitioner;

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(a) The sum of US\$16,500.00; or its equivalent in Philippine currency, as actual damages;

(b) A sum which this Honourable Court may fix as moral and exemplary damages; and

(c) The sum of ₱30,000.00 as attorney's fee;

5. That the respondents be ordered to pay the cost of this suit; and
6. That this Honorable Court extend to the petitioner such other reliefs to which it may be entitled in law and equity.

In the Supreme Court of Hong Kong Admiralty Jurisdiction

Manila, April 2, 1963.

No. 22
Exhibit "FO-5"

FEDERICO DIAZ
LIONEL N. TIERRA
and
JUAN T. DAVID

By:

(*sd.*) JUAN T. DAVID
Counsel

For the Liberation Steamship Co., Inc.
Suite 212 Burke Building
Escolta, Manila

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VERIFICATION

REPUBLIC OF THE PHILIPPINES)
CITY OF MANILA) S.S.
X-----X

ATTY. TOMAS CLOMA, of legal age, after being sworn in accordance with law hereby deposed and says:

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1. That he is the President of the Liberation Steamship Co., Inc., petitioner in the instant proceeding;
2. That he has caused the foregoing petition to be prepared and filed;
3. That he has read the contents thereof and understood the same; and
4. That he certifies that the facts contained therein are true and correct to the best of his knowledge and belief.

Manila, April, 2, 1963.

(*sd.*) TOMAS CLOMA
(Affiant)

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SUBSCRIBED AND SWORN TO BEFORE ME, this 2 day of April, 1963, affiant, exhibiting to me his Residence Tax Certificate No. A-379803, issued at Manila, on February 28, 1963.

Doc. No. 290;
Page No. 79;
Book No. I;
Series of 1963.

(*sd.*) NOTARY PUBLIC
Until December 31, 1963.

EXHIBIT "FO-6"

REPUBLIC OF THE PHILIPPINES
COURT OF FIRST INSTANCE OF MANILA
Sixth Judicial District
Branch XI

THE LIBERATION STEAMSHIP CO., INC.
Petitioner

- versus -

CIVIL CASE NO. 53607

THE REPARATIONS COMMISSION,
BENEDICTO PADILLA,
JUAN M. ALBERTO,
GREGORIO G. ABAD,
CALIXTO O. ZALDIVAR,
HERMENEGILDO ATIENZA,
MAURICIO O. BAS,
THE HONORABLE EMMANUEL PELAEZ,
SECRETARY OF THE DEPARTMENT
OF FOREIGN AFFAIRS, AND
MINISTER SIMEON ROXAS,

Respondents.

X-----X

A N S W E R

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COME NOW, the undersigned counsel for and in behalf of respondent Reparations Commission and co-respondents, Benedicto Padilla, Juan M. Alberto, Gregorio G. Abad, Hermenegildo Atienza and Mauricio O. Bas and by way of answer to the herein petition respectfully state:

1. That the herein answering respondents admit the allegations contained in paragraphs 1, 2, 3 and 4 of the petition;

2. That with respect to the allegations contained in paragraph 5, answering respondents admit that petitioner is engaged or is at least expected to engage in overseas shipping in the operations of reparations vessel M/S "DAGOHOY", but denies that said vessel is authorized to engage in international "tramp" maritime services, the truth being that, said vessel was allowed to be procured through reparations to help provide adequate Philippine bottoms for the carriage of goods imported to and exported from the Philippines: that it is further admitted that said vessel is of Philippine registry, flies the Philippine Flag and manned by Filipino officers and sailors, but with the manifestation however that said vessel is a reparations vessel still owned by the Philippine Government as it has not yet been paid for by petitioner;

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3. That as regards the allegations contained in paragraph 6, answering respondents admit that on or about January 12, 1963, petitioner acting through its duly constituted agent, the Australian Pacific Shipping Co., (H.K.) Ltd. entered into

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10 a time charter party of M/S "DAGOHOY" with the Shipping Corporation of India for a period of 12 to 18 months but deny that portion of the allegation which avers that what was let to the Shipping Corporation of India is merely the entire freight space of the said vessel for the truth of the matter is that pursuant to paragraph 1 of the time charter party, "the owner let, and the charter hire the vessel" and what is to be placed at the disposal of the charterer is the vessel itself. Furthermore, attention is invited to paragraph 2 of said Charter Party wherein it is stipulated that the vessel is to be employed in lawful trades for the carriage of lawful merchandise; to paragraph 4, which provides that while the vessel is on hire, the charter shall provide and pay for all oil fuel, water for boiler, port charges, pilotage, canal steersman, etc; to paragraph 8, which states that the whole reach and burthen of the vessel, including lawful dock-capacity are at the disposal of the charterer; to paragraph 9 wherein it was agreed that the master is under the orders of charterers as regards employment agency or other arrangements; and to paragraph 10 wherein it is provided that the master is under the instruction and sailing direction of the charterer, all of which circumstances indicate that the management control and operation of M/S "DAGOHOY" was transferred to the Shipping Corporation of India for the entire duration of the charter party as a consequence of the lease of the vessel itself.

20 4. That with respect to paragraph 7, the allegations therein contained insofar as they are part and parcel of the stipulations under the time charter are hereby admitted with the added manifestation, however, that, as has been averred in the proceeding paragraph hereof, what was hired by the Shipping Corporation of India was not merely the freight space of the M/S "DAGOHOY" but the vessel itself and as such, the said Charter Party is illegal and in violation of the provisions of the Reparations Law, particularly sections 2 and 12 thereof, and of the rules and regulations, particularly section 15 thereof, promulgated in pursuance of the Reparations Law, it appearing that under said statutory and reglamentary provisions, the said vessel cannot be leased, sold or otherwise disposed of in any manner except to Filipino citizens or entities wholly owned by Filipino citizens and it appearing likewise that the Shipping Corporation of India, Ltd., as charterer of the vessel under the said time charter, is an alien corporation;

30 5. That as regards the allegations contained in paragraph 8, insofar as said allegations ape part of the stipulations of the time charter, same are admitted, with the manifestation, however, that under paragraph 1 of said charter party, what is to be delivered to the Shipping Corporation of India on March 12, 1963 is the vessel itself and not merely the freight space of said vessel;

40 6. That answering respondent admit the allegations contained in paragraph 9 with the manifestation that the letter of Executive Director Mauricio O. Bas referred to therein was made for and in behalf and by authority of the Reparations Commission, it appearing that the Reparations Commission is still the owner of subject vessel as same is not yet fully paid for and was leased by petitioner in violation of the Reparations Law and of the rules and regulations promulgated in pursuance thereto. The Commission as implementing machinery of reparations, has not only the power but also the duty to see to it that said law and rules and regulations are duly complied with by reparations end-user concerned;

7. That answering respondents admit the allegations contained in paragraph 10 and for purposes of this admission, incorporate herein the manifestation made in the proceeding paragraphs hereof;

8. That answering respondents admit the allegations contained in paragraph 11 and again incorporate herein for purposes of this admission the manifestation made in paragraph 6 hereof;

9. That answering respondents are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 12, and, therefore, deny the same;

10. That answering respondents deny the allegations contained in paragraph 13 and for purposes of this denial, the manifestation made in paragraph 6 hereof is hereby incorporated; 10

11. That with regards to the allegations contained in paragraph 14, answering respondents specifically deny the same, the truth being that under the contract of Conditional Purchase and Sale signed by the petitioner and referred to in said paragraph 14, particularly to the terms and conditions contained in Annex "A" of said contract, the Reparations Commission, may take possession of the vessel and dispose of the same upon violation of such terms and conditions by petitioner; the said terms and conditions violated by petitioner and stipulation granting the Reparations Commission to take possession of the said vessel are quoted hereunder: 20

"3. The goods which are the subject matter of this contract shall not be resold, leased, or in any other manner disposed of within five (5) years from the date of acquisition, except when the resale, lease or other disposition is to Filipino citizens, who shall continue the utilization thereof in the projects for which the goods were originally intended or in similar projects included in the economic development program of a similar priority, subject, however, to the further condition that the resale, lease or other disposition be approved by the Conditional Vendor upon good and reasonable grounds, such as death or bankruptcy of the original buyer." 30

"6. The Conditional Vendee shall not permit any subsequent change in ownership or control of the goods, as shall at any time thereafter change the control or ownership of the same wholly held therein by Filipino citizens. In case of any transfer of ownership, whether by virtue of a private contract or through court proceedings, the same shall be limited only to Filipino citizens or to entities wholly owned by Filipino citizens who shall begin utilizing them in such projects as the National Economic Council shall determine within one year from notice of the Council's decision." 40

"11. Should the Conditional Vendee fail to pay any of the yearly installments when due, or otherwise fail to comply with any of the terms and conditions herein stipulated, as provided in R.A. No. 1789, or any of the Rules and Regulations issued pursuant thereto, then this Deed of Conditional Sale shall automatically and without any further formality become ineffective and declared rescinded, and all sums so paid by the Conditional Vendee before rescission by reason thereof shall be considered as rentals and the Conditional Vendor and its agents shall then and there be free to enter

into the premises there such goods are found, take possession of the same and dispose them according to law."

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and according to the case of the De la Rama Steamship Co., Inc. vs. Tan et al., G.R. L-8784, promulgated by the Supreme Court on May 21, 1956, judicial permission to cancel an agreement is not necessary when the right to rescind is expressly granted under the contract;

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Exhibit "FO-6"

10 12. That answering respondents specifically deny the allegations contained in paragraph 15, the truth being that under the very terms of the Charter Party, "the owners let, and the Charterers hire the vessel for a period of 12 months to 18 months at the Charterers option" and in addition to the manifestations made in paragraph 3 hereof which are being incorporated herein by reference, the "charterers have the option of subletting the vessel after due notice to the owner" to further support the contention of answering respondents that what was hired to the Shipping Corporation of India is the vessel itself, and not merely the freight space thereof; furthermore, a Charter Party has been defined as:

20 "Charter Party is a contract by virtue of which the owner or the agent of the vessel leases for a certain price of the whole or a portion of the vessel for the transportation of goods or persons from one port to another." (Dol Viso. p. 547, cited by Martin in his Commentaries and Jurisprudence on the Pail. Commercial Laws, Vol. II. p. 91, 1958 Revised Edition.)

30 13. That as regards paragraph 16, answering respondents likewise specially deny the same, the truth being, as heretofore stated, is that what was let for hire, under the very terms and conditions of the Charter Party is the vessel itself, not merely the freight space thereof; further, for purposes of this denial, the allegations contained in paragraphs 3 and 6 hereof are hereby incorporated and in addition thereto, to further support the claim of answering respondents that the vessel itself was leased under the Charter Party and not merely the freight space thereof, attention is invited to paragraph 34 of the Charter Party which gives the character
40 "the liberty to fly their own house flag and paint the funnel in their own colours": that under paragraph 7 of said Charter Party, what is to be "re-delivered on the expiration of the Charter in the same good order as when delivered to the Charterer (fair wear and tear excepted) at a safe port in the Charterers option in India" is the vessel itself which clearly show that under the said charter party there is a transfer of possession of the vessel from petitioner to the charterer as a consequence of the fact that what was hired and leased to the charterer is the vessel itself and not merely the freight space thereof. Furthermore, a contract of lease has been defined as where in "one of the parties binds himself to give to another the enjoyment or use of a thing for a price certain, and for a period which may be definite or indefinite." (Art. 1643, E.C.C.). Under these circumstances, there is no error, therefore, much less grave abuse of authority or discretion on the part of the Reparations Commission and the Department of Foreign Affairs when they considered the said charter party as a contract of lease of M/S "DAGOHOY" and, therefore, in violation of the Reparations Law, the rules and regulations promulgated in pursuance thereof and of the contract of conditional purchase and sale covering

said vessel. Furthermore, as heretofore manifested, from the standpoint of the Reparations, the herein petitioner is not yet the owner of said vessel since the same has not been fully paid for to the Commission and in fact, petitioner is delinquent in its accounts even with respect to the first installment.

14. That with respect to the allegations contained in paragraph 17, it is submitted that the acts of the Commission in the premises are perfectly legal and in conformity with the Reparations Law, the Rules and Regulations of the Commission, and with the Contract of Conditional Purchase and Sale referred to above; that petitioner could not, therefore, claim any injury or damage resulting from the exercise by respondent Commission of its powers, prerogatives and duties under the law and under the aforementioned contract of conditional purchase and sale. The petitioner must necessarily take the risk of suffering any injury or damage as a result of his own wrongful act. Petitioner cannot be permitted to profit from his own wrong. Under these circumstances, answering respondents deny specifically the allegations contained in said paragraph 17;

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15. That with regard to paragraph 18, answering respondents admit that petitioner, through its President, Tomas Cloma, "made representations with the Reparations Commission" but deny that said representation was made "for the recognition of the rights of the petitioner to implement the charter party", the truth of the matter being that per letter of petitioner to the Commission dated March 21, 1963, petitioner "requested that the Reparations Commission kindly lift the order of the Philippine Ambassador by giving its permission or conformity without prejudice to any legal action that the Commission may desire to determine the legality of the charter party": and further added that "should it be established that the charter party is illegal, we are prepared to accept the penalty that the law provides and would abide by any other action that the Commission may desire to take."

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16. That as regards paragraph 19, answering respondents admit the fact of sending letter annex "C" of the petition but with the manifestation however, that as stated in said letter, the same was in response to a note of the Embassy of India dated March 22, 1963 containing a request to the Government of the Philippines as owner of the vessel M/S "DAGOHOY" to permit said vessel to undertake the voyage from Calcutta to Japan and thereafter the vessel will be released, and to which request the Reparations Commission offered no objection as a gesture of international comity and goodwill, and not as recognition of the legality of the Charter Party;

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17. That answering respondents deny specifically the allegations contained in paragraph 20 and for purposes of this denial, the allegations in the preceding paragraph hereof are hereby incorporated with the added manifestation that insofar as the relationship between the Reparations Commission as owner of M/S "DAGOHOY" and the petitioner as end-user of said vessel, is concerned, the Reparations Commission has never modified its stand as regards the validity or legality of the Charter party, it appearing that the action taken by the Commission of not offering an objection on the request of the Indian Embassy as conceded by

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petitioner itself in its letter dated March 21, 1963 as quoted in paragraph 15 hereof is without prejudice to whatever action the Commission may undertake relative to the invalidity of said Charter contract, and it appearing further that under paragraph 9 of the terms and conditions annexed to the contract of sale and referred to in paragraph 11 hereof, it is expressly stipulated that "all rights and powers of the conditional vendor shall remain in full force and effect notwithstanding any neglect or delay in the enforcement thereof, or of any indulgence or forbearance given or continued to be given to the conditional vendee, or in the return or the reparations goods subject matter of this agreement;"

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Exhibit "FO-6"

10 18. That answering respondents likewise deny specifically the allegations contained in paragraph 21 for reasons already stated in paragraph 14, 15, 16 and 17 thereof;

 19. That answering respondents have no sufficient knowledge or information to form a belief as to the truth contained in paragraph 22 and, therefore, deny the same;

20 20. That answering respondents deny specifically the allegations contained in paragraphs 23 and 24 for the reasons heretofore stated that the Commission in the performance of the acts complained of they acted in the exercise of its powers, prerogatives and duties as provided for by law, and by the rules and regulations of the Commission and of its rights under the contract of sale referred to in paragraph 11 hereof; and in addition, that the petitioner in entering into a Charter Party of M/S "DAGOHOY" to a foreign or alien corporation committed an act not only civil in nature but also penal in character pursuant to the provision of section 19(f) of the Reparations Law, as amended, and consequently, petitioner may not be permitted to invoke the writ of preliminary injunction or prohibition in justification and in furtherance of illegal act, which it has committed; that no rights could possibly spring or accrue from a crime or illegal transactions as the Charter Party in question; that injunction or prohibition will not lie to restrain the enforcement of a valid law; neither will injunction or prohibition lie to restrain an act which is being
30 done to prevent the commission of a crime or violation of law; that injunction will not lie to restrain the enforcement of the valid contract of Conditional Purchase and Sale; that to restrain the Commission either by injunction or prohibition would in effect tie its hands from implementing the provisions of law and of the rules and regulations, thus making it unwittingly a party to a violation of law and of said rules and regulations; and that upon the whole it appearing that no right has been violated, the Reparations Commission should not be restrained preliminarily or otherwise in the performance of its power, prerogatives and duties vested upon it by law and in the enforcement of its contractual rights;

40 21. That answering respondents deny specifically that portion of paragraph 25 which alleged that it has acted arbitrarily, unlawfully, without jurisdiction and with grave abuse of authority and/or discretion for reasons already alleged in the preceding paragraphs hereof and as regards the other portions, respondents are without sufficient knowledge or information to form a belief as to the truth thereof, and therefore deny the same;

22. That answering respondents are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 26 and 27, and therefore, deny same;

And by way of SPECIAL DEFENSES, answering respondents respectfully state:

1. That the answering respondents in performing the acts complained of acted within proper jurisdictional bounds of the law, the rules and the corresponding contract of Conditional Purchase and Sale and in pursuance of the same and in the performance of these acts committed no abuse of authority or discretion, grave or otherwise; neither is there a capricious and whimsical exercise of judgment or authority as shall warrant the Writ of prohibition prayed for; 10

2. That the answering respondents have a duty under the Reparations Law, the Rules and Regulations of the Commission and under the Contract of Conditional Purchase and Sale executed by petitioner with the Reparations Commission to see to it that said law, rules and contract are faithfully complied with by end-users concerned; otherwise they (respondents) may be amenable to the penal sanction provided for in Section 19(f) of the said law "for violating or aiding or abetting the violation of any provision of this act or any of the Rules and Regulations issued pursuant to the provisions of this Act."

3. That accordingly, injunction or prohibition will not lie to stop an act which is being done to prevent the commission of a crime, or to prevent the violation of law; neither will said writ lie to restrain the Reparations Commission in the performance of its duties, powers and prerogatives under the law, or under the terms of the valid contract of Conditional Purchase and Sale. 20

4. That petitioner has failed to exhaust all available administrative remedies, it appearing that the case at bar involve mixed questions of facts and law in relation to the application of the law and also Section 15 of the Rules of the Commission, and it appearing further that Section 6(h) of the Reparations Law provide for that procedural administrative remedy. Thus said section of the law states that the Commission shall have the power among others: 30

"To hear and decide all questions and controversies regarding the rules and regulations which it shall issue to carry out the purposes of this act, its decisions in such cases being appealable directly to the President."

5. That there is another plain, speedy and adequate remedy in the ordinary course of law.

6. That prohibition is not the proper remedy for acts already accomplished it appearing that in the case at bar, and as shown by the petitioner's own Annex "G", the act of the Commission in relation to the subject Charter Party contract has already been accomplished or consummated. 40

7. That petitioner is in estoppel to question or prohibit the acts of the answering respondents in this case since by its own representation per its letter to the Commission dated March 21, 1963, it manifested that its request for the lifting of the order of the Philippine Ambassador in relation to the Charter Contract was "without prejudice to any legal action that the Commission may desire to determine the legality of the Charter Party" and further stated that "should it be established that the Charter Party is illegal, we are prepared to accept the penalty that the law provides and would abide by any other action that the Commission may desire to take."

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10 (a) That as further support for this Special Defense is the evidentiary fact that petitioner is bound by the terms and conditions of the contract of Conditional Purchase and Sale which it executed with the Commission when it covenanted and agreed upon therein, among others, that in case of default of payments of any installments, or violation of any of the terms and conditions therein," the Conditional Vendor and its agents shall then and there be free to enter into the premises where such goods are found, take possession of the same and dispose them according to law."

20 8. That even assuming without admitting that the manner of performing the act complained was improper, still the writ of prohibition will not lie because as stated in *Forris Extraordinary Legal Remedies*, Section 324, p. 440:

"x x x whatever power is conferred may be exercised, and if it be exercised injudiciously, erroneously, or irregularly, it amounts to error merely and not to usurpation or excess of jurisdiction."

And finally answering respondents respectfully state as:

COUNTER-CLAIM

1. That the allegations contained in paragraphs 1, 2, and 3 of the petition are hereby reproduced and incorporated herein by reference as part of this counterclaim;

30 2. That the allegations contained in paragraphs 1 to 22 of this answer are likewise reproduced and incorporated herein by reference also as part of this counter-claim;

3. That said M/S "DAGOHOY" was procured from Japanese reparations with a total FOB cost of ₱6,868,577.78 and was completely delivered to petitioner on October 31, 1960, and subject of the corresponding contract of Conditional Purchase and Sale, copy of which is hereto attached as Annex "1" and made an integral part hereof;

40 4. That pursuant to section 12 of the Reparations Law which provides that the first installment shall be paid within two years from the date of complete delivery of the reparations goods, the amount of ₱686,857.78. representing 10 per cent (10%) of the FOB cost of M/S "DAGOHOY" and which consist of the first installment payment without interest, became due and payable on October 31, 1962;

5. That despite reported demands, petitioner refused and failed and still refuses and fails to pay the said amount of ₱686,857.78;

6. That on or about January 12, 1963, the petitioner, acting through its duly constituted agent, the Australia Pacific Shipping Co., (H.K.) Ltd., entered into a time charter of M/S "DAGOHOY" with the Shipping Corporation of India, a corporation owned and controlled by aliens;

7. That the refusal of petitioner to pay the said amount of ₱686,857.78 is clearly a violation of the terms and conditions of the Contract of Conditional Purchase and Sale Annex "1" hereof, and the chartering of said vessel to a foreign corporation is not only a violation of said contract but also in violation of Section 2 and 12 of the Reparations Law, as amended, and Section 15 of the Rules and Regulations promulgated pursuant to the said Reparations Law;

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8. That by virtue of the aforesaid violation of the law, the rules, and the contract, as already above pointed out, the herein petitioner may not now prohibit or question that "the Conditional Vendor and its agents shall then and there be free to enter into the premises where such goods are found, take possession of the same and dispose of them according to law," as evidenced by the following contractual stipulation:

"11. Should the Conditional Vendee fail to pay any of the yearly installments when due, or otherwise fail to comply with any of the terms and conditions herein stipulated, as provided in R.A. No. 1789, or any of the Rules and Regulations issued pursuant thereto, then this Deed of Conditional Sale shall automatically and without any further formality become ineffective and declared rescinded, and all sums so paid by the Conditional Vendee before rescission by reason thereof shall be considered as rentals and the Conditional Vendor and its agents shall then and there be free to enter into the premises where such goods are found, take possession of the same and dispose them according to law."

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9. That by reason of said illegal acts of petitioner and for his refusal to peacefully deliver the said vessel, to the Reparations Commission, the petitioner has become liable to pay the Reparations Commission an amount equivalent to 10 per cent of ₱6,868,577.78, the total FOB cost of the vessel, as litigation expenses, liquidated damages, penalty and attorneys fees in accordance with paragraph 12 of the Terms and Conditions Annex "A" of the said contract. Said paragraph 12 stipulates as follows:

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"12. It is hereby agreed, covenanted and stipulated by and between the parties hereto that should the Conditional Vendor rescind this Deed of Conditional Sale for any of the reasons stated in the preceding paragraphs, the Conditional Vendee, by these presents, obligates itself to peacefully deliver the property subject of this contract to the Conditional Vendor, and in the event that the Conditional Vendee refuses to peacefully deliver the possession of the property subject of this contract to the Conditional Vendor and a suit is brought to court by the Conditional Vendor to seek judicial declaration of rescission and to take possession of the

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goods subject of this contract, the Conditional Vendee hereby obligates itself to pay all the expenses to be incurred by reason of such suit and in addition, obligates itself to pay as liquidated damages, penalty and attorney's fees, a sum corresponding to ten percent (10%) of the value of the goods subject of this contract.

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Exhibit "FO-6"

P R A Y E R

WHEREFORE, it is most respectfully prayed that judgment be rendered as follows:

1. Dismissing the herein petition with cost against petitioner:

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And on the counter-claim:

2. Ordering petitioner to peacefully deliver to the Reparations Commission the possession of M/S "DAGOHOY":

3. Ordering petitioner to pay to the Reparations Commission an amount equivalent to ten (10) per cent of ₱6,868,577.78 as litigation expenses, liquidated damages, penalty and attorney's fees; and

4. Answering respondents further pray for such other relief as this Honorable Court may deem just and equitable in the premises.

Manila, Philippines, April 1963.

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PANFILO M. MANGUERA
RUBEN V. SARMIENTO
PEACIDO M. PACUNAYEN
FELIPE S. TONGCO
ADAUCTO P. OCAMPO
JOSE LA ROSA REYES
SALUSTIANO A. CABULING
Counsel for the Reparations Commission
Chairman Benedicto Padilla,
Commissioners Juan M. Alberto, Gregorio
G. Abad, Calixto O. Zaldivar, Hermenegildo
Ationza and Executive Director Mauricio O. Bas
Reparations Commission
DBP Bldg. No. 2, Port Area
M a n i l a

30

By:

Copy furnished:

Atty. Juan T. David
Suite 212 Burke Bldg.
Escolta, Manila

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Atty. S.R. Roxas
Department of Foreign Affairs

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

No. 22
Exhibit "FO-7"

EXHIBIT "FO-7"

Republic of the Philippines
COURT OF FIRST INSTANCE OF MANILA
Sixth Judicial District
Branch XI

THE LIBERATION STEAMSHIP CO., INC.,
Petitioner

— versus —

CIVIL CASE NO. 53607

THE REPARATIONS COMMISSION,
BENEDICTO PADILLA,
JUAN M. ALBERTO,
GREGORIO G. ABAD,
CALIXTO O. ZALDIVAR,
HERMEMEGILDO ATIENZA, and
MAURICIO O. BAS,
THE HONORABLE EMMANUEL PELAEZ
SECRETARY OF THE DEPARTMENT
OF FOREIGN AFFAIRS,
MINISTER SIMEON ROXAS,

Respondents

X-----X

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ORDER

When this case was called for hearing today, pursuant to our Orders of 11 and 27 January 1964, counsel for the petitioner reiterated his "Motion for Leave to Withdraw the Above-Entitled Case," filed by the petitioner, thru counsel, on 5 December 1963. Counsel for the petitioner manifested, supported by Exhibits "A," "B" and "C", that the vessel involved in this case, M/S "Dagohoy," is in route to the Philippines, the charter thereof having been terminated, and may arrive in San Fernando, La Union, on or about the 22nd or 23rd of this month. Petitioner in person, thru counsel, also manifested that he would be willing to make payments in the amount of Thirty Thousand (P30,000.00) Pesos per month in amortization of the said vessel and in satisfaction of the counterclaim, in view of which the respondent, The Reparations Commission, thru counsel, gave its conformity to the dismissal of the counterclaim.

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IN VIEW OF THE FOREGOING, let this case (petition as well as counterclaim) be, as it is hereby, dismissed, with prejudice.

No pronouncement as to costs.
SO ORDERED.

Given in open Court this 15th day of February 1964, in Manila, Philippines.

(sd.) GUILLERMO S. SANTOS
Judge

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EXHIBIT "FO-8"

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

—
No. 22
Exhibit "FO-8"

**Third Congress
of the
Republic of the Philippines
Third Special Session
Begun and held in the City of Manila on Thursday, the
twenty-first day of June, nineteen hundred and fifty-six**

**REPARATIONS AGREEMENT, THE ANNEX
THERETO, THE EXCHANGE NOTES
AND THE OTHER SUPPORTING
DOCUMENTS**

10

TREATY OF PEACE WITH JAPAN

**UNDERSTANDING OF THE SENATE ON CERTAIN PROVISIONS
OF THE REPARATIONS AGREEMENT**

In the Supreme Court of Hong Kong Admiralty Jurisdiction CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
Third Special Session)

P. S. R. No. 91

[SENATE RESOLUTION NO. 78]

No. 22
Exhibit "FO-8"

RESOLUTION RATIFYING AND EXPRESSING THE CONCURRENCE AND APPROVAL OF THE SENATE OF THE PHILIPPINES OF THE REPARATIONS AGREEMENT, THE ANNEX THERETO, THE EXCHANGE NOTES AND THE OTHER SUPPORTING DOCUMENTS OF THE REPARATIONS AGREEMENT SIGNED AT MANILA ON MAY 9, 1956, BETWEEN THE REPUBLIC OF THE PHILIPPINES AND JAPAN.

10

WHEREAS, the Republic of the Philippines and Japan acting in line with the provisions of the Treaty of Peace with Japan signed at the City of San Francisco on September 8, 1951, have decided to conclude the present Reparations Agreement on May 9, 1956;

WHEREAS, all the supporting Documents of the Reparations Agreement form integral part of the Reparations Agreement signed on May 9, 1956;

WHEREAS, the Reparations Agreement with its supporting Documents provide for the payment on the part of the Japanese Government of the amount of \$500,000,000 in capital goods, \$20,000,000 in cash (Pesos), \$30,000,000 in services; and

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WHEREAS, the President of the Philippines in His Letter of Transmittal to the Senate, dated May 9, 1956, declared, to wit: "judged, however, from the point of view of the requirements of our national interest and viewed in the light of the practical realities posed by the political and economic situation obtaining in both countries as well as in their part of the world, I subscribe to the conclusion reached by the Philippine Panel of Negotiators that this settlement is the best that can be obtained under the circumstances,"; Now, therefore, be it

Resolved, That the Senate of the Philippines ratify and express, as it hereby ratifies and expresses, its concurrence and approval of the Reparations Agreement, the Annex thereto, the Exchange Notes, and the other supporting Documents of the Reparations Agreement signed at the City of Manila on May 9, 1956, between the Republic of the Philippines and Japan.

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Adopted, July 16, 1956.

GENTLEMEN OF THE SENATE:

I transmit herewith, for appropriate action by the Senate, copies of the Reparations Agreement between the Republic of the Philippines and Japan, signed at Manila on May 9, 1956, of the Annex thereto and of the Notes Exchanged between the two countries on the same date concerning the allocation of the amount provided in Article 1 of the same Agreement, which documents form integral parts thereof.

10 I also transmit, for the information of the Chamber, copies of the Notes exchanged between the two countries concerning the extension of long term development loans; the notes also exchanged regarding the details of implementation of the Reparations Agreement; of Article 3 and of the Annex thereof in particular; and the agreed Minutes Concerning Articles 3, 5 and 9 of the same covenant. Also included are copies of an analysis of the provisions of all of the aforementioned instruments.

The Reparations Agreement and its supporting instruments set forth the terms of settlement of the Philippine reparations claim by Japan. They provide for the payment of capital goods, services and cash as follows:

20 (1) \$500 million in capital goods, \$30 million in services and \$20 million in cash (pesos);

(2) The total of these amounts or \$550 million, shall be paid in the following manner: \$250 million in equal annual installments in the first ten years and the balance of \$300 million during the remaining ten years or within a shorter period as may be agreed upon between the two countries.

(3) The \$20 million in cash shall be paid in equal installments within five years. This sum shall be made available by deducting from the value of Japanese goods exported to the Philippines in the normal course of trade (other than the reparations deliveries) annual amounts representing the value of Japanese services applied in the processing and manufacture of said goods.

30 Japan has also agreed to facilitate and expedite the extension of long-term loans to the amount of \$250 million. Although not strictly partaking of the nature of reparations because of their private and non-governmental character, these loans offer terms more liberal and advantageous than those obtainable outside of this arrangement. For this reason, it is hoped that these loans would assist in the further economic development of the country, particularly in its efforts to meet the need for adequate financing capital, fuller utilization of our national resources and the unemployment situation.

Considering the losses and suffering the Philippines sustained as a result of the Pacific War, these terms do not come up to the generally-accepted concept of

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reparations as compensation for damage done and injury suffered.

Judged, however, from the point of view of the requirements of our national interest and viewed in the light of the practical realities posed by the political and economic situation obtaining in both countries as well as in their part of the world, I subscribe to the conclusion reached by the Philippine Panel of Negotiators that this settlement is the best that can be obtained under the circumstances. In considering it, the Panel also took into account the setbacks and difficulties that attended previous attempts of both countries to reach a settlement.

I have given these instruments careful consideration and I concur in the recommendation of the Panel for their approval.

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I, therefore, request the concurrence of the Senate to their ratification and, pursuant to Article VI, Section 21(2) of the Constitution, I hereby certify to the urgency of the consideration thereof by that body.

Respectfully,

RAMON MAGSAYSAY
President of the Philippines

The SENATE
Congress of the Philippines
Manila

**REPARATIONS AGREEMENT BETWEEN THE REPUBLIC
OF THE PHILIPPINES AND JAPAN**

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

The Republic of the Philippines and Japan,

**Desiring to act in line with the provisions of the Treaty of Peace with
Japan signed at the city of San Francisco on September 8, 1951,**

**No. 22
Exhibit "FO-8"**

**Have decided to conclude the present Reparations Agreement and have
accordingly appointed as their Plenipotentiaries:**

The Republic of the Philippines:

10

**FELINO NERI, Ambassador
JOSE P. LAUREL, Senator
FRANCISCO A. DELGADO, Senator
LORENZO M. TANADA, Senator
GIL J. PUYAT, Senator and Acting Presiding Officer, National
Economic Council
ARTURO M. TOLENTINO, Member, House of Representatives
MIGUEL CUENCO, Member, House of Representatives
CORNELIO T. VILLAREAL, Member, House of Representatives
MIGUEL CUADERNO, Governor, Central Bank of the Philippines
CAESAR Z. LANUZA, Director of National Planning
ALFONSO CALALANG
FRANCISCO ORTIGAS, Jr.
VICENTE FABELLA
EDUARDO QUINTERO, Minister-Counselor**

20

Japan:

**TATSUNOSUKE TAKASAKI, Minister of State
TAKIZO MATSUMOTO, Deputy Director of Cabinet Secretariat
MIKIO MIZUTA, Member, House of Representatives
AIICHIRO FUJIYAMA
MAMORU NAGANO**

30

**Who, having communicated to each other their full powers found to be in
due form, have agreed upon the following Articles:**

ARTICLE 1

**Japan, by way of reparations, shall supply the Republic of the Philippines
with the services of the Japanese people and the products of Japan in the form of
capital goods, the total value of which will be so much in yen as shall be equivalent
to five hundred fifty million United States dollars (\$550,000,000) at present
computed at one hundred ninety-eight billion yen (¥198,000,000,000), within the
period and in the manner hereinafter prescribed.**

ARTICLE 2

The supply of the services and products referred to in the preceding Article shall be made on an annual average of so much in yen as shall be equivalent to twenty-five million United States dollars (\$25,000,000) at present computed at nine billion yen (¥9,000,000,000), during the ten-year period from the date of coming into force of the present Agreement; and on an annual average of so much in yen as shall be equivalent to thirty million United States dollars (\$30,000,000) at present computed at ten billion eight hundred million yen (¥10,800,000,000), during the succeeding ten-year period. However, by agreement between the two Governments, this latter period may be reduced to a period shorter than ten years, provided the outstanding balance is settled in full within the remainder of the reduced period.

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ARTICLE 3

1. The services and products to be supplied by way of reparations shall be those requested by the Government of the Republic of the Philippines and agreed upon between the two Governments. These services and products shall consist of such items as may be needed for projects to be chosen from among those enumerated in the Annex to the present Agreement, provided that such items as may be requested by the Government of the Republic of the Philippines for projects other than those listed in the aforesaid Annex may, by agreement between the two Governments, be included in the services and products to be supplied by way of reparations.

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2. The products to be supplied by way of reparations shall be capital goods. However, products other than capital goods may, by agreement between the two Governments, be supplied by Japan at the request of the Government of the Republic of the Philippines.

ARTICLE 4

1. The two Governments shall fix through consultation an annual schedule (hereinafter referred to as the "Schedule") specifying the services and products to be supplied by Japan each year.

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2. The Schedule for the first year shall be fixed within sixty days from the date of the coming into force of the present Agreement. The Schedule for each succeeding year shall, until the reparations obligation specified in Article 1 above shall have been fulfilled, be fixed prior to the beginning of that year.

ARTICLE 5

1. Japan agrees that the Mission mentioned in Article 7, paragraph 1 of the present Agreement shall have the authority to conclude, in behalf of the Government of the Republic of the Philippines, contracts directly with any Japanese national or any Japanese juridical person controlled by Japanese nationals, in order

to have the services and products supplied in accordance with the Schedule for each year.

*In the Supreme
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Admiralty
Jurisdiction*

—
No. 22
Exhibit "FO-8"

10 2. Every such contract (including modifications thereof) shall conform with (a) the provisions of the present Agreement, (b) the provisions of such arrangements as may be made by the two Governments for the implementation of the present Agreement and (c) the Schedule then applicable. Every proposed contract shall, before it is entered into be verified by the Government of Japan as to the conformity of the same with the above-mentioned criteria. The Government of Japan shall receive a copy of each contract from the Mission on the day following the date such contract is entered into. In case any proposed contract cannot be entered into due to non-verification, such proposed contract shall be referred to the Joint Committee mentioned in Article 10 of the present Agreement and acted upon in accordance with the recommendation of the Joint Committee. Such recommendation shall be made within a period of thirty days following the receipt of the proposed contract by the Joint Committee. A contract which has been concluded in the manner hereinabove provided, shall hereinafter be referred to as a "Reparations Contract".

20 3. Every Reparations Contract shall contain a provision to the effect that disputes arising out of or in connection with such Contract shall, at the request or either party thereto, be referred for settlement to an arbitration board of commerce in accordance with such arrangement as may be made between the two Governments.

4. Notwithstanding the provisions of paragraph 1 above, the supply of services and products as reparations may be made without Reparations Contracts, but only by agreement in each case between the two Governments.

ARTICLE 6

30 1. In the discharge of the reparations obligation under Article 1 of the present Agreement, the Government of Japan shall, through procedures to be determined under Article 11, make payments to cover the obligations incurred by the Mission under Reparations Contracts and the expenses for the supply of services and products referred to in Article 5, paragraph 4 of the present Agreement. These payments shall be made in Japanese yen.

2. By and upon making a payment in yen under the preceding paragraph, Japan shall be deemed to have supplied the Republic of the Philippines with the services and products thus paid for and shall be released from its reparations obligation to the extent of the equivalent value in United States dollars of such yen payment in accordance with Article 1 and 2 of the present Agreement.

ARTICLE 7

40 1. Japan agrees to the establishment in Japan of a Mission of the Government of the Republic of the Philippines (hereinafter referred to as "the Mission") as its sole and exclusive agent to be charged with the implementation of the present Agreement, including the conclusion and performance of Reparations Contracts.

2. Such office or offices of the Mission in Japan as are necessary for the effective performance of its functions and used exclusively for that purpose may be established at Tokyo and/or other places to be agreed upon between the two Governments.

3. The premises of the office or offices, including the archives, of the Mission in Japan shall be inviolable. The Mission shall be entitled to use cipher. The real estate which is owned by the Mission and used directly for the performance of its functions shall be exempt from the Tax on Acquisition of Real Property and the Property Tax. The income of the Mission which may be derived from the performance of its functions shall be exempt from taxation in Japan. The property imported for the official use of the Mission shall be exempt from customs duties and any other charges imposed on or in connection with importation.

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4. The Mission shall be accorded such administrative assistance by the Government of Japan as other foreign missions usually enjoy and as may be required for the effective performance of its functions.

5. The Chief and two senior officials of the Mission as well as the chiefs of such offices as may be established in pursuance of paragraph 2 above, who are nationals of the Republic of the Philippines, shall be accorded diplomatic privileges and immunities generally recognized under international law and usage. If it is deemed necessary for the effective performance of the functions of the Mission, the number of such senior officials may be increased by agreement between the two Governments.

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6. Other members of the staff of the Mission who are nationals of the Republic of the Philippines and who are not ordinarily resident in Japan shall be exempt from taxation in Japan upon emoluments which they may receive in the discharge of their duties, and, in accordance with Japanese laws and regulations, from customs duties and any other charges imposed on or in connection with importation of property for their personal use.

7. In the event any dispute arising out of or in connection with a Reparations Contract has not been settled by arbitration or the arbitration award rendered has not been complied with, the matter may be taken, as a last resort, to the appropriate Japanese court. In such a case and solely for the purpose of whatever judicial proceedings may be necessary, the persons holding the position of Chief of the Legal Section of the Mission may sue or be sued, and accordingly he may be served with process and other pleadings at his office in the Mission. However, he shall be exempt from the obligation to give security for the costs of legal proceedings. While the Mission enjoys inviolability and immunity as provided for in paragraphs 3 and 5 above, the final decision rendered by the appropriate judicial body in such a case will be accepted by the Mission as binding upon it.

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8. In the enforcement of any final court decision, the land and buildings, as well as the movable property therein, owned by the Mission and used for the performance of its functions shall in no case be subject to execution.

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ARTICLE 8

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

—
No. 22
Exhibit "FO-8"

1. The services which have already been supplied or may hereafter be supplied in accordance with the exchange of notes effected at Manila on January 24, 1953, in connection with the survey of sunken vessels in Philippine territorial waters or in accordance with the Interim Agreement on Reparations Concerning Salvage of Sunken Vessels between the Republic of the Philippines and Japan signed at Manila on March 12, 1953, shall constitute part of the reparations under Article 1 of the present Agreement.

10 2. The supply of the above-mentioned services after the coming into force of the present Agreement shall be subject to the provisions of the Agreement.

ARTICLE 9

1. The two Governments shall take measures necessary for the smooth and effective implementation of the present Agreement.

20 2. Those materials, supplies and equipment which are necessary for the projects mentioned in Article 3 but are not included in the Schedule will be provided by the Government of the Republic of the Philippines. No Japanese labor will be utilized in such projects as may be undertaken in the Philippines except the service of Japanese technicians. The incidental expenses in local currency for such Japanese technicians as well as the expenses for local labor shall be borne by the Government of the Republic of the Philippines.

3. Japanese nationals who may be needed in the Philippines in connection with the supply of services or products under the present Agreement shall, during the required period of their stay in the Philippines, be accorded such facilities as may be necessary for the performance of their work.

4. With respect to the income derived from the supply of services or products under the present Agreement, Japanese nationals and juridical persons shall be exempt from taxation in the Philippines.

5. The products of Japan supplied under the present Agreement shall not be re-exported from the territories of the Republic of the Philippines.

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ARTICLE 10

There shall be established a Joint Committee to be composed of representatives of the two Governments as an organ of consultation between them, with powers to recommend on matters concerning the implementation of the present Agreement.

ARTICLE 11

Details including procedures for the implementation of the present Agreement shall be agreed upon through consultation between the two Governments.

ARTICLE 12

1. The two Governments shall endeavor, through constant consultation, to preclude the likelihood of disputes arising out of or in connection with the implementation of the present Agreement.

2. Any dispute between the two Governments concerning the interpretation and implementation of the present Agreement shall be settled primarily through diplomatic channels. If the two Governments fail to reach a settlement, the dispute shall be referred for decision to a tribunal of three arbitrators, one to be appointed by each Government and the third to be agreed upon by the two arbitrators so chosen, provided that such third arbitrator shall not be a national of either country. Each Government shall appoint an arbitrator within a period of thirty days from the date of receipt by either Government from the other Government of a note requesting arbitration of the dispute and the third arbitrator shall be agreed upon within a further period of thirty days. If, within the periods respectively referred to, either Government fails to appoint an arbitrator or the third arbitrator is not agreed upon, the President of the International Court of Justice may be requested by either Government to appoint such arbitrator or the third arbitrator, as the case may be. The two Governments agree to abide by any award given under this paragraph.

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ARTICLE 13

The present Agreement shall be ratified. The Agreement shall enter into force either on the date of exchange of the instruments of ratification or on the date the Republic of the Philippines deposits its instrument of ratification of the Treaty of Peace with Japan signed at the city of San Francisco on September 8, 1951, in accordance with Article 24 of the said Treaty, whichever date is the later.

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ARTICLE 14

The present Agreement is written in the English and Japanese languages, both being equally authentic.

IN WITNESS WHEREOF the undersigned Plenipotentiaries have signed the present Agreement and have affixed thereto their seals.

30

DONE in duplicate at the city of Manila, this ninth day of May of the year one thousand nine hundred and fifty-six, Anno Domini, and of the Independence of the Republic of the Philippines, the tenth; corresponding to the ninth day of the fifty month of the thirty-first year of Showa.

For the Republic of the Philippines:

For Japan:

ANNEX

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

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No. 22
Exhibit "FO-8"

- I. **AGRICULTURAL AND FISHERY DEVELOPMENT PROJECTS**
1. Irrigation Gates and Pumping Equipment
 2. Agricultural Equipment and Machineries
 3. Logging Equipment
 4. Saw Mill Equipment
 5. Fishing Boats
 6. Floating Canneries
 7. Food Processing Plants
 - 10 8. Animal Feed Plants
 9. Salt Making Plants
 10. Coconut Processing Plants
 11. Wheat Flour Mills
 12. Cassava Flour Mills
 13. Rice Mills
 14. Ramie and Abaca Decorticating and Degumming Plants
 15. Tobacco Processing Plants
 16. Baking Powder Plants
 17. Sugar Refineries
- 20 II. **ELECTRIC POWER DEVELOPMENT PROJECTS**
1. Hydroelectric Plants
 2. Steam Electric Plants
 3. Diesel Electric Plants
 4. Substation Equipment
 5. Transmission and Distribution Lines
- III. **MINERAL RESOURCES DEVELOPMENT PROJECTS**
1. Coal Mining Equipment
 2. Iron, Chrome and Manganese Mining Equipment
 3. Iron, Chrome and Manganese Beneficiation Plants
 - 30 4. Copper Mining and Beneficiation Equipment
- IV. **INDUSTRIAL DEVELOPMENT PROJECTS**
1. Alcohol Plants
 2. Briquetted Semi-coke Plants
 3. Coke Making Plants
 4. Charcoal Making Plants
 5. Integrated Iron and Steel Mills
 6. Ferro-alloy Plants
 7. Sulphur Refining Plants
 8. Copper Smelting and Refining Plants
 - 40 9. Copper Rolling and Drawing Plants
 10. Soda Ash-Caustic Soda Plants
 11. Sheet Glass Plants
 12. Calcium Carbide Plants
 13. Industrial Explosives Plants
 14. Munitions Plants

15. Industrial Carbon Plants	
16. Portland Cement Plants	
17. Industrial Lime Plants	
18. Asphalt Plants	
19. Cotton Textile Mills	
20. Rayon Plants	
21. Ramie Plants	
22. Pulp and Paper Plants	
23. Celluloid Plants	
24. Absorbent Cotton Plants	10
25. Paper Products Plants	
26. Building Hardware Plants	
27. Wall Board Plants	
28. Plywood and Hardwood Plants	
29. Light Chemicals Plants	
30. Pharmaceuticals Plants	
31. Blood Plasma Plants	
32. Insecticides Plants	
33. Ceramics Plants	
34. Paints, Pigments and Varnish Plants	20
35. Resin Processing Plants	
36. Photo Film Plants	
37. Synthetic Leather Plants	
38. Rubber Goods Plants	
39. Rubber Reclaiming Plants	
40. Ammonia Plants	
41. Various Chemical Fertilizer Plants	
42. Fertilizer Mixing-granulating Plants	
43. Electrical Manufacturing Plants	
44. Agricultural Machinery and Implement Plants	30
45. Bicycle Plants	
46. Sewing Machine Plants	
47. Ball and Roller Bearing Plants	
48. Cottage Industries Equipment	

V. TRANSPORTATION AND COMMUNICATION DEVELOPMENT PROJECTS

1. Railroad Equipment
2. Ocean-going Ships
3. Interisland Vessels
4. Telecommunication Equipment

VI. PUBLIC WORKS PROJECTS

1. Artesian Well Pipes and Equipment
2. Flood Control Gates
3. Water Supply Filters, Pipes and Equipment
4. Public Housing Equipment and Materials
5. Warehousing Equipment and Materials
6. Airfield and Airport Equipment
7. Port Equipment and Facilities

8. Construction Equipment and Materials for Public Buildings
9. Road and Bridge Construction Equipment and Materials

*In the Supreme
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Hong Kong
Admiralty
Jurisdiction*

VII. OTHER PROJECTS

1. Education, Health and Social Welfare Facilities
2. Research Laboratory and Equipment
3. Survey and Salvage of Sunken Vessels
4. Coast and Geodetic Survey Equipment
5. Reclamation of Foreshore Land and Swamps
6. Training of Filipino Technicians and Craftsmen in Japan
7. Transportation, Insurance, Packing, Handling and Inspection of Reparatons Machinerics, Equipment, etc.

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No. 22
Exhibit "FO-8"

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MANILA, May 9, 1956.

EXCELLENCY,

I have the honor to acknowledge receipt of Your Excellency's note of today's date which reads as follows:

"I have the honor to refer to Article 1 of the Reparations Agreement between the Republic of the Philippines and Japan signed today and to confirm the understanding between our two Governments that, of such amount in yen as shall be equivalent to five hundred fifty million United States dollars (\$550,000,000) at present computed at one hundred ninety-eight billion yen (¥198,000,000,000) mentioned in said Article, such amount in yen as shall be equivalent to fifty million United States dollars (\$50,000,000) at present computed at eighteen billion yen (¥18,000,000,000) shall be allocated in the following manner:

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(1) Such amount in yen as shall be equivalent to twenty million United States dollars (\$20,000,000) at present computed at seven billion two hundred million yen (¥7,200,000,000) for the services of the Japanese people in processing the products of Japan other than those supplied as such under the Reparations Agreement which may normally be shipped to the Philippines. These services shall be supplied within five years after the coming into force of the Agreement, each year to such amount in yen as shall be equivalent to four million United States dollars (\$4,000,000) at present computed at one billion four hundred forty million yen (¥1,440,000,000). The additional details of this arrangement, acceptable to the Government of the Republic of the Philippines, shall be determined by both Governments upon recommendation of the Joint Committee mentioned in Article 10 of the Agreement.

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(2) Such amount in yen as shall be equivalent to thirty million United States dollars (\$30,000,000) at present computed at ten billion eight hundred million yen (¥10,800,000,000) for services other than those mentioned in (1) above, which are supplied under

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Reparations Contracts. However, this amount may be increased within the total amount of reparations referred to in Article 1 of the Agreement, if such an increase is subsequently found necessary by the Government of the Republic of the Philippines for the full and effective utilization of the capital goods to be supplied as reparations.

"If the above is also the understanding of your Government, I have the honor to propose that the present note and Your Excellency's reply in confirmation thereof be considered as constituting an agreement between our two Governments to form an integral part of the Agreement."

I have the honor to confirm, on behalf of My Government, that the understanding as stated in Your Excellency's note is also the understanding of my Government. Accordingly, Your Excellency's note and the present reply shall be considered as constituting an agreement between our two Governments to form an integral part of the Agreement. 10

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

TATSUNOSUKE TAKASAKI
Plenipotentiary of Japan

His EXCELLENCY
FELINO NERI,
Plenipotentiary of the
Republic of the Philippines

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MANILA, May 9, 1956.

EXCELLENCY:

I have the honor to acknowledge the receipt of your note of today's date, which reads as follows:

"I have the honor to refer to the Reparation Agreement between Japan and the Republic of the Philippines signed today. The Annex to the Agreement is composed of those projects which were studied by the Technical Conference on Reparations between the Government of Japan and the Government of the Republic of the Philippines in 1955. Accordingly, it is the understanding of my Government that the studies and findings of the aforesaid conference, including various terms and conditions relative to the supply of items required for the execution of those projects, should be used as reference in the preparation of the annual Schedules mentioned in Article 4, paragraph 1 of the Agreement. 30

"It is also the understanding of my Government that foreign products which are not normally being imported into Japan or which, if supplied

by way of reparations, would necessitate additional and specific foreign exchange allocation of a special or exceptional character, will not as a rule be included in the annual Schedules.

*In the Supreme
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Hong Kong
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Jurisdiction*

“I should be grateful if Your Excellency could confirm the above-mentioned understanding on behalf of your Government..”

—
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I have the honor to confirm that the above note is a correct statement of the understanding of my Government on the matter.

Accept, Excellency, the renewed assurances of my highest consideration.

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(sgd.) FELINO NERI
Plenipotentiary of the Republic
of the Philippines

His Excellency
TATSUNOSUKE TAKASAKI,
Plenipotentiary of Japan

MANILA, May 9, 1956.

EXCELLENCY:

I have the honor to acknowledge the receipt of your note of today's date concerning details for the implementation of the Reparations Agreement, which reads as follows:

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“I have the honor to refer to the Reparations Agreement between Japan and the Republic of the Philippines signed today. The Government of Japan proposes that under Article 11 of the Agreement the two Governments agree as follows:

1. REPARATIONS CONTRACTS

“1. Reparations Contracts mentioned in Article 5, paragraph 2 shall be concluded in terms of Japanese yen through normal commercial procedure.

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“2. The responsibility for the performance of Reparations Contracts shall rest solely with the Mission and the Japanese nationals or juridical persons who are parties thereto.

“3. The Government of Japan may recommend to the Mission Japanese national and juridical persons qualified to enter into Reparations Contracts. However, the Mission is not bound to enter into Reparations Contracts only with such nationals or juridical persons so recommended.

II. PAYMENT

"1. The Mission mentioned in Article 7 of the Agreement shall have the authority to enter into any arrangement with a Japanese foreign exchange bank of its own choice and open a Reparations Account in its own name, authorizing such bank, among others, to receive payment for the Government of Japan, and notify the Government of Japan of the contents of such arrangement. It is understood that the Reparations Account shall not bear interest. The Mission may, if it deems necessary, designate additional foreign exchange banks for the same purpose.

"2. Within a reasonable period before any payment falls due under the terms of a Reparations Contract the Mission shall forward a Payment Request to the Government of Japan stating the amount of such payment and the date on which the Mission has to make the same to the contractor concerned.

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"3. Upon receipt of the Payment Request, the Government of Japan shall pay the requested amount to the bank referred to in paragraph 1 above before the said date of payment by the Mission.

"4. Upon agreement between the two Governments, the Government of Japan shall also pay, in the same way as provided for in paragraph 3 above, the expenses of the Mission, the expenses for the training of Filipino technicians and craftsmen, and such other expenses as may be agreed upon between the two Governments.

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"5. The amounts paid under paragraphs 3 and 4 above shall be credited to the Reparations Account, and no other funds shall be credited to the Account. The Account shall be debited only for the purposes mentioned in paragraphs 2 and 4 above.

"6. In case the whole or a part of the funds paid into the Reparations Account has not been drawn by the Mission because of cancellation of contracts, etc., the unpaid amount shall be applied for the purposes mentioned in paragraph 2 and 4 above, after appropriate arrangements are made with the Government of Japan.

"7. In case the whole or a part of the amounts paid out of the Reparations Account has been refunded to the Mission, the amount so refunded shall be credited to the Reparations Account, notwithstanding the provisions of paragraph 5 above. The provisions of paragraph 6 above shall apply to these amounts.

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"8. For the purpose of Article 6, paragraph 2 of the Agreement, 'upon making a payment' means 'at the time when a payment is made by the Government of Japan to the bank referred to in paragraph 1 above'.

"9. The computation of the amount to the extent of which the Government of Japan shall be released from the reparations obligation under Articles 1 and 2, shall, pursuant to Article 6, paragraph 2 of the Agreement, be made by determining the equivalent value in terms of United States dollars of the yen

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payment at the basic exchange rate of Japanese yen to the United States dollar, officially fixed by the Government of Japan and agreed to by the International Monetary Fund, which is prevailing on the following date:

*In the Supreme
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Hong Kong
Admiralty
Jurisdiction*

“(a) In the case of payment for a Reparations Contract, the date of receipt by the Government of Japan of a copy of the pertinent Contract.

“(b) In other cases, the date to be agreed upon between the two Governments in each case; however, if there is no agreement on the date, the date the Payment Request is received by the Government of Japan shall apply.

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No. 22
Exhibit “FO-8”

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III. MISSION

“1. Only those Filipino nationals who enter and reside in Japan solely for the purpose of working with the Mission shall be exempt from taxation in Japan as coming within the purview of Article 7, paragraph 6 of the Agreement.

“2. The Government of the Republic of the Philippines shall advise the Government of Japan from time to time of the names of the Chief and other members of the Mission who are authorized to act on behalf of the Mission in connection with Reparations Contracts, and the Government of Japan shall have the aforesaid names published in the Official Gazette of Japan. The authority of such Chief and other members of the Mission shall be deemed to continue until such time as notice to the contrary is published in the said Gazette.

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IV. SURVEY AND SALVAGE OF SUNKEN VESSELS

“1. The procedure for the supply of services in the operations presently underway in accordance with the Interim Agreement on Reparations Concerning Salvage of Sunken Vessels shall be the same as heretofore, unless otherwise agreed.

“2. The amount which has already been paid by the Government of Japan for making the survey of sunken vessels totals seventeen million five hundred thousand yen (¥17,500,000), and the amount which has been fixed through consultation between the two Governments to be incurred by the Government of Japan for the salvage of sunken vessels mentioned in paragraph 1 above is two billion three hundred forty-three million nine hundred twenty-two thousand six hundred and eleven yen (¥2,343,922,611). Accordingly, by supplying the services of the survey and salvage of sunken vessels as mentioned above, Japan shall be released from its reparations obligation under Article 1 of the Agreement in the amount of six million five hundred fifty-nine thousand five hundred and seven United States dollars and twenty-five cents (\$6,559,507.25), equivalent to two thousand three hundred sixty-one million four hundred twenty-two thousand six hundred and eleven yen (¥2,361,422,611).

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“3. The amount which has been paid by the Government of Japan for supplying the services mentioned above prior to the coming into force of the Agreement, together with the amount to be paid for supplying such services in the

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first year after the coming into force of the Agreement shall be regarded, for the purpose of Article 2 of the Agreement, as the amount paid in the first year.

"I have further the honor to propose that this note and Your Excellency's reply confirming the acceptance by your Government of the above proposal shall be regarded as constituting an agreement between the two Governments on details for the implementation of the Reparations Agreement under Article II thereof."

I have the honor to agree on behalf of my Government to the proposal embodied in the note under acknowledgment and to further agree that the same, together with this note, shall be regarded as constituting an agreement between the two Governments on the details for the implementation of the Reparations Agreement.

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Accept, Excellency, the renewed assurances of my highest consideration.

(sgd.) FELINO NERI
Plenipotentiary of the Republic
of the Philippines

His Excellency
TATSUNOSUKE TAKASAKI,
Plenipotentiary of Japan

AGREED MINUTES TO THE REPARATIONS AGREEMENT
BETWEEN THE REPUBLIC OF THE PHILIPPINES
AND JAPAN AND THE EXCHANGE OF NOTES
CONCERNING DETAILS FOR THE
IMPLEMENTATION THEREOF

20

The Plenipotentiaries of the Republic of the Philippines and of Japan wish to record the following understanding which they have reached during the negotiations for the Reparations Agreement between the Republic of the Philippines and Japan signed today:

1. Re Article 3 of the Agreement:

"Agreed upon between the two Governments" or "agreement between the two Governments" as mentioned in paragraphs 1 and 2 of this Article means fixing through consultation the Schedule as provided for in Article 4, paragraph 1.

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2. Re Article 4, paragraph 2 of the Agreement:

The two Governments will endeavor to fix the Schedule for the second year and each year thereafter at least sixty days prior to the beginning of the year concerned. For this purpose the Government of the Republic of the Philippines will forward its proposed Schedule to the Government of Japan not less than one hundred and twenty days prior to the beginning of that year.

3. Re Article 5, paragraph 2 of the Agreement:

(a) The arrangements referred to in (b) means arrangements existing at the time a Reparations Contract is verified. An Arrangement will not apply retroactively to a Reparations Contract which has been duly verified prior to the conclusion of such arrangement.

(b) At least three copies of every proposed contract will be furnished by the Mission to the Government of Japan for the purpose of verification.

(c) The verification by the Government of Japan will as a rule be effected within fourteen days.

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

—
No. 22
Exhibit "FO-8"

10 4. Re Article 5, paragraph 3 of the Agreement:

The two Governments will take measures necessary to make final and enforceable all arbitration awards duly rendered.

5. Re Article 9, paragraphs 2, 3 and 4 of the Agreement:

It is understood that Japanese nationals who may be needed in the Philippines in connection with the supply of services or products under the Agreement will be Japanese technicians or experts only.

6. Re Article 9, paragraph 4 of the Agreement:

20 The Japanese juridical persons mentioned in this paragraph are those who undertake reparations projects in the Philippines or those who provide services under Reparations Contracts.

7. Re Chapter II PAYMENT, paragraph 4 of the Exchange of Notes concerning Details for the Implementation of the Agreement:

With respect to the expenses of the Mission and the expenses for the training of Filipino technicians and craftsmen, "upon the agreement between the two Governments" means "upon the completion of necessary arrangements between the two Governments concerning the specific details" of such expenses.

MANILA, May 9, 1956.

JOINT STATEMENT

On the occasion of the signing of the Reparations Agreement between the Republic of the Philippines and Japan, the plenipotentiaries of the two countries made the following joint statement on behalf of their respective Governments:

"We expect that the conclusion of this agreement and the eventual ratification by the Republic of the Philippines of the Peace Treaty with Japan, signed at San Francisco on September 8, 1951, will pave the way for the restoration of normal relations between the two countries and for the promotion of those relations on the basis of friendship, mutual respect and common understanding.

"With the resumption of normal relations, the two countries expect to be able to devote their attention to matters of common interest, such as the development of trade on a balanced basis. For this purpose, the two countries look forward to the early initiation of negotiations for a treaty of friendship, commerce and navigation as well as such revision of the present Trade and Financial Agreements as may be necessary. 10

"We believe that with the normalization of their relations with each other, our two countries will be able to contribute more effectively to the promotion and preservation of peace in this part of the world."

MANILA, May 9, 1956.

**AGREED MINUTES OF THE TECHNICAL CONFERENCE
ON REPARATIONS BETWEEN THE PHILIPPINES
AND JAPAN**

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1. During their first business session on March 29, 1955 both Technical Committees (hereinafter referred to as Panels) confirmed the prior formal understanding reached between their respective Governments that the present technical conference is aimed at "paving the way for the successful outcome of the formal negotiations on the reparations question to be held later in Manila, and that the above-mentioned conference will be of such a nature as to examine the details of the reparations items as desired by the Philippines and to determine which of them can be made available to the Philippines by Japan, as well as their kinds, amounts, or quantities and other necessary specifications." 30

In confirming the above-stated purpose, however, both Panels took note of the fact that the conference, being merely technical in character, is not aimed at the final settlement of the reparations question which is expressly reserved for the subsequent plenipotentiary negotiations contemplated by the two Governments. The task of the conference is thus limited to ascertaining the specific items including the quantities thereof that the Philippines wishes to procure as reparations for its economic development and rehabilitation which Japan can provide from the technical standpoint of whether or not there is any substantial difficulty in producing and/or supplying them. How much of such items thus determined to be technically available from Japan, it should offer as reparations to the Philippines is, in the opinion of both Panels, not purely a technical question. Its final determination is not therefore within the competence of the conference but of the subsequent one on a plenipotentiary level. 40

2. In line with the above-stated purpose, the Philippine Panel submitted an itemized and detailed list of the various requirements of the Philippines for rehabilitation and economic development, broken down into three broad categories, namely:

(a) Category I (Items A to T, inclusive) consisting of capital goods, machinery, equipment, spare parts, materials and supplies;

10 (b) Category II (Items 1 to 77, inclusive) consisting of machinery, equipment, tools, spare parts, materials and supplies for the establishment of complete operating plants or for the expansion of those now existing in the Philippines; and

(c) Category III (Item 1 to 9) consisting of various special projects and services, and including a few suggestions concerning some additional ways and means by which Japan may be able to pay reparations to the Philippines.

In submitting the above-specified requirements of the Philippines for study by the Japanese Panel as to their technical availability and price, the Philippine Panel made of record the following reservations:

20 (a) Categories I, II, and III are neither exclusive of other items, nor all inclusive; and that they may, any time during or after the Conference, be modified (at the instance of the Philippine Panel or the Philippine Government by (1) the addition of new items producible in Japan (2) the deletion of those now listed and their substitution with some other items (also producible in Japan) and/or (3) by the modification of the original specifications given for any items;

30 (b) The machinery, equipment, tools, spare parts, materials and supplies indicated in Categories I and II shall be made in accordance with Philippine designs and/or specifications and their manufacture shall conform to standards set for like or similar Japanese export products. It is understood that the requisite parts and accessories for, including any improvements on, such machinery, equipment, tools will be made available to the Philippines at the request of the latter either as reparations or on commercial basis. Any of these items, when actually requisitioned as reparations, shall be subject to inspection and acceptance prior to delivery by the authorized representatives of the Philippine Government;

(c) Upon the request of the Philippine Government all possible facilities will be given by the Japanese Government to provide the required number of Japanese specialists and technicians for the supervision, installation and/or initial operation of any item, plant or project specified in Categories I, II and III;

(d) The f.o.b. price to be quoted for any listed item shall, as a general rule, correspond to the current export price of a like or similar Japanese product, or to the current world market price of a like or similar foreign product from any competitive source.

(e) The unit price of any item specified in (d) above shall not be binding on either Government, it being understood that at the time of actual requisitioning the current market price of such an item shall as a general rule apply.

(f) All expenses for inspection, packing, handling, freight and insurance due on any listed item included in the reparations agreement can be charged to reparations, provided that these services are supplied by Japanese nationals.

The Japanese Panel accepted the above reservations by the Philippine Panel excepting items d) and e) with regard to which it reserved its position.

3. The Japanese Panel submitted its findings concerning the technical availability, estimated price and/or value of all the requirements of the Philippines indicated in Categories I and II and its opinion on Category III, together with the following general observations with respect to its position:

10

(a) This Technical Conference on Reparations, as was mutually understood by the Japanese and the Philippine Panels at the first meeting, does not aim at a final settlement of the reparations problem, but concerns itself with the study of the list of items which the Philippines require for their economic development. The Japanese Panel has studied, therefore, the listed items solely from the technical standpoint of whether there is any substantial difficulty or not in manufacturing them, with respect to each individual item, with Japan's existing production facilities and technical ability.

20

(b) It should not be inferred that Japan is able to manufacture all of the items enumerated here and those to be submitted hereafter, simultaneously or in a relatively short period. In order to answer this such extraneous factors as production for export and for domestic consumption must also be taken into account. Viewed from the overall requirements of Japan, its present production capacity to meet any excessive demand on such a capacity is not therefore unlimited.

(c) To what extent Japan can offer as reparations out of the enumerated items is, needless to say, a different matter. It is a matter to be negotiated between the two countries from a different standpoint. In such negotiation, Japan's financial ability to bear the burden, her international balance sheet and other relevant economic factors such as power and raw material supply would have to be taken into account.

30

(d) The unit price quoted for each item represents only a rough estimate and may vary at the time any particular item is actually requisitioned. Also it should be noted that royalties for patent, technical fees and the like for the installation and operation of plants are not included in the computation of the unit prices of some items. Where the detailed specifications supplied by the Philippine Panel are for items not presently producible in Japan, the unit prices quoted for such items are estimated according to Japanese specifications.

(e) With respect to d) and e) of the reservations made by the Philippine Panel, it should be noted that the prices of items to be supplied as reparation are not necessarily identical with commercial export prices. In case of exports, some measures in taxation or other fields are stipulated by law for the purpose of promoting export trade and they are deemed to be inapplicable to reparation goods, which do not acquire foreign exchange. Also in cases where some items required are not currently exported by Japan on a commercial basis, although technically producible, their prices will have no bearing with the world market prices.

10 (f) In some cases where foreign patents and/or technical assistance contracts are involved in the manufacture of listed items, the Japanese suppliers are under regional restrictions regarding sales. Supply in such cases would actually depend on the nature of such restrictions. Also, in some cases where the use of foreign patents or technical assistance involve any substantial foreign exchange burden, the incidence of the additional cost in foreign currency, being additional to and distinct from reparations, would have to be negotiated and agreed upon on a case to case basis between the two governments.

20 The Philippine Panel accepted reservations (a), (b), (c) and (d) above, with the express understanding that the factors and problems therein cited to be restrictive of Japan's capacity to provide any listed item as reparations to the Philippines shall be deemed to be resolved after the two Governments, taking due account of such factors and problems, shall have concluded the reparations agreements. However, in preparing the annual programs for the actual execution of the reparations agreement, particularly as regards the specific items of reparations for any given year, the two Governments shall consult with each other and take due account of the relative urgency of the need of the Philippines for certain items as well as all the relevant factors and problems of Japan's economy which may then affect its capacity to supply them.

30 The Philippine Panel took note of reservations (e) and (f) above with the observation that the problems posed by the Japanese Panel in such reservations are of such a special nature that they have to be substantiated, by item if necessary, in a more detailed manner.

4. The list submitted by the Philippine Panel referred to in 2 above and the findings provided by the Japanese Panel referred to in 3 above are attached hereto as Appendix I.

40 5. During the course of the Conference, the Philippine Panel suggested that in order to "pave the way for the successful outcome of the formal negotiation on the reparations question" envisaged by the two Governments, the Conference should further proceed to study which of the listed items desired by the Philippines and how much of each can, both technically and financially, be supplied by Japan as reparations for a given period.

The Japanese Panel agreed in principle to the above suggestion; but owing to the lack of material time, as well as to the fact that higher-level talks for the settlement of the basic issues of reparations had started simultaneously in Tokyo, it was agreed to wait until after the results of such talks shall have been definitely ascertained.

6. The Philippine Panel expressed its desire to prepare another list which would reflect its evaluation of the relative urgency of the need of the Philippines for the items enumerated in Appendix I. It was felt that such a list would help pave the way for the success of the plenipotentiary negotiations in Manila by indicating which of various Philippine requirements listed in Appendix I are relatively more important than the others. The Japanese Panel concurred in the idea of preparing such a list, but desired to make of record that the choice of items was exclusively done by the Philippine Panel.

10

The list thus prepared by the Philippine Panel is attached hereto as Appendix II, with the understanding between the two Panels that any and all of reservations made by the two Panels with regard to Appendix I will also be applied to Appendix II.

7. The official rosters of the two Panels are hereto attached as Appendix III..

EXHIBIT "FO-9"

**REPUBLIC OF THE PHILIPPINES
COURT OF FIRST INSTANCE OF MANILA
BRANCH NO. XI**

**THE LIBERATION STEAMSHIP CO., INC.,
Petitioner,**

- versus -

CIVIL CASE NO. 53607

**THE REPARATIONS COMMISSION,
BENEDICTO PADILLA,
JUAN M. ALBERTO,
GREGORIO G. ABAD,
CALIXTO O. ZALDIVAR,
HERMENEGILDO ATIENZA, and
MAURICIO O. BAS,**

**THE HONORABLE EMMANUEL PELAEZ,
SECRETARY OF THE DEPARTMENT
OF FOREIGN AFFAIRS,
MINISTER SIMEON ROXAS,**

Respondents

X-----X

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

No. 22
Exhibit "FO-9"

10

20

ANSWER TO COUNTERCLAIM

COMES NOW the petitioner in the above-entitled case, through the undersigned counsel, and to this Honorable Court respectfully alleges:

1. That the petitioner admits the allegations contained in par. 1 of the Counterclaim;

2. That the petitioner specifically denies the allegations contained in par. 2 of the Counterclaim in so far as inconsistent with the petition, and allegations of this answer to the counterclaim;

30

3. That the petitioner admits the allegations contained in par. 3 of the Counterclaim in so far as the conditional purchase and sale reflected in Annex "1", but specifically denies the fact that M/S "Dagohoy" was procured from Japanese Reparations, for lack of knowledge or information sufficient to for a belief as to the truth thereof;

4. That the petitioner admits Section 12 of the Reparations Law, as alleged in par. 4 of the Counterclaim, but specifically denies that the arrangements with respect to the first installment of the price for M/S "Dagohoy" was made pursuant to the said section, since there is no mention whatsoever in the schedule of the installment of payments of the said Section 12 of the Reparations Law;

5. That, while the petitioner admits the schedule of payments alledged in the same par. 4 of the Counterclaim, the subsequent arrangement between the petitioner and the respondent Reparations Commission, on the payment of the

installments on the price of the vessel has superseded the arrangement contained in the said paragraph, thereby constituting a novation as to the terms of payments and the said original arrangement is no longer binding between the petitioner and the Reparations Commission;

6. That the petitioner specifically denies the allegations contained in par. 5 of the Counterclaim that the respondents demanded for the payment of the first installment of ₱686,857,78, since there was a novation on the terms of payment;

7. That the petitioner specifically denies the allegations contained in par. 6 of the Counterclaim for having no knowledge or information sufficient to form a belief as to the truth thereof, but admits that it entered into a time charter party with the Shipping Corporation of India, which is valid and legal;

8. That the petitioner specifically denies the allegations in par. 7 of the Counterclaim to the effect that the non-payment by the petitioner of the first installment is a violation of Annex "1", the Contract of Purchase and Sale, inasmuch as the petitioner is not called upon to pay in accordance with the original terms of payment but to the subsequent novation entered into between the petitioner and the Reparations Commission; that the chartering of the vessel to the Shipping Corporation of India, is not in violation of the Reparations Law and the laws and regulations promulgated thereunder, because it does not involve a change in the ownership, and control of the vessel;

9. That the petitioner specifically denies the allegations contained in par. 8 of the Counterclaim to the effect that Reparations Commission is entitled to enter into the premises where the vessel is found to take possession the same and dispose of it according to law pursuant allegedly to Clause 11 of Annex "1", inasmuch as the Reparations Commission can not take the law into its own hands by pronouncing that the petitioner has violated the law, the rules, and Annex "1", when the petitioner maintains otherwise; since automatic rescission can only take place under par. 11 of Annex "1" when the petitioner does not dispute that the Reparations Commission has that right, but if the petitioner so disputes, par. 12 provides the course of action that the Reparations Commission should take, which is an action for judicial rescission; that the taking of the vessel without further formality and without a judicial determination as to the violation of the terms and conditions of the contract amounts to deprivation of property without due process of law;

10. That the petitioner specifically denies the allegations contained in par. 9 of the Counterclaim to the effect that the petitioner should pay to the Reparations Commission litigation expenses, liquidated damages, penalties, attorney's fees in accordance with par. 12 of the terms and conditions of Annex "A" of Annex "1", for the reason that the payment of said amount applies only in a case of judicial rescission, and not in a case where the Reparations Commission alleged that it had availed itself of the power of automatic rescission.

BY WAY OF SPECIAL AND AFFIRMATIVE EXPENSES, the petitioner, through the undersigned counsel, to this Honorable Court, respectfully alleges:

1. That it reproduces the foregoing statements as integral parts of this Special and Affirmative Defenses;

2. That this Court has no jurisdiction over the counterclaim for failure of the respondents Reparations Commission, the Members thereof, and its other officers sued herein – to pay the filing fee therefor pursuant to Section 5, Rule 130 of the Rules of Court, as amended;

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

—
No. 22
Exhibit "FO-9"

3. That the counterclaim does not alleged sufficient causes of action, for

(a) there has been no judicial declaration that the petitioner has committed a breach of the law, the rules promulgated thereunder, and contract, Annex "1";

(b) in the absence of such a judicial pronouncement, the second element of a cause of action consisting of the delict or wrong in violation of the right of the Reparations Commission in non-existence, hence it is premature for the latter to ask for the peaceful delivery of the possession of M/S "Dagohoy" and for the payment of litigation expenses, liquidated damages, and attorney's fees, since no action for judicial rescission has been brought by the Reparations Commission;

(c) the right of the respondents to file and maintain the counterclaim is likewise non-existent in the absence of an enabling resolution by the Reparations Commission authorising the institution of the said Counterclaim;

(d) the arbitrary and despetic act of respondent Mauricio O. Bas, as Executive Secretary of the Reparations Commission can not confer any right to the Reparations Commission to treat the actions of the petitioner as a violation of their mutual agreement;

4. That there has been no delict or wrong committed by the petitioner since:

(a) The original terms of payment of the purchase price had been superseded and novated by the Reparations Commission and the petitioner;

(b) The Charter Party does not involve a change of ownership and control of the vessel, M/S "Dagohoy".

WHEREFORE, it is respectfully prayed that the Counterclaim be dismissed with cost against the respondents, and that the petitioner be accorded such further and other reliefs to which it may be entitled in law and in equity.

Manila, July 12, 1963.

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

No. 22
Exhibit "FO-9"

Copy Furnished:
Hon. Arturo A. Alafriz
Solicitor General
M a n i l a

Atty. Camilo Quiason
Solicitor, Manila

Attys. PANFILO M. MANGUERA,
RUBEU V. SARMIENTO, &
PLACIDO M. PACUNAYEN

Counsel for Movants-Respondents,
Reparations Commission
Legal Department, DBP Building
No. 2, Port Area, Manila

(sd.) JUAN T. DAVID
Counsel
For the Petitioner
Suite 212 Burke Building
Escolta, Manila

10

EXHIBIT "FO-10"

**LIBERATION STEAMSHIP CO., INC.
PMI BUILDING, 419 DAVID STREET, MANILA, PHILIPPINES**

**PHONES:
4-31-96, 3-04-87**

**CABLE ADDRESS: "LISTCO"
P. O. BOX 1419. MANILA**

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

—
No. 22
Exhibit "FO-10"

April 17, 1972

**The Honorable Chairman
Reparations Commission
Quezon City**

10 **Dear Sir:**

Sometime in 1962, we negotiated with your good Commission for the execution of a **RENOVATED CONTRACT OF CONDITIONAL PURCHASE AND SALE OF REPARATIONS GOODS (M/S DAGOHOY)**, the final draft of which was signed by our Company and forwarded to your good Commission for approval. A "xerox" copy of said document is attached hereto and made an integral part hereof as **ANNEX "A"**, for your ready reference.

20 However, for one reason or another, our Company failed to obtain a copy of said renovated contract as finally approved and executed by your good Commission. Nevertheless, our periodical amortizations on the M/S "Philippine Admiral" (Ex-"Dagohoy") are all in accordance with and in implementation of the renovated contract, as your records will most probably reflect.

We understand that sometime in 1968, the records of your good Commission were burned during the conflagration that gutted your offices then at the SSS Building. This is probably the reason why our repeated requests for copies of said renovated contract has yielded no positive results, as probably your records of the same had either been lost or destroyed.

30 In view of which, we now request and pray of your good Commission to reconstitute the aforesaid renovated contract, or else take such other remedies as may be proper under the premises. You will also find attached hereto and made an integral part hereof a copy of the **CONTRACT OF CONDITIONAL PURCHASE AND SALE OF REPARATIONS GOODS (M/S DAGOHOY)** as **ANNEX "B"**, for your ready reference.

Your prompt and favorable action on this request will be highly appreciated and thanked for.

**Very truly yours,
LIBERATION STEAMSHIP CO., INC.
(sd.) TOMAS CLOMA
President**

ENCL: AS STATED

EXHIBIT "FO-11"

REPUBLIC OF THE PHILIPPINES
Office of the President
REPARATIONS COMMISSION
Quezon City

RESOLUTION NO. 238(72)

RESOLVED, (1) to approve the request of the Liberation Steamship Co., enduser of the reparations vessel M/S "Philippine Admiral" (formerly M/S "Dagohoy"), for the renovation of its original Contract of Conditional Purchase and Sale with the Commission covering said vessel in accordance with Sec. 21 of R.A. 1789, as amended, subject to the conditions (a) that the obligation of said enduser regarding said vessel under the Renovated Contract of Conditional Purchase and Sale shall be payable in twenty (20) equal annual installments reckoned from October 31, 1960, the date of complete delivery of said vessel, the decision of the Court in Civil Case No. 53067 (CFI, Manila entitled "The Liberation Steamship Co., Inc. vs. The Reparations Commission") notwithstanding; (b) that said enduser shall up-date its payment of said installments, including interest, prior to the execution by this Commission of said Renovated Contract of Conditional Purchase and Sale, and pay the remaining installments which are still to mature within six (6) months from the date of execution by this Commission of said contract in consonance with its letter dated September 12, 1972; and (c) that said enduser shall post the requisite performance bond and insurance coverages and otherwise comply with all the other legal requirements of the Commission; and (2) to authorize the Legal Department, in collaboration with the Accounting Department, to prepare said Renovated Contract of Conditional Purchase and Sale, and to submit the same for the approval of the Commission as soon as possible.

10

20

Adopted, September 13, 1972.

(Abstained)

ANACLETO C. MANGASER
Acting Chairman

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(sd.) FELICISIMO OCAMPO
Member

(sd.) LUIS ASIS
Member

(sd.) GONZALO T. ESCALONA
Acting Member

ATTESTED:

(sd.) ERNESTO R. TENA
Asst. Secretary of the Commission
ERT:LBT/

EXHIBIT "FO-12"

LIBERATION STEAMSHIP COMPANY, INC.

**419 DAVID ST. MANILA, PHILIPPINES
PHONES: 40-65-68 OR 49-29-14 CABLE ADDRESS: LISTCO MANILA**

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

October 2, 1972

No. 22
Exhibit "FO-12"

The Reparations Commission
133 Quezon Blvd. Ext.
Quezon City

Dear Sirs:

10 This has reference to your Resolution No. 238(72) of September 13, 1972,
which, for ready reference, is quoted as follows:

20 "RESOLVED, (1) to approve the request of the Liberation Steam-
ship Co., Inc., end-user of the reparations vessel M/S "Philippine
Admiral" (formerly M/S "Dagohoy"), for the renovation of its
original Contract of Conditional Purchase and Sale with the
Commission covering said vessel in accordance with Sec. 21 of
R.A. 1789, as amended, subject to the conditions (a) that the
obligation of said enduser regarding said vessel under the Re-
novated Contract of Conditional Purchase and Sale shall be payable
in twenty (20) equal annual installments reckoned from October
31, 1960, the date of complete delivery of said vessel, the decision
of the Court in Civil Case No. 53067 (CFI, Manila entitled "The
Liberation Steamship Co., Inc. vs. The Reparations Commission")
notwithstanding: (b) that said enduser shall up-date its payment of
said installments, including interest, prior to the execution by this
Commission of said Renovated Contract of Conditional Purchase
and Sale, and pay the remaining installments which are still to
mature within six (6) months from the date of execution by this
30 Commission of said contract in consonance with its letter dated
September 12, 1972: and (c) that said enduser shall post the
requisite performance bond and insurance coverages and otherwise
comply with all the other legal requirements of the Commission:
and (2) to authorize the Legal Department, in collaboration with
the Accounting Department, to prepare said Renovated Contract of
Conditional Purchase and Sale, and to submit the same for the
approval of the Commission as soon as possible."

40 We strongly submit that the "conditions" imposed by your good Com-
mission for the renovation of our original Contract of Conditional Purchase and Sale
as aforesated are rather too oppressive, arbitrary and unwarranted, in the light of
the fact that the law requires only one condition for such a renovation, which is, "that
the end-user shall voluntarily assume all the new obligations provided for in this
amendatory Act" (Last part of Sec. 20, Republic Act No. 3079 - Amendatory to
R.A. No. 1789), which condition, we hasten to state, our Company has already
complied with.

Your records will bear out the fact that, as stated in our letter to your Commission of April 17, 1972, we originally requested for a reconstitution of our Renovated Contract of Conditional Purchase and Sale of Reparations Goods (M/S Dagohoy) which was executed sometime in 1962, a copy of which was duly furnished your good Commission. This same request, as your records will also bear out, was reiterated in our letter to your Commission of July 10, 1972 and our Memorandum of July 14, 1972.

Upon our persistent representations, your Commission, through Executive Director Ramon M. Solis, informed our Company thus:

"Gentlemen:

10

In reply to your letter of April 17, 1972 and the cable dated June 22, 1972 requesting the reconstitution of your 'Renovated Contract of Conditional Purchase and Sale of Reparations Goods (M/S Dagohoy)' which was executed sometime in 1962, please be informed that the Commission has deferred action on your said request for further study for the reason that our records of said contract are no longer available as the same are presumably burned or lost in the fire which gutted the offices of the Commission at the SSS Building on April 6, 1968.

In this connection, please be informed further that as soon as the matter will be again taken up by the Commission you will be advised of the action taken thereon."

20

It will of course be recalled that sometime in 1962, our Company negotiated with your Commission for the execution of the aforesaid renovated contract. The terms and conditions having been mutually agreed upon, the final draft of said renovated contract was prepared by your Commission and signed by our Company's duly authorized officials in the presence of your Commission's lawyers and responsible officials. However, for one reason or another, our company failed to obtain a copy of said renovated contract as finally approved and executed by your good Commission.

30

Your records will definitely show that subsequent to the signing of the renovated contract as aforestated, your good Commission has virtually approved, recognized and ratified said contract by: (a) demanding payments of the periodic amortizations exactly in accordance with the schedule of payments provided for in the renovated contract, and not anymore in accordance with the original utilization contract; and (b) accepting payments by our Company of amortizations in accordance with the schedule of payments provided for in the renovated contract. We cite, for instance, the following facts:

1. Your statement of accounts of September 3, 1963, a "xerox" copy of which is hereto attached and made an integral part hereof as Annex "A", expressly noted that "Amortization based on the renovated contract";

40

2. Your statements of accounts, "xerox" copies of which are hereto attached and made integral parts hereof as Annexes "B", "B-1" to "B-2", inclusive, all demanded payments of amortizations in accordance with the schedule of

payments under the renovated contract, and not anymore in accordance with the original utilization contract.

In the Supreme Court of Hong Kong Admiralty Jurisdiction

On this score, it has been aptly held by our Supreme Court that:

“The ratification of a contract may be express or implied. Implied ratification may take diverse forms, such as by silence or acquiescence; by acts showing approval or adoption of the contract; or by acceptance and retention of benefits flowing therefrom.” (Emilio Acuña vs. Batac Producers Cooperative Marketing Association, Inc., et al., No. L-20333, June 30, 1967, 20 SCRA 527).

No. 22
Exhibit “FO-12”

10 It is our position that there is a valid, binding and legally enforceable renovated contract as aforestated between our Company and your good Commission, and this fact cannot be denied by your Commission on the ground of estoppel.

Our position is upheld by no less than Atty. Jose V. Roldan, Chief, Legal Officers’ Division, and Hon. Panfilo M. Manguera, Reparations Adviser and Director & Head, Legal Department, both of your good Commission.

In his Urgent Memorandum of August 26, 1972, your Atty. Rolden opined thus:

“x x x x x x x x x x x x

20 As discussed in our memorandum of May 9, 1972 and 1st Indorsement, dated May 29, 1972, the basic issue in the instant case is the said Renovated Contract, the original copies of which were gutted by fire in which the enduser is requesting the Commission to confirm and ratify its existence and due execution, or to take other positive remedies as may be proper under the premises.

30 It is conceded that the problem regarding said renovated contract is one merely of evidence – the lack of formal notarized instrument signed by the parties with their instrumental witnesses. Nevertheless, we are reiterating herein the statement of our distinguished Director of the Legal Department in his 1st Indorsement dated May 29, 1972, quoted as follows:

‘The absence of such an instrument does not, however, negate the reality of the agreement, if, otherwise entered into and there was a meeting of the minds specially so in this case the carbon copy signed by the end-user and his witness and showing upon its face signs of age, in, under the law a probative memorandum indicative of such agreement.’

The aforequoted statement is supported by Rule 130, Section 4 of the Rules of Court, which provides thus:

40 ‘Secondary evidence when original is lost or destroyed, or cannot be produced in Court, upon proof of its execution and loss or destruction, or unavailability, its contents may be proved by a copy, or by a recital of its contents in some authentic document, or by a recollection of witnesses.’ (Michael & Co. Vs. Enriquez, 33 Phil. 87 and Govt. of P.I. vs. Martinez, 44 Phil. 817).

x x x x x x x x x x x”

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

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No. 22
Exhibit "FO-12"

Honestly, we see no just and valid reason, justification or excuse why our demand for the reconstitution, confirmation or ratification of our aforesaid renovated utilization contract covering the M/S "Philippine Admiral" (Ex-"Dagohoy") could not be favorably acted upon by your Commission. The renovation anew of said utilization contract as decreed by your Resolution No. 238(72) is not only unnecessary and useless but grossly unfair and prejudicial to our Company.

WHEREFORE, premises considered, it is demanded of your good Commission to approve, recognize and ratify formally the existing renovated utilization contract aforesaid, as we have earlier repeatedly requested, in keeping with good faith, justice and fair-play. It is moreover requested that immediate action, whether favorable or adverse, be taken on this matter so we may be afforded the opportunity to take timely and appropriate legal actions in the protection of our Company's rights and interests.

10

Very truly yours,
LIBERATION STEAMSHIP CO., INC.
TOMAS CLOMA
President

By:

(*sd.*) MENA Q. TAGANAS
Legal Counsel

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EXHIBIT "FO-13"

REPUBLIC OF THE PHILIPPINES
Office of the President
REPARATIONS COMMISSION
Quezon City

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

—
No. 22
Exhibit "FO-13"

RESOLUTION NO. 308(72)

10 **RESOLVED**, to deny for lack of merit the request of Liberation Steamship Co., Inc., enduser of the reparations vessel M/S "Philippine Admiral" (formerly M/S "Dagohoy"), for the reconsideration of Resolution No.238(72) dated September 13, 1972 approving the request of said enduser for the renovation of its original Contract of Conditional Purchase and Sale covering said vessel in accordance with Section 21 of R.A. 1789 as amended.

Adopted, November 9, 1972.

ABSTAINED
ANACLETO C. MANGASER
Acting Chairman

(sd.) **FELICISIMO OCAMPO**
Member

(sd.) **LUIS ASIS**
Member

20 *(sd.)* **GONZALO T. ESCALONA**
Acting Member

ATTESTED:

(sd.) **GABRIEL TORRECAMPO**
Secretary of the Commission
GT:ERT:LBT/

In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction

No. 22
Exhibit "FO-14"

EXHIBIT "FO-14"

REPUBLIC OF THE PHILIPPINES
Office of the President
REPARATIONS COMMISSION
Quezon City

RESOLUTION NO. 368(73)

RESOLVED, in view of the proposed sale in Hongkong, allegedly in pursuance of an order of the Hongkong Supreme Court, of the reparations vessel, M/S "Philippine Admiral" (formerly, M/S "Dagohoy") procured for and delivered to the Liberation Steamship Co., Inc. as an end-user of the same and which proposed sale was published in the Manila newspaper, "Bulletin Today" dated October 10, 1973, and considering that the aforesaid vessel remains the property of the Philippine Government, represented by the Reparations Commission, the same not having been fully paid for; considering further, that the published proposed sale could have been the result of the neglect and/or failure of the said enduser to operate the vessel as a good father of a family and in a bonafide manner within the framework of pertinent laws and regulations; considering also, that the said enduser has been delinquent of the payment of its obligations to the Commission and which delinquency has aggregated in the amount of ₱5,322,120.04 as of October 9, 1973; considering finally, that the said enduser, has continuously failed to make even a reply to the letters and telegrams of the Commission inquiring about the status of the case against it in Hongkong and/or steps it had taken to bring the vessel to the Philippines, (1) to direct the immediate repossession of said vessel; and (2) to direct and authorise the Legal Department, in coordination with the DBP-Repacom Action Group, to implement this resolution and to take such other steps and/or actions as may be necessary and warranted for the protection of the best interest of the Government.

10

20

Adopted, October 10, 1973.

(sd.) ANACLETO C. MANGASER
Acting Chairman

30

(On leave)
FELICISIMO OCAMPO
Member

(sd.) LUIS ASIS
Member

(sd.) GONZALO T. ESCAIONA
Acting Member

ATTESTED:

(sd.) ERNESTO R. TENA
Secretary of the Commission
ERT: JRD: LBT:sa

EXHIBIT "FO-15"

LIBERATION STEAMSHIP COMPANY, INC.
PMI BLDG., 419 DAVID ST., MANILA PHILIPPINES
PHONES: 40-65-68 OR 49-21-14 CABLE ADDRESS: LISTCO MANILA

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

Reparations Commission
133 Quezon Blvd. Extension
Quezon City
Thru: The Executive Director

October 11, 1973

No. 22
Exhibit "FO-15"

Dear Sirs:

10 Re: M/V "PHILIPPINE ADMIRAL"

We confirm what has been published in the local papers about the vessel being arrested in Hongkong and its possible sale by the Supreme Court in Hongkong. The situation is serious but not hopeless. Liberation Steamship Co., Inc. assures you that whatever happens, the interest of the Philippine Government which Liberation Steamship Co., Inc. is under contract to answer for, will be amply protected. Our lawyers in Hongkong have been instructed to coordinate with the Consul General to see to it that whatever happens, the balance of about ₱5,300,000.00 due the Reparations Commission be protected in Hongkong Supreme Court.

20 Pending negotiation of certain details, we are advising you in advance the following arrangement being made locally:

A local company will buy the ship from Liberation Steamship Co., Inc. and will pay the Reparations Commission the certified balance of about ₱5,300,000.00 including interest or ₱4,700,000 without interest, certified to by the Development Bank of the Philippines, Repacom Group, xerox copy of which is hereto attached for your information.

Additionally, the local buyer will answer for all credits in Hongkong and attend to all pending cases at their expense.

As soon as the above arrangement is finally concluded the same will be submitted in a day or two to the Reparations Commission for approval.

30 It is, therefore, requested that no precipitate action be resorted to by the Reparations Commission because such action might only delay matters and may prejudice the rights of all the parties concerned including the Reparations Commission.

Very truly yours,
LIBERATION STEAMSHIP CO., INC.
(sd.) R. G. CLOMA
Executive Vice President

TC:RGC:ag

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

—
No. 22
Exhibit "FO-16"

EXHIBIT "FO-16"

Record File

Rep. 3-2 LS Cr.

135 Quezon Boulevard Extension, Quezon City

October 15, 1973

Liberation Steamship Co. Inc.,
PML Building, 419 David Street,
MANILA

Gentleman,

With reference to your letter and telegram respectively dated October 11 and 14, 1973, please be advised that as of October 10, 1973, this Commission per Resolution No.568(73) adopted October 10, 1975, certified copy enclosed, and for the reasons therein stated, has repossessed the reparations vessel M/S "PHILIPPINE ADMIRAL" (formerly M/S "Dagohoy") 10

In view thereof, you are requested to immediately deliver peacefully the said vessel to this Commission.

Very truly yours,
For the Acting Chairman

RAMON M. SOLIS
Executive Director
RMS:CCC:felb

20

Encl.: As stated.

EXHIBIT "FO-17"

C. F. I. FORM No. 31

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

**REPUBLIC OF THE PHILIPPINES
COURT OF FIRST INSTANCE OF MANILA**

No. 22
Exhibit "FO-17"

No. 92402

REPARATIONS COMMISSION,)
Plaintiff)

VERSUS

WRIT OF PRELIMINARY
PROHIBITORY INJUNCTION

10 LIBERATION STEAMSHIP CO., INC.,)
Defendant)

To LIBERATION STEAMSHIP CO., INC., - 149 David Street, Sta., Cruz, Manila

GREETINGS:

Complaint having been filed before this Court of First Instance of Manila in the above-entitled cause, against the defendant LIBERATION STEAMSHIP CO., INC., above mentioned, praying that a preliminary prohibitory injunction be issued against said defendant restrainingit.... from continuing the performance of certain acts mentioned in the complaint and more particularly described hereafter; upon considering said complaint and affidavit by plaintiff's Executive Director RAMON M. SOLIS and it appearing to the satisfaction of the Court that this is a case where a writ of injunction should issue, sufficient reasons having been alleged, and the bond required by law having been given in the sum of WITHOUT BOND pesos, Philippine currency (P.....), to the satisfaction of the Court:

It is hereby ordered by the undersigned Judge of the Court of First Instance that, until further orders, you, the said LIBERATION STEAMSHIP CO., INC., and all your attorneys, representatives, agents, and any other person assisting you, refrain from performing any act tending to obstruct, delay or interfere with the release of the M/S "Philippine Admiral" by the Hongkong Supreme Court.

MANILA, PHILIPPINES, November 3, 19 73

30

(sd.) JESUS P. MORFE
Judge, Court of First Instance of Manila
Branch XIII

**REPUBLIC OF THE PHILIPPINES
COURT OF FIRST INSTANCE OF THE CITY OF MANILA**

No. 92402

<u>REPARATIONS COMMISSION,</u>)	
)	ORDER FOR THE SEIZURE
VERSUS)	OF
)	PERSONAL PROPERTY
<u>LIBERATION STEAMSHIP CO., INC.</u>)	

10

To the SHERIFF OF Manila or any of his Deputies, more specifically Deputy Sheriff Restitute R. Quenada

Whereas RAMON M. SOLIS agent/counsel of plaintiff in the above-entitled action, having filed an application with this Court praying for the seizure and delivery to him of the property, more fully described hereafter, and having filed the affidavit required by the Rules of Court and having executed to the defendant..... a bond in the sum of ₱ WITHOUT BOND.....

You are hereby ordered to take immediate possession of the following property which is now detained by the defendant LIBERATION STEAMSHIP CO., INC., -----

20

to wit: M/S "Philippine Admiral" (originally named M/S "Dagohoy" more specifically described as follows: "One (1) Single Screw Motor Cargo Vessel, 12,200 long tons dead weight (per procurement contract); Builders Hull No. 43, and Class 100-A 1 for the Hull and LMC for the Machinery including furnishing, fixtures, navigation charts and other appurtenances thereto".....

and to keep the said property in your possession for five days. At the expiration of the said period of five days, you shall deliver, subject to the provisions of Sections 5, 6 and 7 of Rule 60, Rules of Court, to the plaintiff the said property, provided that your legal fees and all the necessary expenses are fully paid.

You shall return this order with your proceedings indorsed thereon within twenty (20) days from the date of the taking of the property above described.

30

MANILA, Philippines November 3, 1973

JESUS P. MORFE
Judge, Branch XIII

EXHIBIT "FO-19"

C.F.I. Form No. 19

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

**REPUBLIC OF THE PHILIPPINES
IN THE COURT OF FIRST INSTANCE OF MANILA**

Manila, **November 3** , 19 **73**

No. 22
Exhibit "FO-19"

Case No. **92402**

REPARATIONS COMMISSION.....)
<i>Plaintiff</i>)
VERSUS)
LIBERATION STEAMSHIP CO.....)
<i>Defendant</i>)

**NOTICE OF
ORDER/DECISION**

10

Messrs: The Solicitor General – Padre Faura, Manila

Liberation Steamship Co. Inc. – 149 David St., Sta. Cruz,
M a n i l a

Sirs:

You are hereby notified by these presents that on the 3rd day of November,
19.....73..... two (2) orders were issued in the above entitled case, copy of which
is attached hereto.

20

LEONARDO S. ALCID
Clerk of Court
(sd.) R. C. MADARANO
By
Branch Clerk of Court

rrq/XIII

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

No. 22
Exhibit "FO-19"

REPUBLIC OF THE PHILIPPINES
COURT OF FIRST INSTANCE OF MANILA
BRANCH XIII

REPARATIONS COMMISSION,
Plaintiff,
— versus — CIVIL CASE No. 92402
LIBERATION STEAMSHIP CO., INC.,
Defendant.

X-----X

ORDER

Regarding the motion in the form of letter of the Liberation Steamship Co., Inc., asking for one (1) week within which to study the case and submit an opposition to plaintiff's application for replevin and preliminary injunction, this Court finds that the application under consideration is urgent; and considering that, at any rate, whatever Order this Court may issue in this case, even if implemented, will not prejudice the Liberation Steamship Co., Inc., for even if, after trial on the merits, the Liberation Steamship Co., Inc. be found entitled to the return to it of the subject vessel and if it be no longer returnable, the Liberation Steamship Co., Inc. would be entitled to collect from the plaintiff the value thereof; 10

WHEREFORE, the motion for postponement of the hearing is denied, and this Court will now receive evidence of the plaintiff, if any, to supplement the prima facie showing in the verified complaint in this case. 20

SO ORDERED.

Manila, Philippines, November 3, 1973.

(sd.) JESUS P. MORFE
Judge

JPM:abv

REPUBLIC OF THE PHILIPPINES
COURT OF FIRST INSTANCE OF MANILA
BRANCH XIII

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

REPARATIONS COMMISSION,

Plaintiff,

— versus —

CIVIL CASE No. 92402

LIBERATION STEAMSHIP CO., INC.,

Defendant.

No. 22
Exhibit "FO-19"

X-----X

ORDER

10 The application of the plaintiff Reparations Commission that, pending hearing of this case on its merits, a writ of replevin and a writ of preliminary injunction be issued, was heard this morning in the absence of the defendant and/or its counsel, the latter's letter-request for a postponement of the scheduled hearing having been denied in a separate Order issued by this Court this morning.

20 The allegations of the complaint made under oath, and the annexes to said complaint, supplemented during the hearing this morning by documentary evidence consisting of Exhibits A to M, inclusive, show that: (a) the Republic of the Philippines continues to be the owner of the vessel originally named M/S DAGOHYOY and renamed M/S PHILIPPINE ADMIRAL (Exhs. A and B) as provided in paragraph 1 of the terms and conditions attached to and made part of the
30 CONTRACT OF CONDITIONAL PURCHASE AND SALE OF REPARATIONS GOODS (M/S DAGOHYOY), executed by and between the Liberation Steamship Company, Inc. and the Reparations Commission, an agency of the Republic of the Philippines created under Rep. Act No.1789, as amended: (b) said vessel has not yet been fully paid for by the Liberation Steamship Co., Inc. which is in arrears in the stipulated payments to the tune of ₱5,322,120.04, so that said vessel is at present still covered by Certificate of Philippine Register which shows that the Reparations Commission of the Republic of the Philippines is still its owner (Certificate No.4571 of the Bureau of Customs, Exh. B): (c) that the said vessel now known as
40 PHILIPPINE ADMIRAL is at present the subject of an admiralty action before the Supreme Court of Hongkong in which the plaintiff is Delfair Shipping Corporation, and the defendants are the OWNERS of the ship PHILIPPINE ADMIRAL (Philippine flag), and that in view of positions taken before the said Supreme Court of Hongkong by counsel for the Liberation Steamship Company (defendant in the case at bar), the Hongkong Supreme Court deems the said Liberation Steamship Company and/or Tomas Cloma as the owner of said vessel although said vessel actually still belongs to the Reparations Commission of the Republic of the Philippines: (d) that the said Liberation Steamship Company and/or Tomas Cloma have taken steps tending to show that they have no objection to the scheduled sale of said vessel by the Hongkong Supreme Court; and (e) that unless a writ of injunction be issued the said Liberation Steamship Company and/or Tomas Cloma will continue to cooperate towards the ultimate sale of said vessel in Hongkong, to the irreparable damage of the Reparations Commission of the Republic of the Philippines.

This Court, therefore, finds that the case at bar falls under Sec.2 of Rule 60 and Sec.3 of Rule 58, both of the Revised Rules of Court of the Republic of the Philippines, and that the interest of justice demands that the writs prayed for be immediately issued.

WHEREFORE, it is hereby ordered that:

1. A writ of seizure issue, without the necessity of filing any replevin bond, the plaintiff being exempt from this usual requirement, directing the Sheriff of Manila or any of his Deputies, more specifically Deputy Sheriff Restituto R. Quemada of this Branch, to take into his custody the M/S "Philippine Admiral" (originally named M/S "Dagohoy") more specifically described as follows: 10

"One (1) Single Screw Motor Cargo Vessel, 12,200 long tons dead weight (per procurement contract); Builders Hull No.43 and Class 100-A1 for the Hull and LMC for the Machinery including furnishing, fixtures, navigation charts and other appurtenances thereto".

if and when the same reach Philippine territorial jurisdiction, to be disposed of in accordance with Sec.6, Rule 60 of the same Rules.

2. A writ of preliminary prohibitory injunction issue, without the necessity of filing any injunction bond, the plaintiff being exempt from this usual requirement, ordering the defendant and/or its agents, or persons acting in its behalf, to desist and refrain from performing any act tending to obstruct, delay or interfere with the release of the M/S "Philippine Admiral" by the Hongkong Supreme Court. 20

SO ORDERED.

Manila, Philippines, November 3, 1973.

(sd.) JESUS P. MORFE
Judge

JPM:abv

SUMMONS INTER PARTES

10 Let all parties attend The Judge in Chambers, at the Supreme Court, Hong Kong, on Wednesday, the 5th day of December, 1973, at 9:30 o'clock in the fore-noon, on the hearing of an application on the part of the Plaintiff for an order that the Government of the Republic of the Philippines which has intervened in these proceedings do on or before 6th December, 1973 give security for the Plaintiff's costs to the satisfaction of one of the Registrars of the Supreme Court of Hong Kong and that in the meantime all proceedings herein other than the proceedings relating to the giving of such security be stayed.

—
No. 23
Summons inter partes
dated 30.11.1973

And that the costs of this application be paid by the said Government of the Republic of the Philippines to the Plaintiff in any event.

Dated the 30th day of November, 1973.

(*sd.*) J.R. OLIVER (L.S.)
Registrar

This summons was taken out by Messrs. Johnson, Stokes & Master of Rooms 403-413, Hongkong & Shanghai Bank Building, Solicitors for the Plaintiff

To the abovenamed Government of the Republic of the Philippines
Peter Mark & Co. their Solicitors

20 (Estimated time: not exceeding 15 minutes)

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

AFFIDAVIT OF STRUAN ROBERTSON

I, STRUAN ROBERTSON, of 30 Lugard Road, The Peak, Hong Kong, Solicitor, make oath and say as follows:-

No. 24
Affidavit of
Struan Robertson
dated 4.12.1973

1. I am an Assistant Solicitor with Messrs. Johnson, Stokes & Master of Room 403-413 Hong Kong & Shanghai Bank Building, 1 Queen's Road, Central, Victoria, Hong Kong and have the conduct of these proceedings on the part of the plaintiff herein.

2. My firm has on behalf of the plaintiff been served with the Notice of Motion herein issued on the part of the Government of the Republic of Philippines and filed on 29th October 1973 for an order that the m.v. "Philippine Admiral" at present under arrest is the property of said the Government of the Republic of Philippines and that being recognised as a foreign independent state that state declines to sanction the institution of the proceedings herein.

10

3. I subsequently attended the hearing of the aforesaid Notice of Motion on 3rd November 1973 when Counsel for said the Government of the Republic of Philippines stated in relation to an order adjourning the said Notice of Motion that no order for costs could be made against the said Government. The said Motion was heard in Open Court by Mr. Justice Pickering who ordered costs of and incidental to and thrown away by adjournment of the hearing of the said Notice of Motion to be paid by the said Government.

20

4. As far as I am aware no appeal has been lodged with regard to such order.

5. Following the aforesaid hearing I wrote to Messrs. Peter Mark & Co., solicitors for the said Government of the Republic of Philippines a letter, a true copy whereof is now produced and shown to me marked "S.R.1." and exhibited hereto. At the time of the filing of this affidavit I have received no reply from Messrs. Peter Mark & Co. with regard thereto.

6. I crave leave to refer to the affidavit of Rodolfo Lamy Diaz of 30th October 1973 wherein Mr. Diaz stated that the "Philippine Admiral" is owned by and has at all material times been owned by the Philippine Reparations Commissions, a state organ of the Republic of the Philippines and I verily believe that it has no assets in Hong Kong or other visible means of paying the costs of the plaintiffs should judgment be given for the plaintiff in this action. By reason of the matters aforesaid I verily believe that the Government of the Republic of the Philippines will not honour any order for costs made against it in these proceedings.

30

7. I have been informed by the Chief Bailiff of this Honourable Court that as at 14th November 1973 the costs of maintaining the "Philippine Admiral" under arrest amount to HK\$183,322.26, the vessel having been under arrest since 4th June 1973 and I pray that any order for security for costs which this Honourable Court

10 may give shall include the costs of maintaining the aforesaid vessel for the likely duration of its arrest. In this respect I am informed by Mr. Howard Hobson of Messrs. Deacons for the Plaintiffs in A.J. Folios 94 and 106 of 1973 against the owners of the "Philippine Admiral" that he has written to Messrs. Peter Mark & Co. suggesting that the "Philippine Admiral" be released upon a bank guarantee being put up to meet the claims of the various plaintiffs against the "Philippine Admiral" in order that the vessel may be released forthwith to its owner and the costs of arrest minimized. A copy of Messrs. Deacons' letter to Messrs. Peter Mark & Co. dated 28th November is now produced to me marked "S.R.2." and exhibited hereto. I am informed by Mr. Hobson and verily believe that the Philippine Government has not agreed to put up any such guarantee.

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

—
No. 24
Affidavit of
Struan Robertson
dated 4.12.1973

SWORN at the Courts of Justice)
Victoria in the Colony of Hong)
Kong this 4th day of December,)
1973.)

(*sd.*) STRUAN ROBERTSON

Before me,
(*sd.*) David C. Ho
A Commissioner & C.

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

SR/T5/73jt

EXHIBIT "S.R-1"

23rd November, 1973.

No. 25
Exhibit "S.R.1."

Messrs. Peter Mark & Co.,
Solicitors,
Grand Bldg.,
11th Floor,
Hong Kong.

BY HAND

Dear Sirs,

10

Re: A. J. Folio No. 106 of 1973
"Philippine Admiral"

As the Government of the Republic of the Philippines is not amendable to the jurisdiction of the Supreme Court of Hong Kong and as indicated through Counsel that it is unlikely to satisfy any judgment that may be given against it as regards costs in the present proceedings, we shall be glad to hear from you within the next 5 days whether your client is prepared to provide security for the plaintiffs costs of this action. Failing a satisfactory reply we are instructed to apply to the court for an order.

Yours faithfully,
(*sd.*) S. Robertson

20

c.c. Messrs. Deacons
c.c. Messrs. Brutton & Stewart
c.c. Messrs. Wilkinson & Grist

EXHIBIT "S.R-2"

HFGH:PAD:JK:HK
73/2159 73/2173

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

28th November, 1973.

No. 25
Exhibit "S.R.2."

Peter Mark & Co.,
Grand Building, 11th floor,
HONG KONG.

Dear Sirs,

Re: "Philippine Admiral"
Release of the Vessel

10

Bearing in mind the costs continuously being incurred whilst this vessel is kept under arrest pending the outcome of your applications (and any appeals which may be made thereafter). We have a suggestion to make in relation to the vessel itself.

20

We take it to be your clients' position that they want the vessel back. Accordingly would your clients be prepared to arrange for a Bank Guarantee to be put up for the value of the vessel (either appraised value of at a new valuation) which Guarantee to remain in force pending the final result of your applications for stay. This would, of course, have to extend to the possibility of the matter even going to the Privy Council or until such time as all the Plaintiffs or your clients indicate that they will not be appealing (or the time for appealing expiring).

In accordance with an independent valuation, the costs of establishing such Guarantee being disclosed to the Plaintiffs in the various actions. This would enable the vessel to be released - leaving the actions and your Notices of Motion to be fought through the Courts - thus saving the costs of upkeep (and wages) of the vessel whilst under arrest.

If you win your applications for stay then the various Plaintiffs to bear the costs of the Guarantee proportionately to their claims and the Guarantee would lapse.

30

If you lose your applications then your clients would bear the cost of the Guarantee.

We have not sought the views in depth from any of the other Plaintiffs' solicitors but we are copying this letter to them since we think it deserves serious consideration as a reasonable and practical solution to the problem of the ever increasing costs of keeping the vessel under arrest.

Yours faithfully,
(*sd.*) DEACONS

c.c. Messrs. Johnson, Stokes & Master
Messrs. Brutton & Stewart

IN THE SUPREME COURT OF HONG KONG
ADMIRALTY JURISDICTION
ACTION NO. 106 OF 1973

No. 26
Judge's Notes of
Pickering
dated 5.12.1973

BETWEEN TELFAIR SHIPPING CORPORATION *Plaintiffs*
and
The Owners of the ship "PHILIPPINE
ADMIRAL" (PHILIPPINE FLAG) *Defendants*

Coram: Pickering, J.
Date: 5th December, 1973

Charles Ching (J.S. & M.) for Plaintiffs
Henry Litton, Q.C. (Peter Mark & Co.) for Government of Philippines.

10

JUDGE'S NOTES

p.13 CHING:

Papers have also been served on "Liberation" but Arculli has no instructions to appear.

Present application is only in one action, 106/73. Application of Philippine Government has been set down for tomorrow morning for five days.

If Philippine Government successful in application to set aside order for sale – no difficulty as to costs. If they lose, e.g. on 3/11 you made an order for costs against them, and presumably if they lose there will be another order. But we cannot execute on such an order. British Shipping Laws Vol. 1 p.12 para. 23.

20

Philippine Government has shown no indication that it would voluntarily pay costs. If they lose no indication they will pay costs. And we could not execute.

Also costs of maintenance of vessel are mounting daily and will come out of proceeds of sale – to prejudice of all clients. Therefore ask for security for costs.

No question of sovereign immunity. Philippine Government has voluntarily submitted to the jurisdiction. Subject to at least the procedural jurisdiction of the court.

30

The Newbattle. 1885 P. 33.
Section 34 Admiralty Court Act 1861.
Brett M.R. @ p.35
So a quasi-plaintiff is subject to jurisdiction.

L.J. *Republic of Costa Rica v. Erlanger* 1876 3 Ch. 62 @ 69 Mellish *In the Supreme Court of Hong Kong Admiralty Jurisdiction*

Not contradicted that Philippine Government has no property in Hong Kong

p.14

Philippine Government is a quasi-plaintiff.

Apollinaris Co. v. Wilson 1886 3 Ch. 632.

(Quasi-plaintiff had to give security for costs).

Anticipate Litton will say Philippine Government is owner and therefore a defendant and not an intervener.

10

Crux is there is a dispute at least between Philippine Government on the one hand and Liberation on the other as to who is owner. Further dispute as to sovereign immunity.

Court cannot assume Philippine Government will be successful or able to prove the facts they allege.

They have come into the action voluntarily. Ask order in terms of summons.

20

Day to day maintenance. Cost to now \$201,450.62 for five months. Para. 7 of Robertson's affidavit only reason vessel not sold is because of the application by Philippine Government. In a little difficulty arguing that maintenance costs come within "plaintiff's costs" as in summons.

Telfair arrested the vessel and undertaking of 2/6/73 by Johnston, Stokes & Masters was given. That must be included in "costs". Ask Philippine Government also put up security for maintenance of vessel from day to day.

Litton:

Three headings. 1. General remarks. 2. What position would have been had defendant not been a foreign sovereign. 3. Position as it exists.

30

1. Certain propositions beyond dispute.
 - (1) That my client is the Government of the Philippines recognised by Her Majesty's Government.
 - (2) Government of the Philippines is registered owner.
 - (3) Government of the Philippines does not submit to jurisdiction of the courts in Hong Kong and has accordingly made application that these proceedings be set aside on ground that they implead a foreign sovereign.

Principle of law is that proceedings do implead a foreign sovereign where that sovereign is required to sacrifice its independence and immunity in order to maintain any proprietary interest. Strong prima facie case that these proceedings do implead a foreign sovereign.

Not a question of diplomatic immunity. Matter of solemn international engagements. Proceedings which implead a foreign sovereign have to be set aside as a matter of comity of nations. These more serious considerations over-ride questions of merit and hardship. But any plea of hardship is over-ridden by fact plaintiff knew or ought to have known Philippine Government was the registered owner.

10

2. Application is made under 0.23 r.1(1). Rule permits a defendant in proceedings to apply to the court for security for costs. Summons has been taken out by plaintiff: learned friend relies on sub-para. (3) to get over this initial hurdle.

You often have cross-action where "defendant" is in reality a "plaintiff".

Foundation of the rule commented on in *Maatschappij Voor Fondsenbezit and Another v. Shell Transport and Trading Company and Others*. (1923) 2 K.B. @ 177.

Legal ownership not in dispute.

20

All Philippine Government is doing is to invoke the jurisdiction of the court whereby a point of international law can be established. If successful, ship would have to be discharged from arrest – but that is all. We are not asking court to give possession to the Philippine Government.

Apollinaris does not go so far as to say a person who invokes a mere procedure as an applicant can be treated as a plaintiff when in reality he is a defendant.

p.16

Defendant here is The owners of the ship Philippine Admiral. Telfair are plaintiffs. He must satisfy you he is in the position of a defendant and therefore entitled to invoke 0.23 r.1.

30

Would be different if we were asking for order for possession. Government then might be plaintiff in regard to that matter. Know of no authority that a person who seeks to invoke a procedure to establish a point in international law can come within words "in the position of a plaintiff".

0.23 r.1 is discretionary. Seems extraordinary thing than when Notice of Motion on behalf of Philippine Government was issued as early as 29/10 and hearing has been fixed for seven days commencing on 6/12, that an application should be heard today, 5/12. Suggest that no court

will accede to an application like that the effect of the granting of which would either impose extreme hardship on part of person to provide security or force him to forego relief because he cannot provide security.

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

Is it conceivable court will accede to this 3.30 this p.m. which then requires defendant make arrangements with his bankers – not in Hong Kong, before registrar closes doors for day? On that ground alone this application must be dismissed.

—
No. 26
Judge's Notes of
Pickering
dated 5.12.1973

10 Bizarre. Telfair – resident in Munrovia in Liberia with, as far as we know, no property within the jurisdiction, making application like this.
3. Position of a foreign sovereign.

There are cases of highest authority to support proposition that Her Majesty's courts enforce a rule of international law as a matter affecting comity of nations, to effect that where proceedings brought in Her Majesty's courts implead a foreign sovereign, they must be set aside.

p.17 Order for costs made against foreign sovereign cannot be enforced. That is perhaps why courts do not make such orders. Yet by this application an order is being sought against a foreign sovereign to attend before Registrar, to give security in the very proceedings in which it is the assertion of the foreign sovereign, that any proceedings including any order made on this application, must be set aside.
20

Ysmael ss. Tasik Malaj (1955) A.C. 72 establishes that on a claim by a foreign sovereign of sovereign immunity it is necessary that the government should at first produce evidence that its claim to property within jurisdiction is not illusory or founded on title manifestly defective.

Some cases support view that all that is necessary is for foreign sovereign to assert that it has proprietary interests and that proceedings implead it, for courts to set proceedings aside.

Jowett (in Ysmael) thought foreign sovereign had to do more than that.

30 Learned friend does not suggest title of Philippine Government illusory or manifestly defective. Enough to say Government appears to have a good title as owner and you have to assume naturally that it must therefore succeed in the proceedings commencing tomorrow when writ, arrest, order for appraisalment and your order today, must be set aside.

Is it conceivable court would make order now (less than 24 hours before proceedings) which brushes aside sovereign immunity so that that immunity cannot be asserted without security?

Application is probably a way of trying to stifle the proceedings.

You are not concerned with costs of maintaining the vessel on this summons.

The *Newbattle* 10 P. 33. Clearly distinguishable. Action there was brought by owners are 2nd para. Here foreign sovereign was invoking the jurisdiction of the court but the essence of these proceedings is Philippine Government denies the jurisdiction and only way that denial could be expressed was by Notice of Motion filed.

Costa Rica case 1876 3 Ch. Div. 62.

Again a suit by a foreign government, therefore, of no assistance. Mellish p.69 (last sentence).

.10

Apollinaris – very remote in circumstances here. 31 Ch. D.

The American there was invoking the jurisdiction of the court to make a claim to property and to that extent was in the position of a plaintiff.

Considered in *Visco v. Minter* 1969 P. 82 @ 83.

That is exactly the position here. Unwarranted stretching of language of O.23 to thrust description of plaintiff on the Philippine Government. It is an applicant applying to set aside the writ on grounds of sovereignty and is no more plaintiff than Mrs. Minter was when she raised issue of domicile.

20

P. 85. If counterclaim were in nature of an equitable set-off he will not be treated as a plaintiff. Only if he raises something outside the subject matter of the claim.

Same principles apply. Philippine Government defends assault upon its sovereignty. No more a plaintiff than was Mrs. Minter.

We ask for no order – not even costs.

Ching.

p.19

They have asked for an order orally – i.e. for a stay of order for appraisal and sale. That is a good indication of looking at substance of matters which is not Philippine Government merely saying “You cannot sue me” but “release my vessel” and “you have sued me which is wrong”. Substance is they are making application (1) have themselves declared real defendant; (2) that they should not be sued; (3) that vessel should be released.

30

Not a case of defendant issuing interlocutory proceedings. Questionable if Philippine Government entitled be heard at all.

Not accurate no dispute Philippine Government is registered owner. Reparations Commission is a part of the Philippine Government set up to sue and to be sued.

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

He says Philippine Government have good prima facie case. I dispute that. We have sued the ship. Action in rem. Question is was she run as a public vessel? Enormously difficult for my friend show that and if he cannot, Philippine Government's application must fail.

—
No. 26
Judge's Notes of
Pickering
dated 5.12.1973

You cannot assume, as he asks you to, that they must succeed.

10 He is one step away from the authorities. He is not a defendant but has made an application. Patent dispute as to beneficial ownership which must be resolved before they can have any locus standi.

He suggests res be further diminished.

Not an attempt stifle proceedings tomorrow. They had time to have funds available. If they cannot, it is their own fault.

At 12.40 p.m. adjourned to 5.00 p.m.

p.21 5 p.m.

Order in terms to take effect as from 6/12/73.
Certificate for counsel.

(sd.) W.F. Pickering

20 Certified true copy.
(sd.) David K.Y. Ho
Puisne Judge's Clerk
12 Dec. 1973

*In the Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

IN THE SUPREME COURT OF HONG KONG
ADMIRALTY JURISDICTION
ACTION NO. 106 of 1973

No. 27
Judgment of
Pickering, J.
dated 5.12.1973

BETWEEN TELFAIR SHIPPING CORPORATION *Plaintiff*
and
The Owners of the Ship "PHILIPPINE
ADMIRAL" (PHILIPPINE FLAG) *Defendants*

Coram: Pickering, J. in chambers.
5th December, 1973

J U D G M E N T

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The vessel "The Philippine Admiral" having been arrested, there followed an order for the appraisal and sale of the vessel. The Registrar of Supreme Court was to open tenders for the vessel on the morning of Monday, 5th November when, on Saturday, 3rd November there was heard before me an application by the Government of the Philippines to set aside the writ in this action together with the order for appraisal and sale. The ground of the application was that the vessel was the property of the Government of the Philippines which, as a sovereign state, was not subject to the jurisdiction of the courts of Hong Kong. There being insufficient time on Saturday morning to hear all the interested parties - for similar applications were made in respect of similar actions concerning the same vessel - I adjourned the application and also ordered a stay of the order for appraisal and sale. At the same time I ordered that the costs of the motion be paid by the Government of the Philippines.

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The present application is by the plaintiff in this action and seeks an order that the Philippine Government, being outside the jurisdiction and without assets within the jurisdiction, other than the vessel the res in this action if the Government of the Philippines can prove its title thereto, give security for the costs of the motion. Mr. Charles Ching of counsel appeared for the plaintiffs upon the application and Mr. Henry Litton, Q.C., for the Government of the Philippines.

Mr. Ching pointed out that if the Government of the Philippines was successful in its application to set aside the writ and the order for appraisal and sale, there would be no difficulty as to costs but contended that if that Government was unsuccessful in its application, a further order for costs would presumably be made; the plaintiffs, however, could not execute upon that order both because the Government of the Philippines is a sovereign state and also because it has no assets, other than the disputed res, in the Colony. The Government of the Philippines had shown no indication that it would pay the costs of the motion if unsuccessful and, the plaintiffs being unable to execute upon any order for costs, it was reasonable that security for costs should be provided; there was no question of sovereignty since the

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Government of the Philippines had voluntarily submitted to the jurisdiction of the court by bringing the application to set aside and had so subjected itself to at least the procedural jurisdiction of the court.

In the Supreme Court of Hong Kong Admiralty Jurisdiction

—
No. 27
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10 In support of his contentions Mr. Ching cited the case of the *Newbattle*⁽¹⁾ in which a foreign sovereign, whose ship could not be arrested, had been ordered, as plaintiff in an action for damage by collision, to give security for damages to the counter-claiming defendant. In the case of *Republic of Costa Rica v. Erlanger*⁽²⁾ an order for security for costs had been given in a suit by a foreign government. In *Appollinaris Company v. Wilson*⁽³⁾ a person resident abroad, intervening to enforce an alleged right in the goods the subject matter of the action, was held to stand in the position of a plaintiff and was ordered to give security for costs. The Government of the Philippines had come into the action voluntarily and was in the position of a quasi-plaintiff and there was authority for saying that such a person, even though a sovereign state, could be ordered to give security for costs.

20 It seems to me that these cases assist Mr. Ching and that the distinction between them and the present case, which Mr. Litton sought to draw by reference to the decision in *Visco v. Minter*⁽⁴⁾ is not valid, the Government of the Philippines, in the present case, being very much more in the position of a plaintiff than was Mrs. Minter in that case and being, in my view, for the purposes of O.23 r.1 under which the application for security for costs is made, in the position of a plaintiff.

30 It was Mr. Litton's contention that to order payment for security for costs would, in effect, be to treat the Government of the Philippines as a plaintiff when in fact it was really a defendant. The question as to whether or not the Government is, in fact a defendant, is however one of the matters for determination in the motion to set aside the writ and the order for appraisalment and sale. The writ has been issued against "the owners of the 'Philippine Admiral'" and it is only after the Philippine Government has substantiated its claim to ownership in the motion to set aside the writ and the order for appraisalment and sale, that it can be said to be a defendant. Mr. Litton further urged that the effect of an order for payment of security for costs would be either to impose extreme hardship, by the necessity of providing such security, or alternatively to force the intervener to forego relief because he was unable to provide security. In the case of a sovereign state such as the Government of the Philippines the second alternative does not arise. Nor in my view can it be said that an order for payment of security for costs would involve hardship upon that Government which has voluntarily invoked the assistance of the court but has done so in a manner which suggests "if we win, well and good. If we lose we will not pay costs". True, there has been no specific refusal to pay costs in the event of the motion to set aside being decided against the Government of the Philippines but the probability of such a refusal is inherent in the opposition to this motion and in the fact that Mr. Litton told the court that if successful in his

(1) 1885 P. 33
(2) 1876 3 Ch. 62
(3) 1886 31 Ch. 632
(4) 1969 P. 82

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opposition to this motion for payment of security for costs, he would not ask for the costs of the motion. The attitude of the Philippine Government appears to be that while it invokes the assistance of the court it wishes to keep the court at arm's length to the extent even of not seeking an order for costs which, if successful, it could legitimately expect to be made in its favour. The corollary of that, coupled with the opposition to this motion, suggests an intention not to pay costs if costs are ordered against the Philippine Government. It does not seem to me that that Government can approbate and reprobate, that is it cannot say "I seek the assistance of your court to set aside this writ and the order for appraisal and sale and am prepared to take the benefit of any such order but if that order be refused me, I will not abide by any order to pay the costs to those, whose title I have chosen unsuccessfully and at great expense to them, to impugn". I say "at great expense to them" because it is as a result of the intervention of the Government of the Philippines that the ship has still not been sold and is subject to continuing maintenance expenses in the hands of the bailiff. These expenses will ultimately be to the prejudice of those entitled to the proceeds of sale of the vessel and are, of course, separate and distinct from the legal expenses being incurred as a result of the intervention of the Government of the Philippines.

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I am assured that it is not the intention of the Government of the Philippines to hold the court at arm's length but that its opposition to providing security for costs is merely a facet of its assertion of sovereign immunity. Whilst I accept that assurance, the practical effect remains the same. The Government of the Philippines though seeking the assistance of the court, gives every indication that, in the event, it would decline to be bound by any order made by the court for costs against it. The motion to set aside the writ and the order for appraisal and sale will be stayed pending the giving of security for the costs of the motion to the satisfaction of the Registrar. To avoid ambiguity I wish to make it clear that the phrase "costs of the motion" is not to be construed as including the bailiff's charges and expenses in relation to the maintenance of the vessel. The plaintiff will have the costs of this application and there will be a certificate for counsel.

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Charles Ching (Johnson, Stokes & Master) for plaintiff
Henry Litton, Q.C., (Peter Mark & Co.) for Government of Philippines.

ORDER

**BEFORE THE HONOURABLE MR. JUSTICE
PICKERING IN CHAMBERS**

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No. 28
Order of
Pickering, J.
dated 5.12.1973

10 Upon the Application of the Plaintiff and Upon hearing Counsel for the Plaintiff and Counsel for the Government of Republic of the Philippines IT IS ORDERED that the Government of the Republic of the Philippines which has intervened in these proceedings do on or before 6th day of December 1973 give security for the Plaintiff's costs to the satisfaction of one of the Registrars of the Supreme Court of Hong Kong and that in the meantime all proceedings herein other than the proceedings relating to the giving of such security be stayed and that the costs of this application be paid by the said Government of the Republic of the Philippines to the Plaintiff in any event. This Order shall take effect as from the 6th day of December, 1973. Certificate for Counsel.

Dated the 5th day of December, 1973.

(*sd.*) S.H. MAYO (L.S.)
Acting Deputy Registrar

ORDER

BEFORE THE HONOURABLE MR. JUSTICE
BRIGGS, CHIEF JUSTICE IN CHAMBERS

No. 29
Order of
Briggs, C.J.
dated 17.12.1973

Upon hearing Counsel for the Plaintiffs and Counsel for the Liberation Steamship Company Inc. and Counsel for the Government of the Republic of the Philippines IT IS ORDERED that the writ of summons and all subsequent proceedings herein be set aside with costs to be paid equally by the parties to these proceedings to the Government of the Republic of the Philippines, such costs to be taxed on the ground that the ship "Philippine Admiral" formerly m.v. "Dagohoy" is the property of the Government of the Republic of the Philippines, a recognised foreign independant state AND IT IS FURTHER ORDERED that this order is to take effect as if it was made on the 14th day of December, 1973. In the event of any appeals being lodged against the decision of the Court IT IS ORDERED BY CONSENT that all such appeals, if any, be heard together and that only one set of documents for all such appeals be used as record for the Appellate Court AND IT IS FURTHER ORDERED that if any appeal is lodged the order for stay made on the 14th day of December, 1973 is varied and the stay will be for a period of two months from the date of the lodgement of the appeal (if any) or until further order AND IT IS FURTHER ORDERED that the Notice of Motion for appeal (if any) be filed as expeditiously as possible and that early dates be fixed for the hearing of the appeal. Certificate for counsel.

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Dated the 17th day of December, 1973.

(sd.) S.H. MAYO (L.S.)
Acting Deputy Registrar

In the Supreme Court of Hong Kong

Appellate Jurisdiction

Civil Appeal No. 53 of 1973

(on Appeal from Admiralty Jurisdiction

Folio Nos. 103, 106 and 139 of 1973)

**IN THE SUPREME COURT OF HONG KONG
APPELLATE JURISDICTION**

(On Appeal from Admiralty Jurisdiction 1973, Nos.103, 106 and 139)

No. 30
Notice of
Appeal
dated 27.12.1973

**Admiralty action in rem against the ship
"PHILIPPINE ADMIRAL"**

10	BETWEEN	WALLEM SHIPPING (HONG KONG) LTD.	(Plaintiff in Folios 103 and 139 of 1973)
10		TELFAIR SHIPPING CORPORATION	(Plaintiff in Folio 106 of 1973)
		and	
		THE OWNERS OF THE SHIP "PHILIPPINE ADMIRAL" (Philippine Flag)	Respondents (Defendants)

NOTICE OF APPEAL

20 TAKE NOTICE that the Full Court will be moved on Monday the 25th day of February 1974 at 10.00 o'clock in the forenoon or so soon as Counsel can be heard by Counsel on behalf of the appellants (Plaintiffs) for leave to appeal from part of the Judgment or Order of the Honourable Chief Justice Mr. Briggs made on 14th December 1973 in so far as the Plaintiffs in A. J. folios numbered 103 and 139 of 1973 are concerned and on 17th December 1973 in so far as the Plaintiff in A. J. Folio number 106 of 1973 are concerned whereby he pronounced that the Government of the Republic of the Philippines was entitled to the relief sought in an application made on behalf of that Government by way of Notice of Motion dated 29th day of October 1973 and condemned the Plaintiffs in the costs of and incidental to the motion, and FOR AN ORDER that the said Judgment may be reversed or varied and that the Government of the Republic of the Philippines may be ordered to pay the costs of this appeal and the costs of and incidental to their own application by way of Notice of Motion or for such other order as the Court may seem just.

30

AND FURTHER TAKE NOTICE that the grounds of this appeal are:-

1. That the learned Chief Justice was wrong in law in holding that being the registered owner of a vessel and having an immediate right to possession thereof were the only conditions necessary to found a claim of sovereign immunity.

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—
No. 30
Notice of
Appeal
dated 27.12.1973

2. That the learned Chief Justice was wrong in law in holding that in so far as a claim of sovereign immunity is concerned the law as to ships does not differ from other property.

3. That the learned Chief Justice was wrong in holding that in seeking and obtaining an injunction prohibiting Liberation Steamship Co. Inc., and/or its agents, or persons acting on its behalf from performing any act tending to obstruct, delay or interfere with the release of the M.S. Philippine Admiral by this Honourable Court The Government of the Republic of the Philippines was not in contempt of this Honourable Court wherefor he should not have heard their application herein.

AND FURTHER TAKE NOTICE that if the Full Court shall grant such leave to appeal as aforesaid the Court will immediately proceed to hear such appeal. 10

Dated the 27th day of December, 1973.

(*sd.*) JOHNSON STOKES & MASTER
Solicitors for the Plaintiffs (Appellants)

RESPONDENTS NOTICE

TAKE NOTICE that the Respondent, the Government of the Republic of the Philippines, intends upon the hearing of the Appeal under the Appellants Notice of Appeal dated and filed herein on the 27th day of December 1973 from the Orders of the Honourable the Chief Justice, Mr. Justice Briggs made on 14 December 1973 in Folios 94, 103, 105 and 139 and on 17 December 1973 in Folio 106 respectively to contend that the said Orders respectively should be affirmed on grounds additional to those relied on by the Court below namely:-

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No. 31
Respondent's
Notice
dated 17.1.1974

- 10 1. That once the Court had found that the Philippine Government's claim to ownership of the vessel was neither illusory nor manifestly defective, this was sufficient to found the Respondents claim to Sovereign Immunity in respect of the said vessel and that it was not then necessary for the Court to further consider whether the Respondent was also entitled to immediate possession of the vessel.
2. That having regard to the terms upon which Liberation Steamship Company Inc. was, as End-user, utilizing the vessel the property of the Philippine Government, the learned Judge should have held that the vessel was being utilized either partly or wholly for a public purpose or for the public benefit of the people of the Philippines or otherwise in accordance with public policy as embodied in the Reparations Law of the Republic of the Philippines.
- 20 3. That having regard to all the circumstances of the case the learned Judge should have held that the vessel was not being utilized purely for the private trading purposes of the Liberation Steamship Company Inc.

Dated the 17th day of January, 1974.

(*sd.*) Richard Mills-Owens
Counsel for the Respondents.

To:

30 Messrs. Brutton & Stewart,
Solicitors for Liberation Steamship Company Inc.
(On Appeal from Admiralty Jurisdiction Folios 94, 103, 105, 106 & 139 of 1973)
Hong Kong.

Messrs. Johnson, Stokes & Master,
Solicitors for: Wallem Shipping (Hong Kong) Limited
(Plaintiff in Folios 103 and 139 of 1973)
Telfair Shipping Corporation
(Plaintiff in Folio 106 of 1973).

40 Hong Kong.

SUPPLEMENTARY NOTICE OF ADDITIONAL GROUNDS OF APPEAL

No. 32
Supplementary
Notice of
Additional Grounds
of Appeal
dated 19.2.1974

TAKE NOTICE that the hearing of this appeal the Plaintiffs will rely upon the following further grounds:

- 1(a) That the learned Chief Justice was wrong in failing to hold that the claim for Sovereign Community must fail unless the said vessel were being used for public purposes.
- 1(b) That, having held that the said vessel was being used for the private purposes of the End-user, the learned Chief Justice was wrong in upholding the claim for Sovereign Community.

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AND FURTHER TAKE NOTICE that if the Full Court shall grant such leave to appeal as aforesaid the Court will immediately proceed to hear such appeal.

Dated the 19th day of February 1974.

(sd.) Johnson, Stokes & Master
Solicitors for the Plaintiffs
(Appellants)

SUPPLEMENTARY NOTICE OF ADDITIONAL GROUNDS OF APPEAL

TAKE NOTICE that the hearing of this appeal the Plaintiffs will rely upon the following further grounds:

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No. 33
Supplementary
Notice of
Additional Grounds
of Appeal
dated 25.2.1974

1. That the application was not supported by the necessary evidence namely a claim for immunity by the Sovereign State itself.
2. That the learned Chief Justice was wrong in holding that the applicant had proved or produced sufficient evidence of any alleged immediate right to possession.
- 10 3. That the learned Chief Justice should have held that the right to Sovereign immunity, if it existed, was waived by the applicants:-
 - (a) By allowing Liberation Steamship Company Limited to operate and trade the vessel for its own account.
 - (b) By allowing the various Admiralty actions in rem and the arrest of the vessel to proceed after the existence thereof was know to the applicant.
4. In amplification and further clarification of ground 1 of the Grounds of Appeal set forth in the Notice of Appeal herein:
 - 20 (a) That the learned Chief Justice was wrong in failing to hold that the claim for Sovereign Immunity must fail unless the said vessel were being used for public purposes.
 - (b) That, having held that the said vessel was being used for the private purposes of the End-user, the learned Chief Justice was wrong in upholding the claim for Sovereign Immunity.

AND FURTHER TAKE NOTICE that if the Full Court shall grant such leave to appeal as aforesaid the Court will immediately proceed to hear such appeal.

Dated the 25th day of February, 1974.

(*sd.*) JOHNSON, STOKES & MASTER
Solicitors for the Plaintiffs
(Appellants)

AFFIDAVIT OF STRUAN ROBERTSON

No. 34
Affidavit of
Struan Robertson
dated 1.3.1974

I, STRUAN ROBERTSON, Solicitor of Flat 3, 30 Lugard Road, The Peak, Hong Kong make oath and say as follows:-

1. I visited the vessel M.V. "Philippine Admiral" (hereinafter called "the Vessel") at about 6.30 p.m. on the 28th February 1974 by launch with the object of seeing for myself whether there were plaques on each side of the bow with the words "Japanese Reparations" engraved thereon or any other statement to that effect on any other part of the Vessel.

2. I caused the launch in which I was travelling to circle the Vessel passing close to the bows and stern and to each side. I then boarded the Vessel and I inspected the upper deck, the wheelhouse and bridge platform the chartroom the offices accomodation and as much as possible of the accessible machinery space.

3. I could find no sign of the words "Japanese Reparations" whether on plaque or otherwise on the bows or any other part of the hull of the Vessel. Nor did I see any sign of a plaque from which such words might have been erased.

4. I verily believe that there is nothing apparent on a careful visual inspection of the above parts of the Vessel which suggests that the Vessel is or has been described as "Japanese Reparation" or that the Government of the Philippines or the Reparations Commission has or has had any interest therein by way of ownership or otherwise.

5. The only signs of ownership which I could see were a large "L" on a white background both on the bows and on the funnel. This is apparently the house Flag of the Liberation Steamship Co. Inc. In the charthouse there was a notice regarding the ships standing orders. This was signed on behalf of liberation. I asked a member of the crew who the owners were and he replied Mr. Tomas Cloma.

6. I also carried out a close inspection of the upper deck and the machinery space for any sign of the words "Reparations Goods". No such words were visible on any part of the main engine or on the front of the boiler or elsewhere in the machinery space that I could see. There was no sign of them on the capston and windlass forward and aft. They did appear in letters about 1½ inches high on the steam cargo winches themselves. There was no indication so far as I could see that these words were intended to apply to the vessel rather than to the particular goods.

SWORN at the Courts of Justice,)
Victoria Hong Kong this 1st day)
of March, 1974.)

(sd.) STRUAN ROBERTSON

Before me,

A Commissioner for Oaths
Hong Kong

This Affidavit is filed on behalf of the Appellant

IN THE SUPREME COURT OF HONG KONG
(APPELLATE JURISDICTION)
CIVIL APPEAL NO. 53 OF 1973
(On appeal from A.J. 103, 106 and 139/73)

*In the Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

—
No. 35
Judgment of
the Full Court
dated 26.4.1974

BETWEEN WALLEM SHIPPING (HONG KONG) LTD. *Appellants*
 TELFAIR SHIPPING CORPORATION.
 and
 THE OWNERS OF THE SHIP "PHILIPPINE *Respondents*
 ADMIRAL" (PHILIPPINE FLAG).

10 Coram: Huggins, McMullin and Leonard, JJ.

J U D G M E N T

Huggins, J.:

20 This is an appeal by the Plaintiffs in three Admiralty Actions against orders made by the Chief Justice setting aside the writs of summons and all subsequent proceedings on the ground that The Philippine Admiral, the vessel which is the subject matter of the actions, was the property of the Government of the Republic of the Philippines, a recognised foreign independent state. The appeals have come before this Court for hearing together pursuant to an order by consent in the court below. We have been content to hear them together, although it is question-
20 able whether a consent order by a court of first instance can bind this Court. The issue on the appeals is whether immunity ought to have been granted.

30 For a proper understanding of the case it is necessary to recount how the vessel came to be built. In 1956 a treaty was concluded between the Republic of the Philippines of the one part and Japan of the other part whereby Japan agreed to make available a total sum of US\$550 million by way of reparations for damage done to Filipino property during the Second World War. Of this sum \$500 million was to be provided in the form of such capital goods or services as might be requested by the Government of the Philippine Republic and agreed between the two Governments. To carry out the detailed arrangements a Filipino mission was set
30 up with authority inter alia to conclude contracts with Japanese nationals for the supply of goods, payment for which would then be made by the Japanese Government. Among the types of goods contemplated by the treaty were ocean-going ships. It was agreed that the products of Japan supplied under the treaty should not be re-exported from the territories of the Republic of the Philippines.

The utilisation of goods acquired under the provisions of this treaty was governed in the Philippines by Republic Act 1789. This Act declared the policy of the Government of the Philippines to be that anything acquired under the treaty

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should be utilised “in such manner as shall assure the maximum possible economic benefit to the Philippine people and in as equitable and widespread a manner as possible”. In particular the policy as to capital goods was that they should be made available only to “approved Government projects as well as to Filipino citizens and entities wholly owned by Filipino citizens”. It was, however, expressly provided that the Government should not utilise reparations goods “for the purpose of entering into competition with private industries, where such industries have shown their capacity and readiness to serve the public fairly and adequately”: on the contrary, in general preference was to be given to “private productive projects” after the first year and Government projects were to be given preference

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“only if they concern electrification, educational materials, equipment and machineries, cottage industries, fire-fighting-equipment, telecommunications or rail road or would foster the growth of private productive capacity, or are needed in the performance of essential public services, or involve productive projects which private enterprises, is (sic) not yet capable or desirous of developing but which are urgently necessary in the interest of over-all national economic growth and only when there are appropriations providing for their procurement already embodied in existing law”.

It was further provided that shipping should be one of the industries given “top priority”. Private persons seeking to share in the goods acquired under the treaty were required to make application, but in no case could the aggregate total of reparations goods and services granted be more than \$1½ million “except when a greater amount is necessary for the realization of any project certified by the President of the Philippines after consultation with the National Economic Council to be vital to the economic development of the country”. The plan was that reparations goods destined for private persons (described as “end-users”) should be sold to such persons by the Philippines Government – often on favourable terms as to credit or otherwise – and that the proceeds of sale should be placed in “Special Economic Development Fund”, which was to be available to the Development Bank of the Philippines and the Philippine National Bank “for loans for economic and industrial projects as well as for construction, reconstruction, repair and/or improvement of public school buildings”. In addition to the Mission in Japan there was to be a Reparations Commission (hereinafter called “the Commission”) charged with administering the acquisition, utilisation and distribution of the reparations goods and services. The Commission was declared to be able to contract and to sue and be sued in the Philippine courts and it was this Commission which was to be the vendor in all contracts of sale to end-users, middle men being expressly excluded. The terms of sale to private parties might include a provision for payment of additional interest where instalments became in arrears and every such sale required to contain both a provision requiring a performance bond and, by s.12, a provision

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“that no capital goods thus acquired shall be resold, leased or in any other manner disposed of except to Filipino citizens or to entities wholly owned by Filipino citizens who shall continue the utilization thereof in the projects for which the goods were originally intended or in similar projects included in the economic

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development program or a similar priority, subject, however, to the further condition that groups, associations and corporations which are recipient of such goods shall not permit any subsequent change in ownership or control as shall at any time thereafter change the control on ownership wholly held therein by Filipino citizens. It shall further contain a provision that any transfer of ownership, whether by virtue of private contract or through court proceedings; shall be to Filipino citizens or entities wholly owned by Filipino citizens who shall begin utilizing them in such projects as the National Economic Council shall determine within one year from notice of the Council's decision."

(We shall see that at least one contract entered into by the Commission did not comply with these requirements). The Commission had power also to make "rules and regulations to be followed in administering the procurement, distribution and utilization of reparations" and was required to "conduct field examinations and evaluate actual utilization of reparations goods and services obtained".

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It would appear that the Liberation Steamship Company Incorporated (hereinafter called "the Company"), which in the first instance entered appearances in each of the three actions as owners of The Philippine Admiral, made a successful application to the Reparations Commission for the grant of an ocean-going ship, for on a date in 1959 the Reparations Mission in Japan entered into a contract on behalf of the Government of the Republic of the Philippines with the Toyo Trading Company Limited for the construction of such a vessel costing \$3,434,288.89 and that contract declared that "the vessel subject matter of this contract is being procured under the Reparations Agreement for the Liberation Steamship Company of Manila, Philippines". The contract itself was recited to be "for the supply of the products of Japan and the services of the Japanese people in accordance with the Reparations Agreement between the Republic of the Philippines and Japan". Payment in accordance with terms set out in an "Annex" to the contract was to be made by the Government of the Philippines to the ship builder and was to be effected by the Fuji Bank Limited "upon due authorization by the Philippine Reparations Committee by means of an authorization to pay". Presumably it had been further agreed between the Governments of the Philippines and of Japan that all or part of the reparations would be paid for by the provision of a credit with the Fuji Bank Limited. Also annexed to the contract was a "Schedule of Instalment Payments", which provided for a first instalment of 10% of the price and ten "equal" yearly instalments thereafter, but which then proceeded to set out particulars of the yearly instalments which showed them not to be equal.

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There was a "Contract of Conditional Purchase and Sale of Reparations Goods" between the Reparations Committee and the Liberation Steamship Company Incorporated in respect of the vessel ordered from the Toyo Trading Company Limited. The vessel was then denominated The Dagohoy but she was later renamed The Philippine Admiral. The contract was concluded in 1960 but the writing incorporating its terms was, it would seem, never signed by the Reparations Commission. However, it is common ground that a binding contract in the terms of the writing came into existence. In short the Company agreed to pay by instalments the price which the Reparations Committee had undertaken to pay to the ship

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Court of
Hong Kong
Appellate
Jurisdiction*

—
No. 35
Judgment of
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builder and the Commission did “conditionally cede, transfer and convey unto the [Company] the utilization of the vessel above-described” subject to the terms and conditions thereafter set out. The contract was declared to be “subject to the provisions of R[epublic] A[ct] 1789 as amended”. It was expressly stated that the Commission “retains title to and ownership of the above-described vessel until the same is fully paid for”. The Company was to take delivery of the ship in Japan and put the necessary officers and crew aboard before delivery “in order to operate and utilize the same in accordance with Philippine laws”. The contract not only included a provision for payment of additional interest upon default in payment of the agreed instalments but also required the Company to maintain a performance bond in a sum equivalent to 10% of the price “for as long as the [Company] has interest in said vessel” to ensure compliance with “each and every, all and singular, its obligations under this contract”. Finally the Company agreed to examination of its records by the Commission “until the [Company] has fully paid its obligations to the [Commission]”. There were annexed to the contract “terms and conditions” which were obviously in common form for inclusion in all contracts of this nature entered into by the Commission. They were in part repetitive of the main text of the contract. Thus we find it stated that the title to and ownership of the reparations goods forming the subject matter of the contract should remain in the Commission until they had been fully paid for, but it was added that “upon the full payment of the purchase price this conditional deed of sale shall become absolute, subject only to the limitations established by the Republic Act No. 1789 with respect to inspection, transfer and utilization of said reparations goods”. The Company agreed “to utilize the reparations goods for the purpose of which (sic) they are intended within a period of 24 months after complete delivery therein, and to continue utilizing such capital goods as long as the same are serviceable after having started operation”, an annual fine being provided for, in addition to confiscation and forfeiture, in case of breach of this covenant. Para. 3 of the form was a condition generally conforming with the first part of the provisions of para. 2 of s.12 of the Act save that it limited the prohibition against disposition of the goods to a period of five years from the date of acquisition. However, para.6, which, from its wording and from the absence of any other comparable term in the contract, would appear to have been intended to comply with the latter part of para. 2 of s.12, referred to “any subsequent change in ownership or control of the goods” whereas the section obviously intended to prevent any subsequent change in ownership or control of “groups, associations or corporations which are recipient of such goods”. The insertion of the words “of the goods” in the contract was clearly per incuriam. However, since the contract was expressed to be subject to the provisions of the Act it would probably be construed both without those words and without the five-year limitation written into para. 3. A difficulty which may be of greater importance to the present case arises from an apparent inconsistency between paras. 11 and 13 of the form. Para. 11 provides that if the Company defaults in any way

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“then this Deed of Conditional Sale shall automatically and without any further formality become ineffective and declared rescinded, and all sums so paid by the Conditional Vendee before rescission by reason thereof shall be considered as rentals and the Conditional Vendor and its agents shall then and there be free to

enter into the premises where such goods are found, take possession of the same and dispose them according to law.”

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10 Para. 13, however, refers to a possibility that “the [Commission] cancels or rescinds this contract in accordance with s.11” despite the fact that s.11 refers to an “automatic” rescission rather than to cancellation or rescission by the Commission. Para. 12 also uses the words “should the [Commission] rescind for any of the reasons stated in the preceding paragraph”, thus suggesting that rescission is not automatic but dependent upon a decision of the Commission. This is material because the Commission alleges that the Company is in default and claims to have been entitled to possession at all material times. However, as we shall see, its decision to rescind came at a comparatively late stage in these proceedings.

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20 There is a dispute between the Commission and the Company whether this original contract is still in force. It has been alleged by the Company that various events have had the effect of varying the original contract. First it says that between 1960 and 1963 there was a consensual variation of some of the terms. The Company has no copy of the new terms and the Commission denies that any such variation took place. There was a fire in some of the Commission’s offices in 1968 and the Company suggests that the new agreement which it executed was destroyed in that fire. The relevance of the matter to the present case is that the variation is alleged to have related to the terms of payment and might affect the question whether the Company is in default. However, in the event I think it will not be necessary to do more than merely record the existence of this dispute.

30 In 1963 the Company instituted proceedings against the Commission in the Philippines, these proceedings arising out of the chartering of the vessel by the Company to an Indian corporation. The Commission had alleged that by entering into this charterparty the Company was in breach of the Conditional Contract of Purchase and Sale and that the Philippine Government had taken diplomatic steps to prevent its fulfilment. Neither the petition nor the subsequent pleadings identified with precision the contract on which the parties relied and to this extent the pleadings were ambiguous. The Company contended that the charterparty was a Baltimore Charterparty which did not contravene the terms of its contract with the Commission, and the Company sought an injunction and other reliefs. The Commission counterclaimed for delivery of the vessel and liquidated damages for default in payment of the first instalment of the price under the Contract of Conditional Sale and Purchase. The merits of the action and counterclaim were never decided because a compromise was reached. On 15th February 1964 a consent order was made, the material part of which was:

40 “Petitioner in person, thru counsel, also manifested that he would be willing to make payments in the amount of Thirty Thousand (P30,000.00) Pesos per month in amortization of the said vessel and in satisfaction of the counterclaim, in view of which the respondent. The Reparations Commission, thru counsel, gave its conformity to the dismissal of the counterclaim.
IN VIEW OF THE FOREGOING, let this case (petition as well as counterclaim) be, as it is hereby, dismissed, with prejudice”

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It is, perhaps, not surprising that there was dissension as to the effect of this order. A motion for clarification resulted in a further order dated 7th March 1964 in the following terms:

“The Motion for Clarification is GRANTED.

The Order is clarified to the effect that petitioners shall pay the sum of thirty-thousand pesos (₱30,000.00) monthly to respondent, Reparations Commission, the first payment to begin February, 1964, and monthly thereafter on the 15th of each month.
SO ORDERED.”

Unfortunately the dissension is not confined to the dates of payment. The Company has contended that the ₱30,000.00 per month, being “in amortization of the vessel” and “in satisfaction of the counterclaim”, replaced entirely its liability under the Contract of Conditional Purchase and Sale. This would involve an extension of the period of credit to approximately twenty years. The Commission maintains that the monthly instalments of thirty thousand pesos related only to the outstanding first instalment and that the Company’s liability to pay the ten yearly instalments was unaffected. Even if the Company’s contention be correct there is evidence that the Company is seriously in default, so once again it is not necessary to enlarge upon the dispute.

The vessel was operated by the Company in the course of its business until some time in 1972. On 21st December of that year she was chartered by the Telfair Shipping Corporation (hereinafter called “Telfair”), the Plaintiffs in Folio No.106 of 1973. It appears from the Defence that at that time the vessel was under repair in Hong Kong, that when the repairs were completed the ship-yard’s account remained unpaid and that there was a dispute between the Company and Telfair as to which of them was liable. Telfair’s claim was in rem for damages for breach of the charterparty. The other actions (Folio No. 103 of 1973 and Folio No. 139 of 1973) are actions in rem in respect of necessary disbursements on behalf of the vessel during her stay in Hong Kong. The first of these actions was started on 23rd May 1973. In each case, the Company, as “owners” of the vessel, entered an appearance. The vessel was arrested at the instance of Telfair on 4th June 1973 and on 12th July 1973 upon the application of the Chief Bailiff of the Supreme Court an order was made to preserve the vessel. On 8th October 1973, on the application of the Registrar, Pickering, J. made an order for appraisalment and sale.

At this point the Commission appears to have become anxious that its interests were in danger. On 10th October 1973 it passed a resolution in the following terms:

“RESOLVED, in view of the proposed sale in Hongkong, allegedly in pursuance of an order of the Hongkong Supreme Court, of the reparations vessel, M/S ‘Philippine Admiral’ (formerly, M/S ‘Dagohoy’) procured for and delivered to the Liberation Steamship Co., Inc. as an end-user of the same and which proposed sale was published in the Manila newspaper, ‘Bulletin Today’ dated October 10, 1973 and considering that the aforesaid vessel remains the property of the Philippine Government, represented by the Reparations Commission, the same not having been fully paid for;

10 considering further, that the published proposed sale could have been the result of the neglect and/or failure of the said enduser to operate the vessel as a good father of a family and in a bonafide manner within the framework of pertinent laws and regulations; considering also, that the said enduser has been delinquent of the payment of its obligations to the Commission and which delinquency has aggregated in the amount of ₱5,322,120.04 as of October 9, 1973; considering finally, that the said enduser, has continuously failed to make even a reply to the letters and telegrams of the Commission inquiring about the status of the case against it in Hongkong and/or steps it had taken to bring the vessel to the Philippines, (1) to direct the immediate repossession of said vessel; and (2) to direct and authorize the Legal Department, in coordination with the DBP-Repacom Action Group, to implement this resolution and to take such other steps and/or actions as may be necessary and warranted for the protection of the best interest of the Government”.

20 On 29th October 1973 solicitors acting for the Government of the Republic of the Philippines filed notice of motion in the Telfair action (Folio No.106) to apply for an order “that writ of summons, the order for appraisal and sale dated 8th October 1973 and all subsequent proceedings herein be set aside”. It would seem, although the relevant papers are not before this Court, that on or about the same date (29th October) applications were filed by the same solicitors in four other actions (including Folio No.103 and Folio No.139 with which we are concerned) asking that the writs of summons and all subsequent proceedings be set aside. In the mean time, on 3rd November 1973, upon the complaint of the Commission in Action No. 92402 in the Court of First Instance of Manila a writ of preliminary prohibitory injunction was issued against the Company to the effect that

30 “until further orders, you, the said LIBERATION STEAMSHIP CO. INC., and all your attorneys, representatives, agents, and any other person assisting you, refrain from performing any act tending to obstruct, delay or interfere with the release of the M/S ‘Philippine Admiral’ by the Hong Kong Supreme Court.”

On the same day an order was made in that action for the seizure of the vessel if and when she reached Philippine territorial jurisdiction. As a result of the injunction the Company proceeded to amend its appearances in the three actions in Hong Kong to show that it claimed to be “a beneficial owner” of the vessel.

On the very last day of the hearing of the appeal further evidence was adduced but I will summarise that later in this judgment.

40 The hearing of the application by the Philippine Government in the Telfair action (Folio No.106) was delayed, but on 14th December 1973 all the other applications were decided by the Chief Justice in a single judgment in favour of the Applicant. When the Telfair action came before him three days later he made a similar order and, we are told, indicated that he did so for the reasons he had given in the earlier judgment.

Before turning to consider this judgment I should mention that the Company gave notice of motion on appeal against it as an interested party. However, before the hearing the Company's solicitors applied for its appeal to be dismissed and we are given to understand that this course was taken for fear that the prosecution of the appeal might be held by the Philippine court to be a breach of the injunction dated 3rd November 1973.

The learned Chief Justice was satisfied on the affidavits that the Applicant was an independent sovereign state recognised by Her Majesty's Imperial Government. He further found that the Commission was the registered owner of The Philippine Admiral and said it was not in dispute that the Commission was an organ of the Government of the Philippines. He said it was admitted by the Company that on the day before the resolution of the Commission to repossess the vessel the Company was indebted to the Commission in a sum of over five million pesos. Such an admission was, in truth, contained in a letter dated 11th October. However, when the judge said that by that date the whole of the purchase price should have been paid, that was open to question, for this was one of the matters in dispute between the Company and the Commission. It was, of course, a matter upon which the courts of this Colony would not adjudge, for the Government's claim was not obviously without foundation. Again, the learned Chief Justice thought it could not be disputed that the Commission had at the material time a right to possess the vessel, but, if it be relevant, this is disputed. He appears to have taken the view that the Company was clearly in default and, if I understand him right, that the Commission's right to immediate possession stemmed from the Resolution of 10th October 1973. He therefore must have been of opinion that "the material time" was not some date prior to 10th October. He held that no special rules applied to ships and that the vessel was not being used "for public purposes" but that it was enough to sustain the claim to immunity that the Applicant was the registered owner and had an immediate right to possession at the date of the application to set aside.

On the appeal a question was raised by counsel for the Respondent as to the locus standi of counsel for the Applicant, doubt being expressed whether a claim to immunity (at least one not brought before the court by Her Majesty's Attorney General) ought not to be supported by evidence from an accredited representative of the sovereign stating that he has proper instructions to make such a claim. We were told that Mr. Rodolfo Lamayo Diaz, who swore an affidavit in support of the application, was in fact the senior consular officer of the Philippines in the Colony at the time of the application and upon Mr. Litton's giving an assurance that he was duly instructed to appear and make the present claim on behalf of the Government of the Republic of the Philippines and not merely on behalf of the Commission the matter was not pursued. I say no more about it.

I shall deal with the case under the following headings:

- (1) Are there any special rules applicable to ships?
- (2) What interest (if any) must be shown to support a claim to immunity?
- (3) What interest has the Government shown?
- (4) Is it necessary, where the claim is made in an action in rem, to show

- that the vessel is destined for public use?
(5) Is the vessel destined for public use?
(6) Has there been a waiver of immunity?

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Although I have separated these questions for the sake of clarity, they inevitably overlap to some extent.

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(1) Are there any special rules applicable to ships?

10 The learned Chief Justice inferred that the law of immunity in so far as it relates to actions involving ships does not differ from that relating to actions involving other forms of property. Mr. Litton supports this view and he cites from the speech of Earl Jowitt in *United States of America and Republic of France v. Dollfus Mieg et Cie. and Bank of England*⁽¹⁾:

“there is, I think, no special doctrine applying to ships which does not equally apply to gold bars”.

20 Mr. Evans does not suggest that there is any difference arising directly from the nature of the property between the principles applicable in the case of a ship and those applicable in the case of other goods, but he says there may be a difference arising from the fact that in English law ships are the only class of personal property which can be the subject of an action in rem. However, he concedes that it is no longer open to him to contend that an action in rem against a vessel does not (either indirectly or, more probably having regard to the judgment in *The Cristina*⁽²⁾, directly) implead her owners, but his case is that the courts have never laid down that immunity is absolute in the sense that it must be granted wherever an independent sovereign is shown to have been impleaded. He goes further and submits that there is overwhelming authority to the contrary. He relies in particular on the advice of the Privy Council in *Sultan of Johore v. Abubakar Tunku Aris Bendahar*⁽³⁾:

30 “Their Lordships do not consider that there has been finally established in England (from whose rules the rules to be applied in the court at Singapore would not differ) any absolute rule that a foreign independent sovereign cannot be impleaded in our courts in any circumstances”.

On the following page of the report it is pointed out that the majority of the House of Lords in *The Cristina* had reserved the case of a sovereign's ship engaged in ordinary commerce. While disavowing the alleged absolute and universal rule to the effect that, once the circumstance of a foreign sovereign being impleaded against his will can be established, a proceeding necessarily becomes defective by virtue of that circumstance alone, the Board emphasised that this did nothing to throw doubt on the existence of the general principle. We are therefore concerned to decide whether

(1) 1952 A.C. 582, 604
(2) 1938 A.C. 485
(3) 1952 A.C. 318, 343

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the present case falls within an exception to the general principle. It must be conceded that the certainty of a rule against impleading a sovereign in any circumstances would have much to commend it and this has led some to question the desirability of allowing any exceptions: see, for example, O'Connell's International Law (2nd Ed.) Vol. 2, 845. Moreover, to permit a sovereign to be impleaded "directly" as the owner of a ship in an action in rem might well be regarded as an equally serious affront to his dignity as to permit an action against him in his own name for the very same debt, although, of course, an action in rem does not involve any suggestion of extra-territorial jurisdiction. It may well be that one should not seek a logical basis for allowing an exception to the general principle or be deterred by the resulting introduction of a complication which could be avoided by adopting an absolute and universal rule, because international practice is probably no more logical or free from quirks than is the behaviour of individuals. Where a convenient way can be found of doing justice to an individual without what could reasonably be regarded by a foreign sovereign as a provocative act the law of nations is likely to take that way, and the Common Law will follow. In *The Charkieh*⁽⁴⁾ Sir Robert Phillimore said at p.93:

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"I think, therefore, that I am not prevented from holding, what it appears to me the justice of the case would otherwise require, that proceedings of this kind, in rem, may in some cases at least be instituted without any violation of international law, though the owner of the res be in the category of persons privileged from personal suit".

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I do not think that the learned judge was suggesting the existence of any significant distinction between the institution of proceedings and the continuance of those proceedings to judgment. However, it must be borne in mind that much of what he said in that case, including this passage, was obiter. Nevertheless it is interesting to note from p.91 of his judgment that this eminent judge thought an action in rem might be free from the objections fatal to other modes of procedure where immunity was claimed and he cited cases which tended to support the view that property of all kinds might in some circumstances be proceeded against without infringing the principles upon which sovereign or diplomatic immunity was based. The existence of a material distinction between actions in rem and actions in personam can also be argued from the well-known passage in the speech of Lord Atkin in *The Cristina*⁽²⁾:

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"The foundation for the application to set aside the writ and arrest of the ship is to be found in two propositions of international law engrafted into our domestic law which seem to me to be well established and to be beyond dispute. The first is that the courts of a country will not implead a foreign sovereign, that is, they will not by their process make him against his will a party to legal proceedings whether the proceedings involve process against his person or seek to recover from him specific property or damages. The second is that they will not by their process, whether the sovereign is a party to the proceedings or not, seize or detain

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(2) 1938 A.C. 490
(4) (1873) L.R. 4 Adm. & Ecc. 59

property which is his or of which he is in possession or control. There has been some difference in the practice of nations as to possible limitations of this second principle as to whether it extends to property only used for the commercial purposes of the sovereign or to personal private property. In this country it is in my opinion well settled that it applies to both”.

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10 That passage has frequently been cited with approval (see, for example, 1958 A.C. 394) although Lord Radcliffe and Lord Tucker in the *Dollfus Mieg* Case both warned against treating it as though it were a statutory definition of the principles of immunity. If an action in rem against a ship impleads a sovereign then, as Lord Atkin himself points out, such an action falls within both his propositions and not merely within the second, yet it is only in relation to the second that the judge himself mentions the possibility of an exception where the action concerns property used only for commercial purposes. He appears to assert his own opinion that there is no such exception and yet later in his judgment he emphasises that the case before him was “not one of control for public purposes but of actual possession for public purposes”. Clearly his mind was there being addressed principally to the distinction between mere control and “actual possession”, but he still seems to have attached some significance to the fact that the ship was destined for public purposes. The other members of the House, with the exception of Lord Wright, were at least doubtful whether the principle of immunity depended solely upon the sovereign’s being impleaded, although all five of the judges inclined to the view that a ship-owning sovereign was impleaded by an action in rem against his ship. Just as at one time the only property of a sovereign which was likely to wander into the territorial jurisdiction of a foreign power was his warships, until the advent of aeroplanes and container-lorries ships remained the only property of a sovereign which was likely to go into foreign parts even when sovereign states began to enter into trade. So it was almost inevitable that the first cases to come before the courts should involve ships, but later it became necessary to consider to what extent the rules laid down in the ship cases were applicable to other forms of property. As Mr. Evans said, the principles of immunity have been laid down for the most part in cases relating to ships not because ships are subject to special rules but because it was possible to institute proceedings against ships: in later cases the courts have merely applied to other classes of property within the territorial jurisdiction of the British courts what were in fact principles of general application. To that extent I think the learned Chief Justice was right when he came to the conclusion that ships were not subject to special rules.

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(2) What interest (if any) must the Government show to obtain immunity?

40 First it must be said that nothing has to be proved: all that is required is that the interest should be shown not to be illusory: *Juan Ysmael & Co. Inc. v. Government of the Republic of Indonesia*⁽⁵⁾.

In the *Dollfus Mieg*⁽¹⁾ case Lord Radcliffe said at p.617:

(1) 1952 A.C. 582, 617
(5) 1955 A.C. 72.

“But the principle recognized in *The Parlement Belge* (5 P.D. 197) has been carried much further since then. It has been applied even when the sovereign had not claimed, let alone proved, that he was the owner of the property that was the subject of the action. It has been regarded as sufficient to stay the proceedings (1) that he had de facto possession of the property (*The Gagara* [1919] P. 95, *The Jupiter* [1924] P. 236, *The Cristina* [1938] A.C. 485) or such rights of direction and control, without possession, as arise from requisitioning (*The Broadmayne* [1916] P. 64), and (2) that the nature of the proceedings is such that, if successful, they would result in an order of the court affecting that possession or those other rights.”

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He was there concerned with a case where the company was the owner of 64 gold bars. They were wrongfully seized by the German authorities during the Second World War. They were recovered by the Allied Forces and lodged by them in the Bank of England for safe custody. The company, as lawful owners, sued the bank. Thereafter the bank by mistake sold 13 of the gold bars. The bank moved to have the writ set aside and all subsequent proceedings in the action stayed on the ground that the bars were in the possession or control of the Allied Governments, and subsequently the Governments of the United States of America and of France were joined as defendants. As regards the 13 bars which had been sold and were no longer available for return to the Allied Governments the action was allowed to proceed, but as regards the remainder it was held that the doctrine of sovereign immunity applied. Lord Jowitt, L.C. was of the opinion that the Governments had a right to possession as bailors at will and that sufficed. He said at p.605:

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“The person having the right to immediate possession is, however, frequently referred to in English law as being the ‘possessor’ – in truth the English law has never worked out a completely logical and exhaustive definition of ‘possession’. We are bound to decide this case in accordance with the English law and we have no evidence of any other system of law; yet it is germane to remember that the English law has incorporated the doctrine of State immunity from international law. It would be an unsatisfactory position if the extent and ambit of this doctrine were to depend on the special and peculiar doctrines of each jurisdiction in relation to ‘possession,’ with the result that differing results might be arrived at according to whether the case was governed by English law or, for example, by Scottish law. The basis of the rule was explained by Lord Atkin in the case of *Government of the Republic of Spain v. The Arantzazu Mendi* [1939] A.C. 256, 265 as being intended either to secure reciprocal rights of immunity or to avoid the risk of injured pride if jurisdiction is sought to be exercised, or to avoid the risk of belligerent action if government property is seized or injured; and the distinction between ‘possession’ and the ‘immediate right to possession’ would have no bearing upon these considerations”.

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And at p.606 he said:

“Jenkins J. in the course of his judgment expresses the matter as follows: ‘A foreign sovereign State (unless embodied in a personal sovereign visiting this country) cannot, so far as I can see,

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be in actual physical possession of property here otherwise than by its servants. Accordingly, if actual physical possession by a foreign sovereign State were essential to immunity on the score of possession by such State, immunity on that ground could only be claimed in respect of property in this country in the actual physical possession either of some personal sovereign or of a person who could be shown to be in the strict sense a servant of a foreign sovereign State (so as to make his possession that of his master) or else to be himself entitled to diplomatic immunity. The application or exclusion of the principle of immunity would thus be made to depend on nice distinctions respecting the particular mode in which a foreign sovereign State might happen to exercise dominion over property brought by it to this country in its possession or control.

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I cannot think it would be right to make the application or exclusion of the principle of immunity (based as it is on substantial reasons of policy) turn upon nice distinctions of this kind.' ”

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The other members of the House gave judgments to the same effect. It must, however, be remembered – as was emphasised in the judgments – that this was an action in personam for trover or detinue: no question of public use of the subject matter arose.

The learned Chief Justice in the court below took the view that no assistance could be obtained from considering cases in other jurisdictions because of differences between the law in those countries and the law in Hong Kong. With respect to him I think it would be unwise to dismiss them as summarily as that: if they do no more they may at least give some indication of the practice of the nations as understood by the countries in which the cases were decided and the differences of approach may not always be material.

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For my part I have found *The Republic of Mexico v. Hoffman*⁽⁶⁾ of great assistance in the present case. The facts were stated by Stone, C.J. at p.734:

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“It is sufficient that it appears that before the injury to the Lottie Carson the Baja California was delivered by the Mexican government to the privately owned and operated Mexican corporation under a contract for a term of five years. As provided by the contract the corporation was to operate the vessel at its own expense in a private freighting venture on the high seas between Mexican ports and between them and foreign ports, and did so operate the vessel until her seizure upon the libel. The officers and crew were selected, controlled and paid by the corporation. For the use of the vessel the corporation agreed to pay to the Mexican government fifty per cent of the net profits of operations but undertook to bear all net losses.”

The decision of the learned judge appears at p.736 where he said:

“The lower Federal courts have consistently refused to allow claims of immunity based on title of the claimant foreign government without possession, both before *The Navemar* and since

(6) (1945) 89 L. ed. 729.

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.....
Whether the distinction between possession and title may be thought to depend upon the aggravation of the indignity where the interference with the vessel ousts the possession of a foreign state, *Sullivan v. Sao Paulo* (CCA 2d) 122 F(2d) 355, 360, it is plain that the distinction is supported by the overwhelming weight of authority."

In *The Navemar*⁽⁷⁾ the Supreme Court of the United States of America had held that a decree of attachment issued by a foreign government appropriating a vessel to its use did not have the effect of transferring possession of the vessel to the government and that unless the decree was accompanied by some act of physical dominion, or by some recognition on the part of the ship's officers that they were controlling the vessel and crew in behalf of their government, or there was proof that the vessel was in fact employed in the service of the government, the decree did not exempt the vessel from the jurisdiction of the Admiralty Court. In all the English cases cited to us where immunity has been granted there was at least a right to possession or control accompanied by some such act or recognition, as in *The Gagara*⁽⁸⁾ and *The Jupiter*⁽⁹⁾. Although I appreciate that there may be a greater indignity involved in failing to prevent a sovereign's being ousted from possession of a ship than in declining to acknowledge his right to obtain possession, this seems to me a slight distinction upon which to base so important a difference in practice. Be that as it may, I think I have reached a point where my headings overlap. The *Dollfus Mieg* case establishes that in an action in personam it is enough to show an arguable claim to immunity based upon either ownership or a right to possession, but when one has an action in rem against a ship the question I am now considering becomes inextricably bound up with the issue whether the vessel is "in the public service": in the present case it has been argued that because The Philippine Admiral passed into the possession of the Company she could not be in the public service of the Government. No case has been cited where immunity has been granted without the claimant's having established a prima facie right to possession or control and it seems to me to matter not whether that right is regarded as part of the interest claimed in the vessel or as a necessary element of "public use" of the vessel: the essential point is that there must be such interest (whether proprietary, possessory or other) that the claimant can fairly claim also the exercise of dominion over the vessel. Mr. Litton has contended that where a proprietary interest is shown immunity must be granted, for, he says, it is only in respect of Lord Atkin's second proposition in *The Cristina*⁽²⁾ that "there has been some difference in the practice of nations as to possible limitations". As I see it the real difference has been in defining "public use" and it is in that connection that I shall consider in detail the necessity for the claimant to have the right of control. It was not submitted on behalf of the Government that the mere fact that the ship was acquired under a reparations treaty, rather than by purchase in the normal course, endowed her with a peculiar national status and that by reason of that status any exercise of jurisdiction over her by the courts of this Colony would constitute a special affront to the dignity of the State, although mention was made of the importance the Japanese Government might attach to the sale of a vessel provided by them under

(7) (1938) 82 L. ed. 669
(8) 1919 P. 95
(9) 1924 P. 236.
(2) 1938 A.C. 485, 490.

the reparations treaty and Mr. Litton said that the treaty was the foundation of his contention that the ship was used for public purposes. I do not think that what might be termed an "emotional interest" could of itself be sufficient basis for the grant of immunity.

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(3) What interest has the Government shown?

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10 As there was some discussion whether the Commission had even bare ownership of the vessel I should state briefly why I believe that matter is not open to doubt. The extracts I have cited from the Contract of Conditional Purchase and Sale show that all that was being ceded to the Company by the Commission was "the utilization" of the vessel and that the Commission retained title to, and ownership of, the vessel until she was fully paid for. Whether or not the Company is in default in its payments, as has been alleged by the Commission, it is not suggested that the ship has been fully paid for. We are told that the Company contends it has acquired full ownership as a result of the order in the 1963/64 proceedings in the Philippines. Whatever may have been intended by that order in so far as the future payments were concerned I see no reason to believe that the original contract was to be superseded in its entirety and, in particular, that the Company was to become owner before the vessel had been fully paid for. It is pointed out that a Certificate of Inspection issued by the Philippine Coast Guard and a Certificate of Stability issued by the Bureau of Customs (both authorities being organs of the Government) named the Company as owner of this vessel. Various explanations can be suggested for this and I do not think it is of the least consequence. Much more important is the fact that a Certificate of Registration, a Certificate of Ownership, and a Certificate of Change of Name all state that the Commission is the owner, although even these are not documents of title.

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30 What was the material date for deciding if the Government had any other interest? It was, I think, suggested that because this was an application to set aside the writs and not an application for a stay of proceedings no date subsequent to the issue of the writs could be material. I confess that I have been unable to see that anything turns upon the precise nature of the relief sought. This is not a case where application is made to strike out because of some defect in the writs themselves: the writs were valid and if the Government had seen fit to submit to the jurisdiction the case could have proceeded to judgment. It seems to me that this must be so because, whatever may be the extent and nature of extra-territorial jurisdiction, within territorial limits there must (as Marshall, C.J. said in *The Schooner Exchange v. M'Faddon*⁽¹⁰⁾) be full and absolute jurisdiction based upon sovereign power, although states may in practice decline to exercise their sovereign power within their territorial limits out of respect for a foreign sovereign.

40 It is stressed on behalf of the Government that the action is, until final judgment, a continuing proceeding and that, as it can be stayed or struck out at any time before judgment, application to stay or set aside can be made at any time before judgment. So, Mr. Litton says, the Court should have regard to the situation existing at the date of the application to the Court. He relies upon *Ghosh v.*

(10) (1812) 3 L. ed. 114

D'Rozario⁽¹¹⁾, where it was held that diplomatic immunity could be claimed in an action although at the time it was instituted no immunity could have been claimed. I do not think the Respondents were able to distinguish the principle there applied and I am content to accept it as being correct and applicable.

It is submitted that by virtue of the Commission's Resolution dated 10th October 1973 the Government on that date acquired an immediate right to possession. As I understand Mr. Litton it is not his contention that the contract with the Company was automatically terminated under Clause 11 but rather that, when the Commission resolved to rescind, it was not obliged to serve any formal notice before the rescission became effective. Under the contract the Commission had the right to receive the instalments, the right to possess the vessel if the instalments were not paid and the right to enforce the covenant against disposal of the vessel otherwise than to Philippine citizens. The Resolution of 10th October was, of course, passed upon the basis of a default by the Company and it has been suggested by the Respondents that in fact the Company was not in default. In my view we are not required to decide whether there was or was not a default provided that the allegation is not manifestly without foundation. I agree with Mr. Litton that the letter dated 11th October 1973 addressed by the Company to the Commission is prima facie evidence that the Company owned ₱5,300,000 on that date and is, even on the Respondents' interpretation of the order in the 1963/64 proceedings, evidence that there is a present debt outstanding. That is not to say that the Respondents are bound by any admission of the Company, but in the absence of evidence to the contrary I think it might well be enough to justify a finding of default. It is certainly enough to establish that the Government's allegation of default is not illusory. That being so the claim that it has a right to possession is not illusory. The fact that the Company has twice appealed against the injunctions granted by the courts of the Philippines, which suggests that the Company still disputes the right of the Government to repossess the vessel, seems to me immaterial.

I think there is no further proprietary interest which the Government can reasonably claim to have. At the time of her arrest the vessel was clearly in the possession of the Company and the Company has been asked to deliver up possession to the Commission: see the Commission's letter of 15th October 1973. There is no suggestion that the Government has sent a crew to re-take possession in Hong Kong.

(4) Is it necessary, where the claim is made in an action in rem, to show that the vessel is destined for public use?

Here I think it is desirable to consider first what is the basis upon which sovereign immunity is granted.

In *The Charkieh*⁽⁴⁾ Sir Robert Phillimore said:

(11) 1962 3 W.L.R. 405.

(4) (1873) L.R. 4 Adm. & Ecc. 59, 88.

10 “Upon principles of general jurisprudence the presence of a person
or of property within the limits of a state founds the jurisdiction
of the tribunals of that state. The sovereign prince or his re-
presentative is exempted from the operation of this principle,
absolutely, so far as his person is concerned, and with respect to
his property, at least so far as that property is connected with the
dignity of his position and the exercise of his public functions.
Upon what grounds is this exemption allowed? Not upon the
possession on behalf of the sovereign of any absolute right in
virtue of his sovereignty to this exemption; such a right on his
part would be incompatible with the right of the territorial
sovereign; and not, as is sometimes carelessly said, upon the ground
that he and his property are to be considered as still remaining in
his own territory. This is indeed the fiction of law expressed in
the term ‘extritoriality,’ by which the nature of the immunity is
illustrated; but it is illogical and inaccurate to consider it as the
ground of that immunity. The true foundation is the consent and
20 usage of independent states, which have universally granted this
exemption from local jurisdiction in order that the functions of
the representative of the sovereignty of a foreign state may be
discharged with dignity and freedom, unembarrassed by any of the
circumstances to which litigation might give rise”.

I do not think that has been criticised as being otherwise than a correct statement
of the law, although a later passage at p.97 which suggests the possibility of an
exception to the general rule of sovereign immunity in all actions concerning land
was left by the Privy Council in *Sultan of Johore v. Abubakar Tunku Aris
Bendahar*⁽³⁾ for later consideration should occasion arise. On the contrary in
Rahimtoola v. Nizam of Hyderabad⁽¹²⁾ Lord Reid said:

30 “The principle of sovereign immunity is not founded on any
technical rules of law: it is founded on broad considerations of
public policy, international law and comity”.

If that be correct then I respectfully doubt whether any advantage is to be gained
by seeking to narrow the ground to one of incompatibility between the exercise of
jurisdiction over a sovereign with “his real dignity – that is to say, with his
absolute independence of every superior authority” (per Brett, L.J. in *The Parlement
Belge*⁽¹³⁾): such incompatibility is no doubt one of the elements of public policy and
comity upon which the principle is founded, but the speech of Lord Denning in
Rahimtoola’s Case and the judgment of Frankfurter, J. in *Republic of Mexico v.
Hoffman*⁽⁶⁾ indicate how uncertain a foundation the concept of “dignity” may be. I
40 doubt whether we would be assisted in ascertaining the broad considerations of
public policy, international law and comity to which we are enjoined to have regard
by limiting ourselves to the adoption of any one of the various theories which have
been advanced in an attempt to rationalise the immunity which has been granted
(see O’Connell on International Law at p.842 et seq.) In so far as immunity depends
upon considerations of international law and in so far as international law depends

(3) 1952 A.C. 318
(6) (1945) 89 L. ed. 729, 738
(12) 1958 A.C. 379, 404
(13) (1880) 5 P.D. 197, 207.

in its turn upon the practice of nations we must enquire what has been the practice of nations. In so far as immunity depends upon public policy it may be the Queen's courts should not consider themselves bound to limit immunity to cases where other states have decided that public policy dictates that immunity should be granted: reciprocity has been rejected as the sole criterion: see the *Dollfus Mieg*⁽¹⁾ case. Public policy is as unruly a horse as it was in 1824 and it is perhaps not surprising that in some jurisdictions (e.g. in the United States of America) the courts openly accept directions from the Executive as to what is the public policy of the state in relation to questions of immunity: see *Republic of Mexico v. Hoffman*⁽⁶⁾. This is a course which never seems to have been adopted in the British courts, which have been content in each case to decide, with such guidance as could be gleaned from previous cases, whether or not it was politic to grant immunity. The guidance has not always pointed clearly in one direction and I confess to having approached a decision in this case with great hesitation.

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There is no reported case in which immunity has been granted in an action in rem solely upon ownership or upon any other proprietary interest of a sovereign. Mr. Litton relies upon *The Jupiter*⁽⁹⁾ where the Union of Soviet Socialist Republics intervened on the ground that the ship was owned by the State under a decree of nationalization. However, it appeared from the evidence that the master of the vessel was also holding the vessel for the Russian Government so that the claim was not founded upon bare ownership. The judgment proceeded upon the basis that the Government was claiming a right or interest in the ship and should not be called upon to show that it had good cause for so claiming, but it was expressly stated by counsel for the appellants that they wished to keep open the question "that not being destined for the public use a state-owned vessel is not entitled to exemption from arrest": they felt precluded from arguing the point in the Court of Appeal by the decisions in *The Parlement Belge*⁽¹³⁾ and *The Porto Alexandre*⁽¹⁴⁾. The case can, therefore, be no authority upon that or any similar point.

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In *The Parlement Belge*⁽¹³⁾ Sir Robert Phillimore said at first instance:

"The Parlement Belge is a packet conveying certain mails and carrying on a considerable commerce, officered, as I have said, by Belgian officers and flying the Belgian pennon.

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Can such a vessel so employed be entitled to the privileges of a public ship of war? The analogy between the immunity of the ambassador and the ship of war is obvious. It has been holden by high authorities, both in this and other countries, that an ambassador may lose his privileges by engaging in commerce. Indeed, Lord Campbell was of opinion that in 'such a case all his goods unconnected with his diplomatic functions may be arrested to force him to appear, and may afterwards, while he continues ambassador, be taken in execution on the judgment:' *The Magdalena Steam Navigation Co. v. Martin* (2 E. & E. 94, 114; 28 L.J. (Q.B.) 310), cited in *The Charkieh* (Law Rep. 4 A. & E. 59)".

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(1) 1952 A.C. 582, 613

(6) (1945) 89 L. ed. 729, 733

(9) 1924 P. 236

(13) (1880) 4 P.D. 147

(14) 1920 P. 30

However, the Court of Appeal held that the vessel was not “a mere trading ship” but was destined for public use. Nevertheless in *The Cristina*⁽²⁾ Lord Maugham said that he could see

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“no sufficient reason for not following in the case of a State-owned vessel, being neither a ship of war nor in any true sense a vessel publicis usibus destinata, the decision of Sir Robert Phillimore”.

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10 In *The Porto Alexandre*⁽¹⁴⁾ the vessel was “engaged ... as an ordinary trading vessel carrying goods for private individuals”. This decision is, perhaps, the one which most closely approaches the present case. There the evidence appears to have shown that the vessel was requisitioned by the Portuguese Government for the service of the State and that she was employed under the orders of the Government. She was arrested in respect of salvage services rendered by three tugs. At the time of those services she was on a voyage on which she was carrying a cargo of cork shavings under a bill of lading from which it appeared that the goods were shipped by and consigned to a trading company. Freight had been paid to the Government. The court declined to distinguish *The Parlement Belge*⁽¹³⁾ and held itself bound by the decision in that case. The judgment has been much criticised on the ground that there was a distinction to which effect should have been given and in *The Cristina*⁽²⁾ two members of the House of Lords reserved their opinions on the question raised in *The Porto Alexandre*⁽¹⁴⁾, while Lord Maugham was clearly satisfied that the decision in that case was wrong. Lord Wright referred to increasing awareness of the importance to the State of trading vessels and to the uncompromising expression by the Supreme Court of the United States of America in *Berizzi Brothers Company v. The Pesaro*⁽¹⁵⁾ of the view that:

30 “... the principles [of immunity] are applicable alike to all ships held and used by a Government for a public purpose, and that when, for the purpose of advancing the trade of its people or providing revenue for its treasury, a Government acquires, mans and operates ships in the carrying trade, they are public ships in the same sense that war ships are. We know of no international usage which regards the maintenance and advancement of the economic welfare of a people in time of peace as any less a public purpose than the maintenance and training of a naval force.”

Lord Wright went on:

“This judgment seems to represent the impact of modern ideas on the doctrines of *The Parlement Belge* 5 P.D. 197, but I cannot regard it as other than representing logical evolution. The decision of the United States Court agrees with that of the Court of Appeal in *The Porto Alexandre* [1920] P.30,”

40 Later he spoke of the International Convention for the Unification of Certain Rules concerning the Immunity of State-owned Ships, of 10th April 1926, which has never

(2) 1938 A.C. 485, 520

(13) (1880) 4 P.D. 147

(14) 1920 P. 30.

(15) (1925) 70 L. ed. 1088.

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been ratified by Great Britain, although she was one of the signatories. One of the arguments on behalf of the Government in the present case is that if we were to decline to grant immunity we would in effect be applying the Convention and doing something which Parliament has declined to do. I do not think that this argument is sound: all we would be doing would be to state what we believe to be the Common Law of England as applicable in Hong Kong. Lord Wright thought that legislation was necessary to exclude trading vessels from the principles of immunity: Lord Maugham apparently thought it was not and that it was open to the courts to stem what he admitted to be the recent current of authority in the English courts as regards state-owned trading ships – indeed, that it was high time they should do so. Another 36 years have passed and I believe his view of the need for reconsideration is still shared “by many judges and by nearly all persons engaged in maritime pursuits”. On the other hand the force of Lord Wright’s argument has been considerably weakened by the disapproval of *The Pesaro*⁽¹⁵⁾ which was expressed in *The Republic of Mexico v. Hoffman*⁽⁶⁾.

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Mr. Evans’s submission is that the present case can be distinguished from *The Parlement Belge*⁽¹³⁾ even further than can *The Porto Alexandre*⁽¹⁴⁾ and that it is not strictly necessary for us to decide whether we would follow *The Porto Alexandre*, but if we conclude that the wider distinction does not exist he asks us not to follow that case. Scrutton, L.J. said at p.37:

“It has been held, as Mr. Dunlop admits, in *The Parlement Belge* that trading on the part of a sovereign does not subject him to any liability to the jurisdiction.”

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Whatever Mr. Dunlop’s admission may have been the report shows that he had relied upon the dictum of Marshall, C.J. in the American case of *U.S. Bank v. Planters’ Bank*⁽¹⁶⁾ that

“when a government becomes a partner in any trading company, it divests itself, so far as concerns the transactions of that company, of its sovereign character”.

In *The Porto Alexandre* Bankes, L.J. thought there was “very little difference between the material facts in *The Parlement Belge* and in the present case”, but we added at p.34:

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“It is quite true that in many of the earlier cases the claim put forward, with regard to a particular ship, was that she was on public service and employed in the public service, and no doubt the statement so made was applicable to the particular case, and was made because it was applicable to the particular case, and the judgments were delivered in reference to the facts so stated. But in this case the Court is bound by the decision in *The Parlement Belge* 5 P.D. 197 and the appeal must be dismissed with costs.”

(6) (1945) 89 L. ed. 729
(13) (1880) 4 P.D. 147; 5 P.D. 197
(14) 1920 P. 30
(15) (1925) 70 L. ed. 1088
(16) (1824) 9 Wheat. 904, 907 (6 L. ed.).

That demonstrates that he did not think the element of public use was material. Scrutton, L.J. at p.38 cites a passage from Hall's International Law and he, too, seems to have thought that any property owned by a sovereign state was a subject matter for immunity regardless of the use to which it was put. Warrington, L.J. on the other hand, thought the evidence was sufficient to show that the ship was destined to public use. It is on the majority view that he alleged distinction arises: if the view of Warrington, L.J. had prevailed *The Porto Alexandre*⁽¹⁴⁾ would have fallen to be discussed only under my next heading, where I shall have to consider the meaning of the words "in the public service".

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10 In *Swiss Israel Trade Bank v. The Government of Salta*⁽¹⁷⁾ Mackenna, J. made an exhaustive and penetrating analysis of *The Parlement Belge*⁽¹³⁾ and concluded at p.502:

20 "Is the case authority for or against the proposition that a sovereign's ship substantially used for trading purposes is immune from jurisdiction? In my opinion it is neither. It is not authority for the proposition. If the proposition were valid the complicated argument which I have analysed would have been unnecessary, and the case of *The Charkieh*, even on the basis that it was a mere trading vessel, would have been wrongly decided. Yet this basis of the decision is referred to with apparent approval in the passage at p.217 which I have cited. It is not authority against the proposition. The immunity of a trading ship would seem to follow logically from some of the reasons given for the *Parlement Belge*'s immunity (though not from all of them). One reason was that an action against the sovereign's public ship would be inconsistent with his independence of authority. If that would be so in the case of his public ship, why not in the case of his private property? Again, if an action in rem against his public ship impleads the sovereign by requiring him either to submit to the jurisdiction or to forfeit his property, an action against his private property has the same effect and might seem to be equally objectionable.

30 *The Parlement Belge* left the question of 'mere trading ships' open, the form of the judgment suggesting one answer, and the logic of the reasoning another".

The ratio decidendi of *The Charkieh*⁽⁴⁾ was, of course, that the Khedive of Egypt was not a sovereign prince, but Mackenna, J. clearly intended to confine himself to the position which would have obtained had the Khedive been found to be a sovereign prince and not to have waived his privilege.

40 It was held by the Supreme Court of Canada in *Flota Maritima Browning de Cuba S.A. v. The Canadian Conqueror*⁽¹⁸⁾ that where a vessel is owned and operated by a sovereign state then in the absence of evidence as to the use to which the ship will be put she should be regarded as a public ship, entitled to immunity, though equipped as a trading ship. That, I think, means no more than there is a rebuttable presumption that a vessel which is owned by, and at the disposal of, a

(4) (1873) L.R. 4 Adm. & Ecc. 59

(13) (1880) 4 P.D. 147; 5 P.D. 197

(14) 1920 P. 30

(17) (1972) 1 Lloyd's Rep. 497

(18) (1962) 34 D.L.R. (2d.) 628.

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sovereign state is in the public service and not in service "for ordinary trading purposes". The court expressly left open the case of property of a foreign sovereign state "only used for commercial purposes".

I now come back to *The Republic of Mexico v. Hoffman*⁽⁶⁾. Like *The Parlement Belge*⁽¹³⁾, it was based upon *The Exchange*⁽¹⁰⁾. In that case, said Brett, L.J. in *The Parlement Belge* at p.208,

"The reasoning seems to be as follows:- The ship is within the territorial jurisdiction of the United States – prima facie the Court of the United States has jurisdiction. But all nations have agreed to certain limitations of their absolute territorial jurisdiction – as, for instance, they have abjured all personal jurisdiction over a foreign sovereign within their territory, and this on account of his dignity, and all personal jurisdiction over foreign ministers, and, says the judgment, this is on the same principle; and all jurisdiction over a foreign army passing through the territory. Is the same immunity to be held to apply to ships of war? The judgment answers, Yes, and upon the same principle: i.e., that to hold otherwise would be inconsistent with the dignity – that is to say, the recognised independence of the foreign sovereign."

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We have seen that in *The Republic of Mexico v. Hoffman* Stone, C.J. thought immunity could not be claimed in an action in rem against a ship unless there was a threat to oust the possession of the claimant government. Frankfurter, J., with whom Black, J. joined, remarked at p.737:

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"My difficulty is that 'possession' is too tenuous a distinction on the basis of which to differentiate between foreign government-owned vessels engaged merely in trade that are immune from suit and those that are not. Ascertainment of what constitutes possession or where it is, is too subtle and precarious a task for transfer to a field in which international interests and susceptibilities are involved."

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He referred to *The Pesaro* and compared the speech of Lord Maugham in *The Cristina*. He then continued at p.738:

"And so, sensible as I am of the weight to which the decision in the *Pesaro* is entitled, its implications in the light of the important developments in the international scene that twenty years have brought call for its reconsideration. The Department of State, in acting upon views such as those expressed by Lord Maugham, should no longer be embarrassed by having the decision in the *Pesaro* remain unquestioned, and the lower courts should be relieved from the duty of drawing distinctions that are too nice to draw".

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(6) (1945) 89 L. ed. 729
(10) (1812) 3 L. ed. 114
(13) (1880) 5 P.D. 197

Even bearing in mind the relationship between the Courts and the Executive in the United States of America with regard to this question of sovereign immunity, that gives very weighty support to the view of Lord Maugham. On the view taken by the judges the fact that the Mexican Government was entitled to 50% of the net profits of the ship's trading was immaterial.

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I do not think any of the other cases assists me in reaching a conclusion. I will, however, refer briefly to passages in some of the leading textbooks which have been cited to us. Dr. Cheshire in his *Private International Law* (8th ed.) 103 appears to accept that *The Porto Alexandre* correctly states the English doctrine, and he continues:

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“That sovereign States which engage in the sea-carrying trade should be relieved of the obligations to which private shipowners are subject is unjust, if indeed not preposterous. Moreover, the injustice has been increased by the emergence of totalitarian States, for the activities of sovereign governments, originally mainly political, have now expanded immeasurably both in extent and scope. States tend more and more to enter the field of commerce, even to the extent of carrying on the business of buying and selling goods.”

20 Dr. O'Connell in Volume 2 of his *International Law* (2nd ed.) at p.855 refers to “the Tate Letter”, in which the State Department of the United States of America in 1952 reviewed the practice in the matter of immunity in other countries and concluded that apart from England and Russia all the nations were tending towards the restrictive rule of distinguishing *acta gestionis* from *acta imperii*. At p.869 he says:

“English law has not yet committed itself to granting immunity to State-owned trading vessels, and in view of the tendency towards restrictive immunity it is unlikely that it will. Already the Supreme Court of Ireland has refused immunity to such vessels and in Canada the same decision was reached after an exhaustive study of *The Cristina* and American and international practice.”

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The Canadian case to which he refers in a footnote has since been affirmed on appeal to the Supreme Court and has already been cited in this judgment.

On the bases both of international practice and of the balance of persuasive authority in the dicta in the English cases I have come to the conclusion that immunity should not be granted in respect of vessels not destined for public use. We are not bound to hold that immunity should be granted.

(5) Is the vessel destined for public use?

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Mr. Litton has submitted that it is sufficient in the present case that the use to which the vessel has been and will be put has been treated by the Government as use for a public purpose: we ought not to question a view which is at least arguable: *Juan Ysmail & Co. Inc. v. The Government of The Republic of*

Indonesia⁽⁵⁾. At the same time he relies upon the presumption which he says arises from the ownership and right to possession of the Government (*The Canadian Conqueror*⁽¹⁸⁾) and, as we have seen, upon the simple fact that the vessel was acquired under a reparations treaty. Mr. Evans replies in effect that on the Government's own evidence any suggestion that the vessel is used for public purposes is illusory and involves an extension of the meaning of the words "public use". Indeed he points out that although the affidavits have asserted what is the national policy they have nowhere in so many words said that the vessel is destined for use for public purposes but have rather stated the facts upon which such a claim is now made and that it has been left to the Court to decide whether the claim is illusory or not. It certainly seems to me that the foundation of the claim is sufficiently doubtful to oblige us to examine it more closely.

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Mr. Evans has submitted that where a vessel is operated by a private owner she is not used by a Government at all and therefore is not used in the public service. This argument assumes that a private shipowner cannot operate his vessel in the public service. We have already seen that there is no reported case where immunity has been granted in respect of a vessel over which the foreign government did not have at least some measure of control, and by "control" is meant immediate control, not merely the sort of general direction that was exercised by the Director of Naval Transports of the Provisional Government of Northern Russia in *The Annette*⁽¹⁹⁾. It was held in *The Broadmayne*⁽²⁰⁾ and *The Cristina*⁽²⁾ that it is sufficient if the government has requisitioned the vessel and she is then held for the government. On the other hand in *The Navemar*⁽⁷⁾ the lack of control was held to be fatal to the claim to immunity. Mr. Litton, of course, argued that immunity arises here because, whether or not the Government was in control, it had an immediate right to possession and, in any event, had a proprietary interest so that these are proceedings which "amount in one way or the other to a suit against the sovereign" (1952 A.C. 616). As I see it the operator must be either the government itself or an agent acting on behalf of the government before immunity can be successfully claimed. It may be that an altruistic ship-owner who volunteered to use his vessel to carry passengers or goods for his sovereign would be using her for the public benefit, but would it necessarily follow that she was used in the public service? In the present case the Government's contention is that the Company has not acted through altruism but through legal necessity in doing what it has, and that although what it has done was primarily done for selfish reasons nevertheless the trading of the vessel was for the public benefit and, therefore, in the public service. I cannot accept that every use which is for the public benefit is necessarily public use for that involves at least some degree of public control, even if it be no more than an acknowledgment by a ship's officers that they hold her on behalf of a requisitioning government. In my view it would be an unwarranted extension of the concept of public use to include in it every operation which resulted in public benefit. The passage which I have cited from *The Pesaro*⁽¹⁵⁾, which suggests that

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(2) 1938 A.C. 485
(5) 1955 A.C. 72
(7) (1938) 82 L. ed. 669
(15) (1925) 70 L. ed. 1088
(18) (1962) 34 D.L.R. (2d.) 634
(19) 1919 P. 105
(20) 1916 P. 64

10 “the maintenance and advancement of the economic welfare of a people in time of peace” is a public purpose, must share the disapproval which the judgment as a whole suffered in *The Republic of Mexico v. Hoffman*⁽⁶⁾. On one view the operation of a merchant ship by a government department in ordinary trading would amount to use in the public service by virtue of the sovereign control exercised over her. On another view the words “public use” must be given a more restricted interpretation, which, it is said, is more consonant with the whole doctrine of sovereign immunity. It is upon this point that the validity of the approach of the majority in *The Porto Alexandre*⁽¹⁴⁾ hangs. Cases like *The Quillwark*⁽²¹⁾ are distinguishable in that the Department of the Government of the United States of America which operated the vessel was established in part for the purpose of creating, encouraging and developing a naval auxiliary and naval reserve. *Companie Mercantile Argentina v. United States Shipping Board*⁽²²⁾ was not only such a case: it was also an action in personam. If it be necessary I tend to favour the restricted interpretation, remembering that the principles of immunity are enshrined in the Common Law and not in the words of a statute.

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20 I propose first to consider the facts as they were presented before the judge in the Court below before going on to refer to the evidence adduced in this Court and to consider whether and, if so, to what extent this additional evidence affects the matter before us.

30 At the date of the intervention by the Government the vessel was lying at a mooring in Hong Kong in custodia legis and had been so lying for several months. It is submitted on behalf of the Appellants that in deciding the purpose for which a vessel is being used one must in a case like this have regard not only to the present use but also to the past and intended uses. As to the past they point out that the ship has from the time she was delivered by her builders been manned and operated by the Company for their own account: the Contract of Conditional Purchase and Sale contemplated that the only direct financial benefit to the Government would be the receipt of the instalment payments, which the Company was liable to pay whether the operation of the vessel resulted in a profit or a loss: there was no term that the instalments should be paid out of profits. Apart from that there has been only a somewhat nebulous benefit to the economy of the country which the trading of any Philippine vessel would bring. As to the future it is said that the Government, even if it regained possession of the vessel, would under the provisions of Republic Act 1789 be under an obligation to dispose of her to another private end-user: if for some reason the private sector were not given preference and the Government decided that the vessel should be operated for its own account she remains what she always has been, a trading vessel, and there is no evidence to justify the conclusion that there is now going to be a change of use. The
40 Government emphasises the status of the vessel as a reparations good under the treaty with Japan, the restriction upon disposal to other than Philippine nationals, its residual right to possession in the event of default (a right which it has sought to

(6) (1945) 89 L. ed. 729

(14) 1920 P. 30

(21) 1922 S.L.T. 68

(22) (1924) 131 L.T. 388

exercise) and the general economic benefit to which I have already referred. Above all it relies upon the right to use the vessel for "approved Government projects" if for any reason it is unable to sell the vessel to another end-user in accordance with its duty to give priority to private production projects, but that right is, of course, always subject to the limitations in Republic Act 1789 which I have mentioned.

The vessel is a trading vessel and has been used as such for many years. It seems to me that something more was required to justify the claim to immunity than a mere possibility that she might hereafter be used for public purposes. As Mr. Evans has pointed out, the Government has never thought fit to assert that the ship will be so used. Although she was repossessed for the protection of the Government's interests, the overwhelming balance of probability is that she will be used for trading. The case is similar to one where a sovereign state purchased a trading vessel expressly for the purpose of selling her at a profit. The sale of the vessel would not be "use" as that word is normally understood – the Act itself distinguishes between disposition and utilization – and there is no authority which would require this Court to hold that a vessel owned by a sovereign state which was trading in ships would be immune to arrest any more than would one owned by a sovereign state trading with ships.

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I would hold that the evidence originally filed did not support the conclusion that the vessel was destined for public use. That means that on the evidence before the learned judge I would allow the appeal and set aside the order made in the Court below.

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The additional evidence which has now been adduced consists mainly of a copy of Presidential Decree No. 332, dated 9th November 1973, which was admitted by consent. By that Decree changes were made in Republic Act No. 1789 and, while no blame attaches to counsel who have appeared before us, I cannot but express pained surprise that Mr. Felicisimo Ocampo, a duly qualified lawyer and member of the Philippine Bar, a Commissioner of the Commission and a former member of the Philippine Judiciary and of the Congress of the Philippines, should on 30th November 1973 have sworn an affidavit exhibiting a copy of the Act without indicating that the Act had been substantially amended three weeks earlier. That those from whom Mr. Litton's professional clients have received their instructions and who now contend that the amendments are material to the present case have allowed the learned Chief Justice and this Court to proceed in ignorance of them does them no credit.

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The Presidential Decree recites, inter alia, that

"it has been shown that majority of reparations end-users in the private sector have failed to properly utilize the reparations goods and/or services received by them, and to pay the amortizations therein as they fall due, thus resulting in huge arrearages to the detriment of the Philippine economy;"

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and states the purpose of the amendment to be

“to effect the desired changes and reforms in the utilization and disposition of reparations so as to assure the maximum possible economic benefit to the Filipino people, and in order to argument the limited government resources available for public projects”.

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Section 2 of the Act is then amended to read as follows:

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“Implementation. – To implement the policy declared in Section one hereof, the procurement, disposition and utilization of all goods and services procured from Japan under the terms of the Reparations Agreement shall be carried out as closely as possible to promote the economic rehabilitation and development of the country and in accordance with the broad program, criteria and priorities established by the National Economic and Development Authority in addition to the following criteria”.

(We have no evidence as to “the broad program, criteria and priorities established by the National Economic and Development Authority”.) There are then set out in amended paragraphs the conditions which are to apply. The paragraph giving priority to the private sector has been repealed. Provision is also made for dealing with “delinquent private end-users” and, in particular, s.12 is amended by the addition of a new paragraph:

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“(a-2) All private end-users with pending accounts with the Commission at the time of the issuance of this Decree shall be allowed to restructure their accounts beyond the maximum allowable period of amortization as provided for under this Act: Provided, That said end-users shall first be required to pay 10% of the total accrued accounts at the time of the issuance of this Decree: Provided, further, That interest at the rate of 12 per cent per annum shall be imposed on the restructure yearly amortization with an additional monthly interest of 1-1/2 per cent for delinquency and said end-users shall be required to put up additional collaterals sufficient to cover the value of the restructured account, and in the case of corporations, the principal officers thereof shall be required to sign the contract of restructuring jointly and severally with the corporation: Provided, finally That all delinquent private end-users of reparations goods and/or services are hereby given a period of three (3) months within which to restructure or update their accounts with the Commission otherwise, the latter, with the assistance of the Armed Forces of the Philippines, shall extrajudicially repossess said reparations goods and attach all other assets of said private end-users and shall sell, transfer, or otherwise dispose of the same in a manner as provided for herein, without prejudice to such civil and/or criminal action that may be taken against them under this Act and/or other existing laws. All reparations goods so repossessed and/or to be repossessed shall be sold through public bidding, or through negotiation if the public bidding will fail, either by lot or by piece, at such price and under such terms and conditions as may be determined reasonable by the Commission upon the recommendation of an appraisal committee to be constituted by the Commission and in which at least one (1) member each must come from the office of the Commission Auditor and the National Economic and Development Authority: Provided, That government instrumentalities will be given the first

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option to acquire the reparations goods which they may need or can utilize, in which case said reparations goods shall be transferred to them without cost

We are also told for the first time that there have been appeals against the prohibitory injunction granted by the Court of First Instance of Manila on 3rd November 1973 and that upon those appeals the Company has contended that the injunction should be discharged by reason of a period of grace allowed by the new Presidential Decree to delinquent end-users. Apparently the Solicitor-General for the Philippines successfully opposed that contention in the Supreme Court of Manila on the ground that the Decree did not apply because The Philippine Admiral had been repossessed before the Decree was made, but the Court of Appeal has not yet delivered judgment. There would seem to be much force in that argument and, as it was adopted by the Supreme Court of Manila, I do not think we can do otherwise than accept that for the time being it accords with the law of the Philippines by which the rights of the Government and the Company are governed as between each other. Does the Decree nevertheless govern in part the rights of the Commission to reparations goods which it had resolved to repossess before the Decree was made? Although the provisions of s.12(a-2) apply only to goods repossessed under the terms of that paragraph, the general amendments to s.2 would operate upon goods repossessed under the earlier legislation. On the evidence before us the position would therefore seem to be that it is still open to the Government to sell The Philippine Admiral to another private end-user but that "approved Government projects" now rank equally with private end-users as possible recipients, all applicants under the Act taking precedence, everything else being equal, according to the order of their applications. We have no evidence whether the term "approved Government projects" has been defined by the National Economic and Development Authority and I must therefore assume that a Government department might apply for the vessel for use in ordinary trade.

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In *The Candalan Conqueror*⁽¹⁸⁾ Ritchie, J. expressed his view of the law in these words:

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"All that can be said is that [the defendant ships] are available to be used by the Republic of Cuba for any purpose which its Government may select, and it seems to me that ships which are at the disposal of a foreign state and are being supervised for the account of a department of government of that state are to be regarded as 'public ships of a sovereign state' at least until such time as some decision is made by the sovereign state in question as to the use to which they are to be put."

If that be correct the possibility, however remote, that the vessel will in the event be used for public purposes in the traditional sense would be enough to require us to grant the immunity sought even though it cannot be said that the Commission "has supervised" the vessel and she is not yet in the control of the Government, since under the Presidential Decree she would be liable to seizure by the Armed Forces of the Philippines even upon the high seas. But in the Canadian case no

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(18) (1962) 34 D.L.R. (2d.) 628

reference was made to *Juan Ysmail Co. Inc. v. The Indonesian Government*⁽⁵⁾ where it was held that the claimant had satisfied a requirement that it should "produce evidence to satisfy the court that its claim is not merely illusory, nor founded on a little manifestly defective". The illusion in that case related to the claimant's title and not to the use to which a ship was destined, but if there is a burden to adduce evidence as to the one I do not see that it can be wrong in principle to hold that there is a burden to adduce evidence as to the other. The Board said at p.90:

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"The court must be satisfied that conflicting rights have to be decided in relation to the foreign government's claim. When the court reaches that point it must decline to decide the rights and must stay the action, but it ought not to stay the action before that point is reached."

That seems to me to require a claimant to adduce evidence to show not merely that a "right" to immunity might arise but that it would exist if the evidence adduced were true. Such a view is both sensible and practical and yet does not in any way require the claimant to submit to the adjudication of the court upon the truth of his assertions. As Sir Robert Phillimore said in *The Charkieh*⁽⁴⁾:

"No disrespect is shown, no injustice is done to the sovereign, while justice is done to the private suitor".

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Even now the evidence before this Court does not establish that The Philippine Admiral is destined for the public service and I would therefore hold that the appeal should be allowed.

(6) Has there been a waiver of immunity?

In view of the conclusion which I have reached upon the earlier questions this final question does not arise, but as the case may well go further I ought to express my opinion upon it.

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It has been urged on behalf of the Appellants that the application by the Government of the Philippines, although in form one to set aside the writs and all subsequent proceedings, was prompted not so much by the fact that objection was taken to the institution of the actions as to the fact that objection was taken to the order for appraisal and sale. In my view the motives of the Government are not material and this Court should not be tempted into an enquiry into them. However, the delay in making the application is one of the factors relied upon as indicating a waiver of immunity.

As I understand it the factors relied upon as evidence of waiver are these. The Government has permitted the Company for thirteen years to operate the vessel as though it was the owner despite the fact that the Government had full knowledge that the Company was holding itself out as owner. Indeed, other organs of the

(4) (1873) L.R. 4 Adm. & Ecc. 59, 98

(5) 1955 A.C. 72

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Government have in fact issued necessary ship's papers in which the Company is named as the owners, i.e. a Certificate of Stability dated 2nd June 1964 by the Bureau of Customs and a Certificate of Inspection dated 11th November 1971 by the Philippine Coast Guard. Further, as we have just seen, it is said that the Government did not intervene in the actions as promptly as it might have done: the resolution of 10th October 1973 shows that the Commission had knowledge of the proceedings some time before that date, which was itself two days before the date of the intervention.

There is no doubt that a foreign sovereign can waive his immunity and submit to the jurisdiction: *Sultan of Johore v. Abubakar Tunku Aris Bendahar*⁽³⁾. However, it seems clear that this doctrine is "confined within very narrow limits" (Dicey & Morris's Conflict of Laws (9th ed.) 140). Dr. Cheshire says in his Private International Law (8th ed.) 107:

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"A submission is ineffective unless it is made by some person with the authority of the foreign sovereign, who has knowledge of the right to be waived and who appreciates the effect of the English law of procedure. It is equally ineffective unless it is made ex facie the court, i.e. made at the time when the jurisdiction is invoked, not at some earlier time."

I think that is supported by dicta in *Baccus S.R.L. v. Servicio Nacional del Trigo*⁽²³⁾. It is not, in my view, enough that the sovereign remains passive: he must have taken some active step which is inconsistent with immunity in the very proceedings in which immunity is in issue. It follows that a sovereign's conduct prior to the institution of the proceedings cannot amount to a submission to jurisdiction: *Mighell v. Sultan of Johore*⁽²⁴⁾ Accordingly I regard use for trading purposes as relevant to the conditions for the existence of immunity rather than to the question whether immunity has been waived, although it may be that the concept of waiver can be regarded as part of the foundation for the exclusion of trading vessels from immunity, as the language of Sir Robert Phillimore in *The Charkieh* might suggest. I find no evidence in the present case which would have justified an inference that the Government of the Philippines had submitted to the jurisdiction of the courts in Hong Kong.

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I wish to add only this, that nothing which I have said should be taken to decide whether The Philippine Admiral may now be sold without regard to the restrictions imposed upon the Company by its contract with the Philippine Government.

26th April, 1974.

(3) 1952 A.C. 318
(23) 1956 1 Q.B. 438
(24) 1894 1 Q.B. 149

In *The Canadian Conqueror*⁽²⁾ immunity was also granted although the vessels concerned, the property of the Republic of Cuba, were trading vessels. It was admitted that they had "been owned by various agencies controlled by the Cuban Government" and the appellant Flota Maritime had taken no part in their operations. G.T.R. Campbell & Co. had "supervised the said ships and had submitted its reports and accounts to the Government of the Republic of Cuba represented in this behalf by the Oficina de Fomento Maritime a division of the Department of Defence". When the vessels were arrested at the instance of the appellant immunity was claimed and granted on the basis that the ships in question were to be "treated for the purpose of this appeal as 'public ships' owned by and in the possession of a foreign sovereign state" because in the words of Ritchie, J. with whom the majority concurred:

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"I ... do not feel that we are in a position to say that these ships are going to be used for ordinary trading purposes. All that can be said is that they are available to be used by the Republic of Cuba for any purpose which its government may select and it seems to me that ships which are at the disposal of a foreign state and are being supervised for the account of a department of government of that state are to be regarded as 'public ships of a sovereign state' at least until such time as some decision is made by the sovereign state in question as to the use to which they are to be put."

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I have underlined the words "are", "are at the disposal" and "are being supervised" because they seem to mark the point of departure of that case from ours. The Amendment to The Republic Act placed before us well after the eleventh hour suggests no more than that the Philippine Admiral might become a "public ship of a sovereign state" in the sense in which Ritchie, J. uses the expression only if we grant immunity.

I prefer to put my judgment on the basis that both *The Porto Alexandre*⁽¹⁾ and *The Canadian Conqueror*⁽²⁾ are distinguishable from our case on their facts than to seek to attack their reasoning. In each case the sovereign impleaded was in control of the vessel concerned. In our case it has never been suggested that the Philippine Government was in control. The test of control seems to me to be all important for a sovereign's dignity and the comity of nations do not seem to be so seriously imperilled if there is no interference with the sovereign's control. "Control" unlike "possession" does not involve any nice questions of law and is therefore not open to the objections voiced by Frankfurter, J. in *The Republic of Mexico v. Hoffman* when he said:

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"Ascertainment of what constitutes possession or where it is, is too subtle and precarious a task for transfer to a field in which international ... susceptibilities are involved."

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(1) (1920) P. 30
(2) (1962) 34 D.L.R. 628

**NOTICE OF MOTION FOR LEAVE TO APPEAL
TO THE PRIVY COUNCIL**

No. 36
Notice of Motion
for leave to
appeal
dated 7.5.1974

TAKE NOTICE that the Full Court will be moved on Friday the 17th day of May, 1974 at 4:30 p.m. in the afternoon or so soon thereafter as Counsel can be heard on behalf of the Government of the Republic of the Philippines, the owners of the ship "Philippine Admiral" that it be granted leave to appeal to Her Majesty in the Council pursuant to the provisions contained in the rules in the Order in the Council regulating appeals from the Supreme Court or Court of Appeal for Hong Kong to Her Majesty in Council from a Judgment of the Full Court given on the 26th day of April 1974 whereby it was adjudged and ordered that the appeal of the above-named Plaintiffs (Appellants) from the judgment or order of the Honourable Chief Justice Mr. Geoffrey Gould Briggs made on 14th December 1973 in Admiralty Jurisdiction Folios Nos.103 and 139 of 1973 and on 17th December 1973 in Admiralty Jurisdiction Folio No. 106 of 1973 be allowed and whereby it was further ordered that the Respondent (Defendant) do pay the costs of the said Appeal.

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AND FURTHER TAKE NOTICE that upon the hearing of the Motion aforesaid, the Respondent (Defendant) will (without prejudice to its claim to sovereign immunity from suit in these proceedings) seek the following further directions of this Honourable Court namely:-

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1. That the Order made by Honourable Mr. Justice Pickering on 8th October 1973 whereby it was ordered that the said ship "Philippine Admiral" be appraised and sold by the bailiff be suspended pending the outcome of the appeal to Her Majesty in Council.
2. As to the amount of security to be furnished for the release of the said vessel from arrest.
3. That the furnishing of any such security by or on behalf of the Government of the Republic of the Philippines be without prejudice to its claim to sovereign immunity from suit in these proceedings.
4. That upon such security being furnished the said vessel be released to the Respondent (Defendant) and be at liberty to leave the jurisdiction of this Honourable Court.
5. All such further or consequential direction as may be registered.
Dated the 7th day of May, 1974.

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(sd.) PETER MARK & CO.
Solicitors for the Government of
the Republic of the Philippines
Owners of the ship "Philippine Admiral"

To the abovenamed Plaintiffs,
and their solicitors,
Messrs. Johnson, Stokes & Master,
Hong Kong.

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ORDER

**BEFORE THE HONOURABLE MR. JUSTICE HUGGINS, THE HONOURABLE
MR. JUSTICE MCMULLIN AND THE HONOURABLE MR. JUSTICE LEONARD
IN FULL COURT**

No. 37
Order granting
conditional
leave to appeal
dated 16.5.1974

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UPON READING the Notice of Motion herein, dated the 7th day of May, 1974, on behalf of the Respondent (the Government of the Republic of the Philippines) for conditional leave to appeal from a Judgment of the Full Court given on the 26th day of April, 1974, to the Judicial Committee of the Privy Council pursuant to the Order in Council regulating appeals from the Court of Appeal for Hong Kong to Her Majesty the Queen in Council:

AND UPON HEARING Counsel for the Appellants and Counsel for the Respondent;

AND UPON READING the affidavits of Rodolfo Lamayo Diaz, Peter Mark and John Charles Corry Ferguson filed herein,

IT IS ORDERED that:-

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- (1) Leave to appeal to Privy Council be granted conditional upon giving security in the sum of HK\$30,000:00 for costs of appeal and despatching Record of appeal to England within three (3) months from the date hereof;
- (2) Costs of this application be costs in the appeal; and
- (3) There will be liberty for both parties to apply for further directions.

Dated this 16th day of May, 1974.

(sd.) B.L. JONES (L.S.)
Acting Deputy Registrar

ORDER

No. 38
Order releasing
the vessel
dated 27.5.1974

**BEFORE THE HONOURABLE MR. JUSTICE HUGGINS, THE HONOURABLE
MR. JUSTICE MCMULLIN AND THE HONOURABLE MR. JUSTICE LEONARD
IN FULL COURT**

UPON READING the Notice of Motion herein dated the 25th day of May, 1974 on behalf of the Appellants for the release of the ship "Philippine Admiral";

AND UPON HEARING Counsel for the Appellants and Counsel for the Respondent;

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AND UPON a Bail Bond having been filed herein as security in the sum of HK\$5,000,000:00;

AND UPON an undertaking of the caveators to withdraw caveats entered by Hong Kong United Dockyards Limited and Burrard Drydock Company Limited,

IT IS ORDERED that:-

- (1) The ship "PHILIPPINE ADMIRAL" be released from arrest;
- (2) The Order made by the Honourable Mr. Justice Pickering on the 8th day of October, 1973 for the appraisalment and sale of the ship "PHILIPPINE ADMIRAL" be discharged;
- (3) Costs of this application for release of the said ship be the costs in the cause of the actions.

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Dated this 27th day of May, 1974.

(sd.) B.L. JONES (L.S.)
Acting Deputy Registrar

EXHIBIT

MALACANANG
MANILA

Exhibit

—
Presidential
Decree No. 332
dated 9.11.1973

PRESIDENTIAL DECREE NO. 332

AMENDING CERTAIN SECTIONS OF REPUBLIC ACT NUMBERED SEVENTEEN HUNDRED AND EIGHTY-NINE, AS AMENDED, OTHERWISE KNOWN AS THE REPARATIONS LAW.

WHEREAS, it is the policy of the government to utilize all reparations payments from Japan in such manner as shall assure the maximum possible economic benefit to the Filipino people;

10 WHEREAS, it has been shown that majority of reparations end-users in the private sector have failed to properly utilize the reparations goods and/or services received by them, and to pay the amortizations thereon as they fall due, thus resulting in huge arrearages to the detriment of the Philippine economy;

WHEREAS, such failure of the end-users in the private sector to comply with their obligations is mainly due to the very low rates of interest being charged under the existing law;

20 NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution as Commander-in-Chief of all the Armed Forces of the Philippines, and pursuant to Proclamation No. 1081 dated September 21, 1972 and General Order No. 1 dated September 22, 1972, as amended, and in order to effect the desired changes and reforms in the utilization and disposition of reparations so as to assure the maximum possible economic benefit to the Filipino people, and in order to augment the limited government resources available for public projects, do hereby order and decree the amendment of Republic Act Numbered 1789, as amended, as follows:

SECTION 1. Section two, paragraph (a) of Republic Act Numbered 1789, as amended, is hereby amended to read as follows:

30 SEC. 2. Implementation. — To implement the policy declared in Section one hereof, the procurement, disposition and utilization of all goods and services procured from Japan under the terms of the Reparations Agreement shall be carried out as closely as possible to promote the economic rehabilitation and development of the country and in accordance with the broad program, criteria and priorities established by the National Economic and Development Authority in addition to the following criteria:

40 (a) Capital goods and services. — Pursuant to the policy declared in Section one hereof, the capital goods and services received as reparations shall be made available only after due compliance with all the conditions specified in this Act to approved government projects for each year included in the economic and social development program adopted by the National Economic and Development Authority upon application from the agency concerned and duly endorsed by the

Exhibit
—
Presidential
Decree No. 332
dated 9.11.1973

proper department head concerned and the National Economic and Development Authority, as well as to Filipino citizens and entities wholly owned by Filipino citizens, whose applications must be accompanied in each case by the requisite project study prepared in accordance with the form prescribed for the purpose by the Commission and approved by the National Economic and Development Authority and a sworn statement as to whether the applicant has already been granted any previous application and procurement order and the value of the reparations goods and/or services involved and actually delivered, and who will themselves utilize such goods and/or services as bona fide producers or manufacturers: Provided, That no private person, private company, establishment, or entity shall be granted more than one application for reparations goods and services and in no case the aggregate total of reparations goods and services granted to any such private person, private company, establishment, or entity shall be more than one and a half million dollars, except when a greater amount is necessary for the realization of any project certified by the President of the Philippines after consultation with the National Economic and Development Authority to be vital to the economic development of the country and except further that the applicant may further apply for expansion or development purposes when so authorized by the President of the Philippines after consultation with the National Economic and Development Authority; Provided, further, That where there are two applicants for the same reparations goods, all other things being equal, the person who first applied shall be given preference: Provided, finally, That reparations intended for electrification, educational material, equipment and machinery, including those for fishery and vocational schools, cottage industries, fire-fighting equipment, telecommunications, railroad, base metal mining, steel and cement manufacturing, logging and shipping shall be given top priority. The list of projects shall be given the widest dissemination and publicity possible.”

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SEC. 2. Paragraphs (b) and (d) of Section 2 of the same act are hereby amended to read as follows:

“(b) Goods other than capital goods. — Goods other than capital goods that may be procured from reparations shall be limited to such goods as may not be obtainable from normal sources of imports and to highly essential consumer goods and construction materials not classified as capital goods, the total value and detailed listing of which shall be made by the Commission created in section 5 hereof and approved by the President upon recommendation of the National Economic and Development Authority. Such goods shall be procured for and sold through such agency selected by the Commission only to bona fide retailers who are Filipino citizens or entities wholly owned by Filipino citizens who shall resell the same directly to consumers or end-users”.

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“(d) Cash payment. — The twenty million dollars cash payment shall accrue to a Trust Fund to be used exclusively for the benefit and rehabilitation of veterans of the Philippines in World War II, and their widows and orphans, as Congress may from time to time provide: Provided, That the procurement of consumers goods intended to generate the trust fund for veterans, their orphans and widows, of World War II shall be undertaken by the Commission upon the recommendation of and in consultation with the National Economic and Develop-

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ment Authority and the same shall be disposed by the agency selected by the Commission under paragraph (b) of this Section and the proceeds thereof shall be deposited in accordance with the provisions of this section. There shall be advanced from the Special Economic Development Fund created in Section three of this Act such amounts as may be needed to complete the scheduled cash payments of four million United States dollar every year for a period of five years in such a manner that the total cash payments of twenty million United States dollars shall have been collected at the end of five years.”

Exhibit

—
Presidential
Decree No. 332
dated 9.11.1973

10 SEC. 3. Paragraphs (e) and (h) of Section 2 of the same Act are hereby repealed and paragraphs (f) and (g) of the same Section are hereby amended to read as paragraphs (e) and (f), respectively.

SEC. 4. Section 3 of the same Act is hereby amended to read as follows:

20 “SEC. 3. Special Economic Development Fund. — The proceeds from the sale of reparations goods and utilization of services, together with interests earned, shall be constituted into a special Economic Development Fund out of which the National Assembly may appropriate by special laws, from time to time, such amounts as may be necessary to constitute a Special Trust Fund which shall be available to the Development Bank of the Philippines and the Philippine National Bank for loans for economic and industrial development projects as well as for construction, reconstruction, repair and/or improvement of public school buildings in amounts not exceeding eighty per cent of the value of the securities and payable within a period not exceeding twenty years depending upon the kind of loan and with interest at a rate not exceeding four per cent per annum: Provided, That the Development Bank of the Philippines and the Philippine National Bank shall charge for their services only the actual cost thereof and shall not make any profit therefrom: Provided, further, That fifty per cent of such Special Trust Fund shall be available for industrial loans, thirty per cent for agricultural loans (but not more than twenty per cent of such agricultural loans may be granted on any single agricultural crop), and the remaining twenty per cent, which shall be given top priority, for public school building construction, reconstruction, repair and/or improvement, as the National Assembly may provide from time to time. The sum of twenty million pesos shall likewise be set aside from the said Special Economic Development Fund to constitute a revolving fund which shall be used exclusively to aid in the establishment of rural banks, subject to the provisions of Republic Act Numbered Seven Hundred Twenty, otherwise known as the “Rural Banks Act,” as amended, and the further sum of fifty million pesos for the purchase of landed estates as provided for in the Land Tenure Act and such other landed estates as provided for by other special Acts.”

40 SEC. 5. Paragraphs (a) and (a-1) of Section 6 of the same Act are hereby amended to read as follows:

“(a) To prepare sufficiently in advance of need, on the basis of the previously approved reparations program and approved applications for reparations goods and services, a tentative schedule of goods and services clearly indicating thereon the name of the applicant end-user and the amount allocated for each

Exhibit
—
Presidential
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project to be procured from Japan every year which, when approved by the President of the Philippines upon recommendation of the National Economic and Development Authority, shall form the basis of consultation between the Philippine and Japanese governments towards the formulation of the schedule called for in Article four of the Reparations Agreement. A copy each, duly certified by the Commission, of the approved applications and studies of the projects included in the tentative schedule shall be transmitted to the Mission together with the tentative schedule. No additional project, and no change involving any item or project in a tentative or agreed schedule, whether by addition, substitution or deletion, whether in kind, quantity, or value, whether partial or total, shall be submitted to the Japanese Government until the same has been endorsed by the National Economic and Development Authority and approved by the President in accordance with the foregoing, except in cases where the proposed change involves only the increase or decrease in the amount allocated for a specific item or project listed in the tentative or agreed schedule, and does not involve any addition of, or change in, any other item or project as provided above, and the total of such increase or decrease, whether effected at one time or several times, does not exceed ten per cent of the amount originally allocated for a specific item or project listed in the tentative or agreed schedule, and does not involve any addition of, or change in, any other item or project as provided above, and the total of such increase or decrease, whether effected at one time or several times, does not exceed ten per cent of the amount originally allocated for the corresponding item or project in the tentative schedule. The agreed schedule, and any addition, substitution or deletion hereinabove referred to, as may thereafter be made in accordance with this Act and agreed to by the Japanese Government, be immediately published in full, indicating clearly the name of the end-users concerned, for three consecutive times every other day in two newspapers of general circulation, one in Tagalog and one in English by the Commission in the Philippines, and both in English by the Philippine Reparations Mission in Japan.

“(a-1) To issue procurement orders for the acquisition of reparations goods and/or services on the basis of the agreed schedule. The procurement order shall specify, among others, the following: (1) the name of the applicant end-users; (2) the item in the agreed schedule; (3) the name of the project; (4) the amount of the procurement order; and (5) the date of issuance of the procurement order. The amount of each procurement order shall be strictly in accordance with the allocation for each project as agreed upon between the Philippine and Japanese Governments. The procurement orders for all the projects shall be issued only after the conclusion of the agreed schedule. No procurement order for the acquisition of goods and/or services intended for government agencies shall be issued by the Commission until after it shall have duly ascertained and verified that the agencies concerned have (1) the capacity and have duly provided for the payment of the 2% service fee and all incidental charges in connection with the procurement and delivery of the goods and/or services, and (2) the technical capacity to take delivery and utilize efficiently the goods applied for, and unless all the following conditions shall have been previously complied with: (1) the government agency concerned must have previously prepared and submitted to the satisfactions of the Commission a financial, economic and technological study concerning the feasibility of the project together with the complete plans and specifications thereof; (2) the application must have

10 been previously approved by resolution of the Commission; (3) the project must be among those specifically included in the reparations schedule agreed upon and effective between the Philippine and Japanese Governments at the time of the issuance of the procurement order; and (4) the agreed schedule showing the names of the applicant end-users must have been published in accordance with this Act. No procurement order for the acquisition of reparations goods and/or services intended for private parties shall be issued by the Commission until after it shall have duly ascertained and verified that the applicant concerned (1) has enough financial resources and capacity to pay, and (2) has the technical capacity to take delivery and utilize efficiently the goods applied for, and unless all the following conditions shall have been previously complied with: (1) the private applicant end-user concerned must have previously prepared and submitted to the satisfaction of the Commission a financial, economic and technological study of the project together with the complete plans and specifications thereof favorably endorsed as prescribed in Section two of this Act, and a certification from the Securities and Exchange Commission or the Bureau of Commerce, as the case may be, attesting that the applicant end-user concerned is qualified under this Act; (2) the application must have been previously approved by resolution of the Commission; (3) the project concerned must be among these specifically included in the reparations schedule
20 agreed upon and effective between the Philippine and Japanese Governments at the time of issuance of the procurement order: Provided, That no procurement order shall be issued until after the private applicant end-user concerned shall have made a cash down payment for the project applied for which shall be 10% of the value of the project computed at the current rate of exchange of the peso to the U.S. dollar prevailing at the time of payment, and (4) the agreed schedule showing the names of the applicant end-users must have been published in accordance with this Act. The private applicant shall be required to submit proof to substantiate that both his financial resources and capacity to pay are commensurate with the value of the goods and/or services applied for, and that he has had experience or has contracted
30 an appropriate number of experts in the particular field. He shall also be required to put up collaterals sufficient to cover the balance of the cost of the goods and/or services: Provided, further, That in the case of corporations, the principal officers thereof shall be required to sign a guarantee contract whereby they shall be jointly and severally liable with the corporation to answer for the obligation so contracted. Notwithstanding the foregoing, no procurement order shall take effect until after the lapse of one week after its final publication indicating the name and address of the applicant end-user, the name of the project subject of the procurement order, and the specific item in the reparations schedule agreed upon and effective between the Philippine and Japanese Governments at the time of issuance of the procurement
40 order, three successive times every other day in two newspapers of general circulation, one in Tagalog and one in English, in the Philippines, and both in English in Japan, by the Commission and the Mission, respectively. As required herein, the Commission shall publish each and every procurement order within one week after its issuance, and the Mission, within one week after receipt of the procurement order. Any procurement order which does not wholly comply with all of the above requirements, shall ipso facto be considered null and void, if such non-compliance has been through the fault or negligence of the applicant end-user. After the procurement order for reparations intended for a specific end-user has been properly issued in accordance with the foregoing, such procurement order may

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not be revoked or suspended except when the end-user in whose favor the procurement order has been issued is adjudged, after due investigation wherein he has been given the opportunity to be heard and represented by counsel, to be disqualified or found guilty of fraud in connection with his application under this Act: Provided, That pending final decision, the procurement of the goods, except actual delivery thereof to the end-user concerned, shall not be suspended: Provided, however, That an end-user who has been found disqualified by the Commission may appeal to the President within thirty days from the receipt of the Commission's decision. The decision of the President which must be made not later than thirty days after the submission of the appeal to him, shall be final, and shall become effective upon receipt thereof by the end-user concerned. In case the end-user fails to appeal, the decision of the Commission shall become final immediately after the lapse of the period for appeal. A party who has been adjudged disqualified shall forfeit the down payment without prejudice to any action, criminal or otherwise, which may be taken against him by the proper government agency. The Commission is hereby required to render a decision on any complaint submitted to it regarding the qualifications of an end-user within ninety days from the date of the formal submission of such complaint in writing."

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SEC. 6. Section 10 of the same Act is hereby amended to read as follows:

"SEC. 10. Operating Funds. – The funds for the approved budget of the Commission shall be provided for in the annual General Appropriation Acts. All the warehousing charges, other charges, and/or expenses paid and advanced by the Commission from the Special Economic Development Fund (reparations proceeds) as authorized in the General Appropriation Acts for reparations goods repossessed by it shall be considered part of the operating expenditures of the commission in the particular fiscal years when they were paid as authorized. Likewise, all service fees and incidental charges collected by the Commission pursuant to this Act shall form part of its operating funds."

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SEC. 7. Section 12 of the same Act is hereby further amended to read as follows:

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"SEC. 12. Terms of Sale. – Capital goods and complementary services intended for government projects, irrespective of the classification of the project, shall be transferred to the agencies concerned without cost; Provided, That said agencies shall pay in cash a service fee of two (2) per cent of the cost of the goods and/or services, and all incidental charges incurred in connection with the procurement and delivery of such goods and/or services, computed at the current rate of exchange of the peso to the U.S. dollar prevailing at the time of payment. The government agencies concerned shall enter in their books of accounts the peso F.O.B. value of the goods and/or services received by them computed at the current rate of exchange of the peso to the U.S. dollar prevailing at the time of delivery, as follows:

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(1) National government offices, agencies, institutions and/or instrumentalities depending solely on appropriations from the National Assembly for their operating expenses shall enter the peso F.O.B. value as additional appropriation for

them.

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(2) National government offices, agencies, institutions and/or instrumentalities with revolving funds provided by law shall enter the peso F.O.B. value as additional appropriation for said revolving fund.

(3) National government offices, agencies, institutions and/or instrumentalities with capital stock provided by law shall enter the peso F.O.B. value as subscription of the Government to such capital stock.

(4) Government-owned or controlled corporations shall enter the peso F.O.B. value as subscription of the Government to their capital stock.

10 (5) Provincial, city and municipal governments shall enter the peso F.O.B. value as contribution of the National government to their operating expenses.

The foregoing provisions shall also apply to all government projects, irrespective of the classification of the projects, the reparations goods and/or services of which have already been procured and delivered to the government end-users concerned, and the contracts for the transfer thereof shall be modified accordingly: Provided, That whatever amount or amounts that may have already been paid by said government end-users for service fee, incidental charges and/or the peso F.O.B. value of the reparations goods and/or services, including interest thereon, if any, shall not be refunded.

20 Capital goods and complementary services disposed of to private parties as provided for in sub-section (a) of Section two hereof shall be sold on cash or credit basis under rules and regulations as may be determined by the Commission. All private end-users shall pay the peso F.O.B. value of reparations goods and/or services received by them plus a service fee of 2% of the value of such goods and/or services, and all incidental charges in connection with the procurement and delivery thereof, all computed at the current rate of exchange of the peso to the U.S. dollar prevailing at time of delivery under the terms and conditions provided herein. Sales on credit basis shall be payable on installments: Provided, That the deposit or down payment required to be paid under subsection (a-1) of Section 6 hereof shall be applied as first payment without interest on the F.O.B. value on the date of delivery of the reparations goods and/or services: Provided, further, That in case of capital goods for the utilization of which an initial investment before operation of not more than twenty per cent of the cost of such goods is required, the first installment with interest shall be paid on the third month after delivery of the goods, and in the case of the capital goods for the utilization of which an initial investment before operation of more than twenty per cent of the cost of such goods is required, and also in the case of ocean-going vessels, the first installment with interest shall be paid on the twelfth month after delivery of the goods, extendible when deemed to be justified by the Commission not exceeding one year. The balance, in both cases, shall be paid in equal annual installments within a period to be fixed by the Commission considering the life expectancy of the goods but in no case exceeding ten years from the date the first installment falls due, with interest at twelve (12) per cent per annum and an additional interest of one and one-half (1-1/2) per cent

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per month for delinquency in the payment of installments: Provided, That in the case of vessels, the procurement cost thereof shall be paid within the period provided for in Republic Act Numbered Fourteen Hundred and Seven, as amended. Goods other than capital goods procured as reparations shall be sold for cash only at prevailing prices for similar goods.

In all transactions involving the transfer of capital goods and services from reparations to the authorized private parties specified in this Act, the sale shall be directly to end-users and not through middlemen. The contract of sale and the corresponding schedule of payment shall be executed upon delivery of the reparations goods and/or services pertaining to each allocation in a particular agreed schedule irrespective of whether or not the project has been given a complete allocation, or needs an additional allocation for completion or expansion, or has an additional allocation in the succeeding annual reparations schedule or schedules. All reparations machinery and equipment in the possession of private end-users, whether utilized or not, shall be declared "Completely delivered" unless within 30 days from date of receipt of instructions to end-users, they shall file with the Commission their respective written proofs justifying their alleged claims.

The contract of sale shall bear the conditions that no capital goods thus acquired shall be resold, leased or in any other manner disposed of except to Filipino citizens or to entities wholly owned by Filipino citizens who shall continue the utilization thereof in the projects for which the goods were originally intended or in similar projects included in the economic development program of a similar priority, subject, however, to the further condition that groups, associations and corporations which are recipient of such goods shall not permit any subsequent change in ownership or control as shall at any time thereafter change the control or ownership wholly held therein by Filipino citizens. It shall further contain a provision that any transfer of ownership, whether by virtue of a private contract or through court proceedings, shall be to Filipino citizens who shall begin utilizing them in such projects as the National Economic and Development Authority shall determine within one year from notice of the Authority's decision."

SEC. 8. To Section 12 of the same Act, there are hereby added paragraphs (a-1) and (a-2) to read as follows:

"(a-1) The foregoing provisions of this Section, insofar as it relates to the computation of the peso F.O.B. value of the reparations goods and/or services, the execution of the sales contract and corresponding schedule of payments, the time of application of the deposit or down payment as first payment without interest and the due date of the first installment with interest on the balance and the imposition of interest of 12% per annum on the balance and an additional 1-1/2 per month for delinquency, shall also apply to all projects of private end-users in the current 17th year reparations schedule and to all other projects of private end-users where the reparations goods and/or services have already been delivered but the contracts and corresponding schedules of payment have not as yet been executed at the time of the issuance of this decree, in which case, said private end-users shall, within a period of three months from issuance of this decree, execute the sales contracts and corresponding schedules of payments, otherwise the sanction provided for under

paragraph (a-2) of this Section shall be taken against them.

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10 (a-2) All private end-users with pending accounts with the Commission at the time of the issuance of this Decree shall be allowed to restructure their accounts beyond the maximum allowable period of amortization as provided for under this Act: Provided, That said end-users shall first be required to pay 10% of the total accrued accounts at the time of the issuance of this Decree: Provided, further, That interest at the rate of 12 per cent per annum shall be imposed on the restructure yearly amortization with an additional monthly interest of 1-1/2 per cent for delinquency and said end-users shall be required to put up additional collaterals sufficient to cover the value of the restructured account, and in the case of corporations, the principal officers thereof shall be required to sign the contract of restructuring jointly and severally with the corporation: Provided, finally, That all delinquent private end-users of reparations goods and/or services are hereby given a period of three (3) months within which to restructure or update their accounts with the Commission otherwise, the latter, with the assistance of the Armed Forces of the Philippines, shall extrajudicially repossess said reparations goods and attach all other assets of said private end-users and shall sell, transfer, or otherwise dispose of the same in a manner as provided for herein, without prejudice to such civil and/or criminal action that may be taken against them under this Act and/or other existing laws. All reparations goods so repossessed and/or to be repossessed shall be sold through public bidding, or through negotiation if the public bidding will fail, either by lot or by piece, at such price and under such terms and conditions as may be determined reasonable by the Commission upon the recommendation of an appraisal committee to the constituted by the Commission and in which at least one (1) member each must come from the office of the Commission Auditor and the National Economic and Development Authority: Provided, That government instrumentalities will be given the first option to acquire the reparations goods which they may need or can utilize, in which case said reparations goods shall be transferred to them without cost and the appraised value thereof as determined by the Commission shall be entered in their books of accounts in accordance with this Section. All expenses incurred in connection with the transfer of said goods shall be borne by the government agencies concerned.

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The Commission is hereby authorized to pay out of the Special Economic Development Fund such amount or amounts as may be necessary for all the expenses and/or charges in connection with the repossession of reparations goods and attachment of other assets of private end-users and the sale thereof through public bidding or negotiations as hereinabove provided.”

40 SEC. 9. All reference to the National Economic Council in Republic Act Numbered 1789, as amended, shall be understood to mean the National Economic and Development Authority.

SEC. 10. All provisions of Republic Act Numbered 1789, as amended, the rules and regulations promulgated thereunder, and all other laws, executive orders, or parts thereof, inconsistent with this Decree are hereby repealed, modified and/or amended accordingly.

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SEC. 11. This Decree shall take effect immediately.

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Done in the City of Manila this 9th day of November, in the year of our Lord, nineteen hundred and seventy-three.

(sgd.) FERDINAND E. MARCOS
President of the Philippines

True copy
RMS:lac
11/15/73

In the Privy Council

ON APPEAL

FROM THE SUPREME COURT OF HONG KONG

(APPELLATE JURISDICTION)

CIVIL APPEAL NO. 53 OF 1973

(On appeal from Admiralty Jurisdiction Folio Nos. 103, 106 and 139 of 1973)

BETWEEN

THE OWNERS OF THE SHIP
"PHILIPPINE ADMIRAL" (Philippine Flag) *Appellants*

and

WALLEM SHIPPING (HONG KONG) LIMITED
TELFAIR SHIPPING CORPORATION *Respondents*

RECORD OF PROCEEDINGS

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