

**1982 UNITED NATIONS CONVENTION
ON THE LAW OF THE SEA**

**IN THE DISPUTE CONCERNING
THE ENRICA LEXIE INCIDENT**

THE ITALIAN REPUBLIC v. THE REPUBLIC OF INDIA

**NOTIFICATION UNDER ARTICLE 287
AND ANNEX VII, ARTICLE 1 OF UNCLOS
AND
STATEMENT OF CLAIM
AND GROUNDS ON WHICH IT IS BASED**

26 JUNE 2015

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I. INTRODUCTION

1. This Notification and Statement of Claim addresses the dispute between the Italian Republic (“**Italy**”) and the Republic of India (“**India**”) over “the *Enrica Lexie* Incident”. This concerns an incident approximately 20.5 nautical miles off the coast of India involving the *MV Enrica Lexie*, an oil tanker flying the Italian flag, and India’s subsequent exercise of criminal jurisdiction over two Italian Marines from the Italian Navy (“**Italian Marines**”) in respect of that incident. India’s exercise of criminal jurisdiction over the Italian Marines violates the 1982 United Nations Convention on the Law of the Sea (“**UNCLOS**” or “**the Convention**”), to which Italy and India are party.
2. Pursuant to Articles 286 and 287 of the Convention, and in accordance with the requirements of Article 1 of Annex VII thereto, Italy hereby gives written notification to India that, having failed to reach a settlement after exchanges of views as contemplated by Article 283 of UNCLOS, it now submits the dispute with India concerning the *Enrica Lexie* Incident to the arbitral procedure provided for in Annex VII of UNCLOS. In accordance with Article 1 of Annex VII, this Notification includes a statement of claim and the grounds on which it is based.
3. In accordance with the requirements of Annex VII, Article 3(b), Italy hereby appoints Professor Francesco Francioni as a member of the Arbitral Tribunal.¹

II. THE DISPUTE ARISING FROM THE ENRICA LEXIE INCIDENT

Deployment of a Vessel Protection Detachment on the *Enrica Lexie*

4. In 2011, in line with the global effort to counter piracy, and to ensure freedom of navigation and the protection of Italian flagged vessels, the Government of Italy enacted Government Decree 107 of 2011 (subsequently converted into

¹ The *curriculum vitae* of Professor Francioni is attached hereto as **Annex 1**.

² Legge 2 August 2011 n. 130, published in Gazzetta Ufficiale n. 181, 5 August 2011 (**Annex 2**).

³ Ship Security Alarm System Message sent out by the *Enrica Lexie* on 15 February 2012 (**Annex 3**).

Law No. 130 of 2 August 2011), which provided for the deployment of Vessel Protection Detachments (“VPDs”) from the Italian Navy on board vessels flying the Italian flag to ensure the security of such vessels travelling in international waters that are at a high risk of piracy.²

5. On 6 February 2012, in accordance with Italian Law No. 130 (2011), a VPD consisting of six marines from the Italian Navy was deployed on board the *Enrica Lexie* at the port of Galle in Sri Lanka. This was to protect the vessel against piracy during its voyage from Sri Lanka to Djibouti, which required it to pass through an IMO-designated high-risk area in international waters.

The 15 February 2012 Incident

6. On 15 February 2012, the *Enrica Lexie*, with the Italian Marines on board, was transiting approximately 20.5 nautical miles off the coast of Kerala, India en route from Sri Lanka to Djibouti. An unidentified craft was detected on radar approximately 2.8 nautical miles away and was observed to be heading rapidly towards the *Enrica Lexie*. As the craft drew closer, Chief Master Sergeant Massimiliano Latorre and Sergeant Salvatore Girone, two of the Italian Marines from the VPD, assessed that it was on a collision course with the *Enrica Lexie* and that this *modus operandi* was consistent with a pirate attack.
7. The craft continued to head towards the *Enrica Lexie* despite sustained visual and auditory warnings from the *Enrica Lexie* and the firing of warning shots into the water. All crew members on board the *Enrica Lexie* who were not engaged in the operation of the vessel were ordered to take refuge in the ship’s security bunker. Sergeant Girone, looking at the craft through binoculars, saw what appeared to be people carrying rifles, as well as instruments for boarding ships.
8. Eventually, after apparent attempts to approach the *Enrica Lexie*, the craft turned away and headed towards the open sea. This incident took place in international waters approximately 20.5 nautical miles off the Indian coast.

² Legge 2 August 2011 n. 130, published in Gazzetta Ufficiale n. 181, 5 August 2011 (**Annex 2**).

During the incident the *Enrica Lexie* sent out a “*Ship Security Alarm System Message*”, which described the “*Nature of distress*” as “*Piracy/armed attack*”, and which was timed at 11.23 UTC.³

9. On the same day there was at least one other report of a piracy incident in the area, said to involve an aborted attack on a tanker at about 16.50 UTC.⁴

Circumstances in which the *Enrica Lexie* was brought to Kochi Anchorage

10. It appears that at some point the Indian authorities received information that two fishermen had been killed on a fishing boat, the “*St Antony*”, and decided that the *Enrica Lexie* was involved in the incident.⁵ By this time the *Enrica Lexie* was still in international waters and already en route to Djibouti.
11. The Indian authorities, acting by ruse and coercion, caused the *Enrica Lexie* to change its course and head for Kochi on the Kerala coast. The Maritime Rescue Co-ordination Centre of India (“MRCC”) contacted the *Enrica Lexie* by telephone, claimed that it had caught two suspected pirate boats in connection with a “*piracy incident/firing incident*” and (on that false pretext) instructed the *Enrica Lexie* to sail to Kochi to identify suspected pirates. In a subsequent email sent to the Master, the MRCC referred to this conversation and again asked the *Enrica Lexie* to head for Kochi, without explaining that the *Enrica Lexie* itself was the suspect vessel.⁶
12. The Indian authorities also used coercion to ensure that the *Enrica Lexie* stopped, changed course, sailed to Kochi anchorage and remained there. They did so by sending out a Dornier coast guard aircraft and at least two vessels (thought to include the “ICGS Samar” and the “ICGS Lakshmibai”, both of

³ Ship Security Alarm System Message sent out by the *Enrica Lexie* on 15 February 2012 (**Annex 3**).

⁴ International Maritime Bureau Report, 15 February 2012 (**Annex 4**).

⁵ Letter from the Indian “Dy Director General of Shipping” to the Owners of the *Enrica Lexie*, 16 February 2012 (**Annex 5**); National Maritime Search and Rescue Board, Report, 4 June 2012, p. 10 (**Annex 6**); Statement by Commandant Alok Negi, Coast Guard Air Enclave Kochi, 19 February 2012 (**Annex 7**).

⁶ Email from MRCC Mumbai to Master of the *Enrica Lexie*, 15 February 2012 (**Annex 8**).

which were armed and at least one of which had police personnel on board).⁷ The aircraft and the vessels intercepted the *Enrica Lexie* in international waters, instructed her to proceed to Kochi, followed her there, and continued to patrol around and monitor her when she reached Kochi anchorage at night.

Events following Arrival at Kochi Anchorage

13. On 16 February 2012, whilst still at Kochi anchorage, the *Enrica Lexie* was boarded by over 30 Indian personnel, some of whom were armed, including coast guard, police and commandos.⁸ It was only after boarding the *Enrica Lexie* that the Indian Coast Guard Officer in charge of the boarding party informed the Master of the *Enrica Lexie* that the incident did not involve a pirate boat but an unflagged fishing vessel, the *St Antony*, and had resulted in the death of two Indian fishermen on board the *St Antony*.⁹ In response, the Master and crew of the *Enrica Lexie* stated that only Italy had jurisdiction over the incident. This was re-iterated in a written notification handed to the Indian boarding team.¹⁰ Disregarding the objections of the Master, the VPD and crew, the Indian boarding team carried out investigations on the *Enrica Lexie*, undertook a coercive interrogation of everyone on board, and (through continuous pressure) obtained some of the vessel's documents.¹¹

14. Italy's prompt assertion of jurisdiction is supported by the contemporaneous record. On 16 February 2012, Italy sent a Note Verbale to the Indian Government asserting that the Italian Marines were "exclusively answerable to the Italian judicial authorities, under article 97" of UNCLOS.¹² On 17 February 2012, the Office of the Prosecutor at the Military Tribunal in Rome wrote to Sergeant Latorre, the commanding officer of the VPD on board the *Enrica Lexie*, to enquire about the use of arms on board the *Enrica Lexie* and required

⁷ Letter from the Indian "Dy Director General of Shipping" to the Owners of the *Enrica Lexie*, 16 February 2012 (**Annex 5**); National Maritime Search and Rescue Board, Report, 4 June 2012, p. 10 (**Annex 6**); Statement by Commandant Alok Negi, Coast Guard Air Enclave Kochi, 19 February 2012 (**Annex 7**).

⁸ Boarding Officer's Report MV *Enrica Lexie*, 16-17 February 2012, §§5 to 11 (**Annex 9**).

⁹ Boarding Officer's Report MV *Enrica Lexie*, 16-17 February 2012, §§5 to 11 (**Annex 9**).

¹⁰ Boarding Officer's Report MV *Enrica Lexie*, 16-17 February 2012, §§5 to 11 (**Annex 9**).

¹¹ Boarding Officer's Report MV *Enrica Lexie*, 16-17 February 2012, §§5 to 11 (**Annex 9**).

¹² Note Verbale 67/438, 16 February 2012 (**Annex 10**).

that investigations be undertaken immediately.¹³ On the same date, Italy sent a Note Verbale to the Indian authorities asserting its right of exclusive jurisdiction over the incident.¹⁴ On 24 February 2012, the Office of the Prosecutor at the Military Tribunal in Rome informed the Italian Ministry of Defence that it had opened a criminal investigation against Sergeant Latorre and Sergeant Girone.¹⁵

15. Late on 16 February 2012, pursuant to the orders of the Indian authorities, the *Enrica Lexie* left Kochi anchorage and proceeded to the oil terminal of Kochi Port, where she docked in the early hours of 17 February 2012.¹⁶ On 19 February 2012, Sergeant Latorre and Sergeant Girone were compelled to disembark and were arrested by the Kerala police and placed in custody. They have been formally subject to the custody of the Indian courts to this day.

The Indian Legal Proceedings

16. On 22 February 2012, Writ Petition No. 4542 of 2012 was filed in the Kerala High Court by Italy and the two Marines (“**Writ Petition No. 4542**”), in which they challenged jurisdiction and asserted immunity.¹⁷
17. On 19 April 2012, Writ Petition No. 135 of 2012 (“**Writ Petition No. 135**”) was filed by Italy and the two Marines in the Supreme Court of India, *inter alia*, on the basis that any action by India in relation to the *Enrica Lexie* Incident and the continued detention of the two Marines was not in accordance with the principle of sovereign immunity under international law and the principles relating to the exercise of criminal jurisdiction under UNCLOS.¹⁸
18. On 29 May 2012, during the pendency of Writ Petition No. 135, the Kerala High Court dismissed Writ Petition 4542 on the ground that the territorial

¹³ Communication from the Office of the Prosecutor at the Military Tribunal of Rome to the Commanding Officer of the Military Protection Detachment of the *Enrica Lexie*, 17 February 2012 (**Annex 11**).

¹⁴ Note Verbale 69/456, 17 February 2012 (**Annex 12**).

¹⁵ Communication from Office of the Prosecutor of the Tribunal of Rome to the Head of Cabinet at the Ministry of Defence, 24 February 2012 (**Annex 13**).

¹⁶ Log book of the Master of the *Enrica Lexie* (**Annex 14**).

¹⁷ Writ Petition No. 4542 of 2012, 22 February 2012 (**Annex 15**).

¹⁸ Writ Petition No. 135 of 2012, 19 April 2012 (**Annex 16**).

jurisdiction of the State of Kerala and the Indian Penal Code extended up to 200 nautical miles and applied to the Italian Marines.¹⁹ Italy and the two Italian Marines then filed a Special Leave Petition challenging the Kerala High Court's dismissal of Writ Petition No. 4542.²⁰

19. Writ Petition No. 135 and the Special Leave Petition were heard together by the Supreme Court of India. On 18 January 2013, the Supreme Court of India handed down its judgment stating that although the Kerala High Court did not have jurisdiction to investigate the incident, the Union of India did have jurisdiction to do so, citing provisions of Indian law and rejecting the arguments advanced to the contrary based on international law.²¹ The Supreme Court failed to address the issue of the immunity of the Italian Marines. The Supreme Court then directed the Government of India to set up a Special Court, in consultation with the Chief Justice of India, to try the two Marines under Indian law.
20. Thus far and throughout, including through other petitions before the Indian courts challenging jurisdiction, Italy has objected to India's assertion of jurisdiction over the *Enrica Lexie* Incident and over the two Italian Marines on the basis that this is in contravention of international law,²² and has sought to

¹⁹ Judgment of the High Court of Kerala, 29 May 2012, pp. 23-24 (**Annex 17**).

²⁰ Special Leave Petition 20370 of 2012, 11 July 2012 (**Annex 18**).

²¹ *Republic of Italy & Ors v. Union of India & Ors*, Supreme Court of India Judgment of 18 January 2013, at paras.100ff. (**Annex 19**).

²² NV 69/456 of 17 February 2012 ("based on international law, the Italian judicial Authorities are the sole competent judicial Authorities for the case in question"); NV 73/472 of 20 February 2012 ("co-operation would take place without prejudice to the issue of jurisdiction, which the Italian side regards as solely pertaining to the Italian judicial Authorities"); NV 95/553 of 29 February 2012 ("reasserts the Italian exclusive jurisdiction in respect of the said military personnel...the conduct of Italian Navy Military Personnel officially acting in the performance of their duties should not be open to judgment scrutiny in front of any court other than the Italian ones"); NV 95/553 of 29 February 2012 ("according to principles of customary international law, recognised by several decisions of International Courts, State organs enjoy jurisdictional immunity for acts committed in the exercise of their official functions"); NV 89/635 of 11 March 2013 ("the position adopted by Indian Authorities on the incident [is] a violation of international law obligations including the principle of immunity of jurisdiction for agents of a Foreign State and the provisions of the [UNCLOS]"); NV 273/1570 of 9 July 2013 ("lack of jurisdiction of India to investigate and/or try"); NV 447/2517 of 5 November 2013 (idem); NV 56/259 of 7 February 2014 ("the two marines enjoy immunity from jurisdiction of the Indian courts under international customary law, and that Italy has jurisdiction over the matter"); NV 67/319 of 15 February 2014 (idem); NV 71/338 of 19 February 2014 ("the legitimate expectation of Italy [is] that the Indian authorities would dispose of the case...in conformity with international law"); NV 93/446 of 10 March 2014 (idem, and "with special regard to the international rules on immunity of State officials on duty and on the exclusive jurisdiction of the flag State on high seas"); and NV 123/714 of 18 April 2014 ("the conduct of the Indian authorities is in contrast with the international obligations binding upon India under international customary and treaty law") (**Annex 20**).

engage with India in the hope of reaching a settlement of the dispute.²³ Despite Italy's requests that India release the Marines and that Italian criminal jurisdiction be enabled to follow its course, and high-level political engagement between Italy and India, India has continued to exercise jurisdiction.

21. Although they have not been charged, the two Marines continue to be placed under bail constraints requiring them to remain in Delhi. One of them, Sergeant Latorre, was granted a relaxation of the conditions of bail by the Supreme Court in September 2014 to return to Italy for an initial period of 4 months, which has been subsequently extended. The Court accepted that this was necessary to aid his recovery from a brain stroke, [REDACTED]

[REDACTED]²⁴ [REDACTED]

[REDACTED]²⁵

22. The other marine, Sergeant Girone, remains detained in India. In December 2014, he sought a relaxation of the conditions of bail to allow him to travel to Italy [REDACTED]

²³ As per the Notes Verbales at **Annex 20** hereto and the ministerial correspondence at **Annex 20** hereto.

²⁴ Application for Directions and Relaxation of Bail Conditions on Behalf of Chief Master Sergeant Massimiliano Latorre, 5 September 2014 (**Annex 21**). Reports of Dr. Mendicini, Specialist Neurologist, Military Hospital in Taranto, 14 October 2014 and 14 November 2014; Report of Professor Mario Carminati, Director and Chief Surgeon for Child Cardiology and Congenital Heart Conditions in Adults, Policlinico San Donato, 11 November 2014; Discharge Summary issued by Istituto Neurologico Carlo Besta, 25 November 2014; Report of Dr. Eugenio Parati, Director of Cerebrovascular Diseases, Istituto Neurologico Carlo Besta, 1 December 2014; Report of Professor Gabriele Masi, Director of the Centre for Psychiatry and Psychopharmacology in Childhood, Fondazione Stella Maris, 1 November 2014; Report of Dr. Stefano Vicari, Director of the Department of Child Neuropsychiatry, Bambin Gesù, 25 November 2014 (**Annexes 24-28**).

²⁵ Application for Directions and Relaxation of Bail Conditions on Behalf of Chief Master Sergeant Massimiliano Latorre, 9 December 2014 (**Annex 23**). On 14 January 2015, the Supreme Court of India granted a 3-month extension for Sergeant Latorre to remain in Italy (**Annex 30**). On 9 April 2014, the Supreme Court granted a further extension for Sergeant Latorre to remain in Italy until 15 July 2015 (**Annex 31**).

████████████████████²⁶ At a hearing before the Supreme Court of India, with the Chief Justice presiding, the Government of India, through its Additional Solicitor General, opposed the petition of Sergeant Girone. In the course of the hearing, the Court made it clear that the petition would be rejected.²⁷ The petition was accordingly withdrawn.²⁸

23. As of the date of this Notification, the Marines have faced confinement in prison and have been thereafter subjected to bail restrictions, without any charge having formally been issued, for approaching three-and-a-half years.
24. By its conduct, India has failed *inter alia* to respect Italy's exclusive jurisdiction over the Enrica Lexie Incident and over the Italian Marines who, in addition, as State officials acting in their official capacity, are immune from legal proceedings in India. India's conduct is in breach of the exclusive jurisdiction of the Italian authorities to pursue a criminal investigation and, as appropriate, criminal charges in connection with the Enrica Lexie Incident and against the Italian Marines. Given the promptness with which Italy asserted jurisdiction over the Enrica Lexie Incident, there can be no doubt that India's conduct violated rights which not only belong exclusively to Italy as a matter of legal principle but which were being concretely exercised by Italy. As a result of India's conduct, Italy continues to this date to be prevented from exercising its rights of exclusive jurisdiction. India's conduct is also in breach of India's duty to cooperate with Italy in the repression of piracy and with other rules and obligations of international law intimately connected with the issues in dispute and not otherwise incompatible with the Convention.
25. These facts have given rise to a dispute regarding the legality under UNCLOS of India's exercise of criminal jurisdiction over the Italian Marines. The dispute includes, but is not limited to, the rights of States under Parts II, V, and VII of

²⁶ Application for Directions and Relaxation of Bail Conditions on Behalf of Sergeant Major Salvatore Girone, 9 December 2014 (**Annex 22**).

²⁷ Supreme Court of India Order of 16 December 2014 recording the withdrawal of the applications (**Annex 29**).

²⁸ A petition to extend Sergeant Latorre's stay in Italy, filed on the same occasion, was also temporarily withdrawn. On 14 January 2015, however, the Supreme Court of India granted him a 3-month extension (**Annex 30**), which - as previously mentioned - was renewed on 9 April 2014 and is due to expire on 15 July 2015 (**Annex 31**).

UNCLOS regarding the exercise of criminal jurisdiction over foreign-flagged vessels in the circumstances in issue, including as regards the immunity of foreign State officials, and the duty of States under the Convention to cooperate in the repression of piracy.

III. JURISDICTION

26. Italy and India are both parties to UNCLOS, having ratified the Convention on 13 January 1995 and 29 June 1995 respectively. Part XV establishes a regime for the settlement of disputes concerning the interpretation and application of the Convention. Article 279 requires State Parties to seek a solution by peaceful means in accordance with the UN Charter. Article 283(1) further requires that when a dispute arises between State Parties, they should proceed expeditiously to an exchange of views regarding a settlement by negotiation or other peaceful means. This requirement has been manifestly fulfilled. From the time the incident occurred, Italy has actively sought—indeed proposed—a diplomatic solution to the case. These efforts intensified from June 2014, following the election of the Government of Prime Minister Modi in India. Italy advanced concrete proposals to India for the settlement of the case in terms that were sensitive to India’s Supreme Court engagement on the matter. The receipt of the Italian proposal has been publicly acknowledged by India and the possibility of a settlement has been discussed in general terms between senior officials of both Governments. India, however, has resisted discussions on the details of the Italian proposal. Despite Italy’s best efforts, the dispute remains unresolved and indeed it has been aggravated by the detention of and continuing restrictions on the Marines. There is no scope for further substantive discussions between the Parties on a negotiated settlement of the dispute at the present time.
27. Article 286 of the Convention provides that “any dispute concerning the interpretation or application of this Convention shall, where no settlement has been reached by recourse to section 1, be submitted at the request of any party to the dispute to the court or tribunal having jurisdiction under this section.” The Parties to the dispute have not agreed on the means for the settlement of the

dispute—India has not made any declaration pursuant to Article 287(1), whereas by its declaration of 26 February 1997, Italy has chosen both the International Tribunal for the Law of the Sea and the International Court of Justice as appropriate means for settling disputes concerning the interpretation or application of the Convention. Accordingly, by application of Article 287(5) of the Convention, the Parties are deemed to have accepted arbitration in accordance with Annex VII of the Convention.

28. Therefore, and in conformity with Article 286, Italy submits this dispute with India to an arbitral tribunal constituted in accordance with Annex VII, which has jurisdiction over the dispute in accordance with Article 288(1) of the Convention.

IV. GROUNDS ON WHICH ITALY’S CLAIMS ARE BASED AND INDIA’S BREACHES OF THE CONVENTION

29. Italy claims, pursuant to UNCLOS, in particular Parts II, V, and VII, and notably Articles 2(3), 27, 33, 56, 58, 87, 89, 92, 94, 97, 100 and 300 of the Convention,²⁹ and customary international law, that India has breached its international obligations in ways including but not limited to the following:

- (a) By causing, by ruse and coercion, the *Enrica Lexie*, whilst in international waters, to alter its course, head towards India, enter Indian territorial waters and continue sailing to Kochi anchorage; by boarding, detaining and investigating the *Enrica Lexie* and her crew (including the Italian Marines) and ordering her to proceed to Kochi port, whilst the *Enrica Lexie* was anchored in the territorial waters of India; and, thereafter, by arresting, interrogating and detaining the Italian Marines and commencing proceedings against them in connection with an incident that occurred beyond India’s territorial waters, India violated and continues to violate Article 27(5) of UNCLOS.

²⁹ Italy is entitled to rely on Articles 87 to 115 of UNCLOS by reason of Article 58 which, subject to certain qualifications, extends the application of those provisions to the EEZ.

- (b) By arresting and detaining the *Enrica Lexie* through the issuance of orders from a coast guard aircraft, tracking and following the ship by that aircraft, and by at least two Indian armed Coast Guard vessels while the *Enrica Lexie* was in international waters, India violated Article 97(3) of UNCLOS.
- (c) By the conduct directed towards the *Enrica Lexie* outlined in paragraphs (a) and (b) above, India violated Italy's freedom of navigation enjoyed under Article 87 of UNCLOS. Such interference with the freedom of navigation is not justified under the narrow exceptions set out in UNCLOS because the circumstances did not give Indian authorities any right of visit nor any right of hot pursuit.
- (d) By the conduct directed towards the *Enrica Lexie* outlined in paragraphs (a) and (b) above, India has failed to fulfill in good faith its obligations under UNCLOS and/or (if and insofar as it had any relevant rights, jurisdiction or freedoms recognized in UNCLOS) has exercised them in a manner which constitutes an abuse of rights, in violation of Article 300 of UNCLOS.
- (e) By arresting, detaining, and exercising criminal jurisdiction over the Italian Marines, India violated and continues to violate Italy's right of exclusive jurisdiction to entertain criminal proceedings in connection with the *Enrica Lexie* Incident and against the Italian Marines contrary *inter alia* to Article 92 of UNCLOS. The principle of exclusive jurisdiction of the flag State is derived *inter alia* from Articles 27, 56, 94, 97(1) and 97(3) of UNCLOS. Article 97(1) expressly confers on the Italian authorities, as the authorities of the flag State and the State of which the Italian Marines are agents and officials, exclusive jurisdiction over matters involving any question concerning the criminal responsibility of the Italian Marines. The arrest, detention and prosecution of the Italian Marines is in violation of Italy's rights *inter alia* under Articles 56(2), 92 and 97 of the Convention.

- (f) By the arrest and detention of the *Enrica Lexie*, and the arrest, detention and prosecution of the Italian Marines, India is also in violation of its duty to cooperate in the repression of piracy under Article 100 of UNCLOS.
 - (g) By arresting, detaining and exercising criminal jurisdiction over the Italian Marines, India breached and continues to breach the immunity of Italy and of its officials. The Marines are State officials who were at all times exercising official State functions, including as regards the repression of piracy in international waters, pursuant to lawful authority. They are immune from legal proceedings in India. Accordingly, India breached and continues to breach Articles 2(3) and/or 56(2) and/or 58(2) of UNCLOS, each of which requires the Tribunal to consider and apply the international law principles relating to the immunity of States and their officials or agents. These international law principles are also part of the relevant applicable law under Article 293 of UNCLOS.
 - (h) By extending the application of its domestic criminal laws and, consequently, providing for the apparent jurisdiction of the Indian investigating and prosecuting authorities, and the Indian courts, over incidents occurring in international waters in excess of the limits prescribed in UNCLOS regarding the jurisdiction of coastal States in the contiguous zone and the exclusive economic zone, India has acted and continues to act in a manner incompatible *inter alia* with Article 56(2) and Article 89 of UNCLOS.
30. These grounds, and supporting submissions, will be developed in detail in Italy's written pleadings, which will be submitted at the appropriate stage in this arbitration, as determined by the Annex VII Tribunal.

V. PROVISIONAL MEASURES

31. Pending the constitution of the Annex VII Tribunal and pending the final determination of the dispute by that Tribunal, Italy requests that India agree to the following provisional measures, intended both to preserve Italy's rights and to prevent an aggravation of the dispute:
- i) India shall refrain from taking or enforcing any judicial or administrative measure against Sergeant Massimiliano Latorre and Sergeant Salvatore Girone in connection with the *Enrica Lexie* Incident, and from exercising any other form of jurisdiction over that Incident; and
 - ii) India shall take all measures necessary to ensure that restrictions on the liberty, security and movement of the Marines be immediately lifted to enable Sergeant Girone to travel to and remain in Italy, and Sergeant Latorre to remain in Italy throughout the duration of the proceedings before the Annex VII Tribunal.
32. If such measures are not adopted and implemented within a period of two weeks from the date of this Notification, Italy reserves its right under Article 290(5) to request the International Tribunal for the Law of the Sea to prescribe the relevant provisional measures.

VI. RELIEF SOUGHT

33. In accordance with the provisions of UNCLOS, Italy respectfully requests the Annex VII Tribunal to adjudge and declare that:
- (a) India has acted and is acting in breach of international law by asserting and exercising jurisdiction over the *Enrica Lexie* and the Italian Marines in connection with the *Enrica Lexie* Incident.

- (b) The assertion and exercise of criminal jurisdiction by India is in violation of India's obligation to respect the immunity of the Italian Marines as State officials exercising official functions.
 - (c) It is Italy that has exclusive jurisdiction over the *Enrica Lexie* and over the Italian Marines in connection with the Enrica Lexie Incident.
 - (d) India must cease to exercise any form of jurisdiction over the Enrica Lexie Incident and the Italian Marines, including any measure of restraint with respect to Sergeant Latorre and Sergeant Girone.
 - (e) India has violated its obligation under the Convention to cooperate in the repression of piracy.
34. Consequently, Italy requests the Tribunal to order India not to prosecute the criminal case against the Italian Marines and to terminate all legal proceedings connected to the Enrica Lexie Incident before the Indian Courts.
35. Italy reserves the right to supplement and/or amend its claim and the relief sought as necessary, and to make such other requests before the Tribunal as may be necessary to preserve its rights under UNCLOS.

Respectfully submitted,

Francesco Pizzarello



H.E. Ambassador Francesco Azzarello

Agent of the Italian Republic

26 June 2015

LIST OF ANNEXES

The Agent of the Italian Republic certifies that Annexes 1 to 31, where relevant, are true copies and accurate translations of the originals.

Annex 1

Curriculum Vitae of Professor Francesco Francioni

Annex 2

Legge 2 Agosto 2011 n. 130, published in Gazzetta Ufficiale n. 181 del 5 Agosto 2011

Annex 3

Ship Security Alarm System Message sent out by the *Enrica Lexie* on 15 February 2012

Annex 4

International Maritime Bureau Report of 15 February 2012

Annex 5

Letter from the Indian “Dy Director General of Shipping” to the Owners of the *Enrica Lexie*, 16 February 2012

Annex 6

National Maritime Search and Rescue Board, Report, 4 June 2012

Annex 7

Statement by Commandant Alok Negi, Coast Guard Air Enclave Kochi, 19 February 2012

Annex 8

Email from MRCC Mumbai to Master of the *Enrica Lexie*, 15 February 2012

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Boarding Officer's Report MV *Enrica Lexie*, 16-17 February 2012

Annex 10

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Annex 11

Communication from the Office of the Prosecutor at the Military Tribunal of Rome to the Commanding Officer of the Military Protection Detachment of the *Enrica Lexie*, 17 February 2012

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Annex 13

Communication from Office of the Prosecutor of the Military Tribunal of Rome to the Head of Cabinet at the Ministry of Defence, 24 February 2012

Annex 14

Log book of the Master of the *Enrica Lexie*

Annex 15

Writ Petition No. 4542 of 2012, 22 February 2012

Annex 16

Writ Petition No. 135 of 2012, 19 April 2012

Annex 17

Judgment of the High Court of Kerala, 29 May 2012

Annex 18

Special Leave Petition 20370 of 2012, 11 July 2012

Annex 19

Republic of Italy & Ors v. Union of India & Ors, Supreme Court of India Judgment of 18 January 2013

Annex 20

NV 69/456 of 17 February 2012; NV 73/472 of 20 February 2012; NV 95/553 of 29 February 2012; NV 89/635 of 11 March 2013; NV 273/1570 of 9 July 2013; NV 447/2517 of 5 November 2013; NV 56/259 of 7 February 2014; NV 67/319 of 15 February 2014; NV 71/338 of 19 February 2014; NV 93/446 of 10 March 2014; and NV 123/714 of 18 April 2014

Annex 21

Application for Directions and Relaxation of Bail Conditions on Behalf of Chief Master Sergeant Massimiliano Latorre dated 5 September 2014

Annex 22

Application for Directions and Relaxation of Bail Conditions on Behalf of Sergeant Major Salvatore Girone, 9 December 2014

Annex 23

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Annex 24

Reports of Dr. Mendicini, Specialist Neurologist, Military Hospital in Taranto, 14 October 2014 and 14 November 2014

Annex 25

Discharge Summary issued by Istituto Neurologico Carlo Besta, 25 November 2014

Annex 26

Report of Dr. Eugenio Parati, Director of Cerebrovascular Diseases, Istituto Neurologico Carlo Besta, 1 December 2014

Annex 27 (Confidential Annex)

Report of Professor Gabriele Masi, Director of the Centre for Psychiatry and Psychopharmacology in Childhood, Fondazione Stella Maris, 1 November 2014

Annex 28 (Confidential Annex)

Report of Doctor Stefano Vicari, Director of the Department of Child Neuropsychiatry, Bambino Gesù, 25 November 2014

Annex 29

Supreme Court of India Order of 16 December 2014 recording the withdrawal of the applications

Annex 30

Supreme Court of India Order of 14 January 2015 granting an extension to Sergeant Latorre

Annex 31

Supreme Court of India Order of 9 April 2015 granting a further extension to Sergeant Latorre