**IT-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

EMBASSY OF ITALY
NEW DELHI

Note Verbale: 69/456

The Embassy of Italy presents its compliments to the Ministry of External Affairs, Government of India, and has the honour to refer to the case of the ship Enrica Liexe.

The Embassy of Italy has been informed that a legal injunction has been addressed to the Master of the ship based on an investigation undertaken by the Kerala Police.

The Embassy of Italy has the honour to refer to its Note Verbale 67/438, dated 16th February and to recall that, based on international law, the Italian judicial Authorities are the sole competent judicial Authorities for the case in question. However, in a spirit of co-operation, the Italian Government is ready to work together with Indian Authorities in order to ascertain facts and responsibilities.

The Embassy of Italy has the honour to inform the Ministry of External Affairs, Government of India, that a high-level Delegation of officials from the Italian Ministry of Foreign Affairs, the Ministry of Defence and the Ministry of Justice is ready to visit India and work with their Indian counterparts, in order to find a mutually acceptable procedure to establish the truth. In the meantime, no unilateral coercive measure should be taken.

The Embassy of Italy, New Delhi, avails itself of this opportunity to renew to the Ministry of External Affairs, Government of India, the assurances of its highest consideration.

New Delhi, 17 FEB 2012

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Ministry of External Affairs
Government of India
Europe West Division
New Delhi

EMBASSY OF ITALY
NEW DELHI

Note Verbale 73/472

The Embassy of Italy presents its compliments to the Ministry of External Affairs, Government of India, and has the honour to refer to the case of the ship Enrica Lexie.

The Embassy of Italy has been informed that the Kerala police requests to be delivered weapons on board Enrica Lexie. The Embassy of Italy has the honour to recall that the two relevant weapons are under seizure, which was ordered following the standard internal procedure in such cases. Breaking the seals is not allowed based on Italian laws.

The Embassy of Italy has also the honour to recall that weapons and ordnance belong to the Italian Navy and are therefore subject to rules and procedures applying to the Armed Forces.

Therefore, the Embassy of Italy would suggest the definition of agreed modalities for delivery and custody of the material requested by Kerala police. These modalities could be determined with the two Italian Navy Officers presently in Kochi, Admiral Piroli and Commander Pierini. Such procedures could be based on the principles contained in the attached text.

Italian Authorities are ready to offer their assistance in the collection and examination of forensic evidence, ballistics etc. The participation of Italian experts would be a concrete step in finding the truth and furthering bilateral collaboration in this context, helping to bridge difference.

However, this 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.

The Embassy of Italy, New Delhi, avails itself of this opportunity to renew to the Ministry of External Affairs, Government of India, the assurances of its highest consideration.

New Delhi, 20th February 2012

AMBASCIATA D'ITALIA

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Ministry of External Affairs
Government of India
Europe West Division
New Delhi

# NOTE VERBALE 96/553

The Embassy of Italy presents its compliments to the Ministry of External Affairs, Government of India and has the honour to refer to the case of the ship Enrica Lexie as per Note Verbale n. 71 dated February 18th 2012.

The Embassy of Italy would like to recall that according to principles of customary international law, recognized by several decisions of International Courts, State organs enjoy jurisdictional immunity for acts committed in the exercise of their official functions. The Italian Navy Military Detachment that operated in international waters on board of the ship Enrica Lexie must be considered as an organ of the Italian State.

Their conduct has been carried out in the fulfilment of their official duties in accordance with national regulations (Italian Act nr. 107/2011), directives, instructions and orders, as well as the pertinent rules on piracy contained in the 1982 UN Convention on the Law of the Sea and in the relevant UN Security Council Resolutions on the Piracy off the Horn of Africa.

The Embassy of Italy welcomes the steps taken by the Chief Judicial Magistrate in Kollam in order to protect the life and honour of the Italian Military Navy Personnel currently held in judicial custody on remand. The Embassy of Italy also welcomes the cooperative approach on the issue of the examination of the weapons taken by the Magistrate.

The Embassy of Italy nevertheless reasserts the Italian exclusive jurisdiction in respect of the said military personnel. It wishes to inform that investigations by both the Italian ordinary and military judicial authorities have already been initiated. Therefore, it urges for the release of the Italian Navy Military Personnel and their unimpeded departure from the Indian territory. They have entered Indian territorial waters and harbour simply as a Military Force Detachment officially embarked on the Italian vessel Enrica Lexie in order to cooperate with Indian authorities in the investigation of an alleged piracy episode. The entry in Indian territorial waters was upon initial invitation and then under direction of Indian Authorities.

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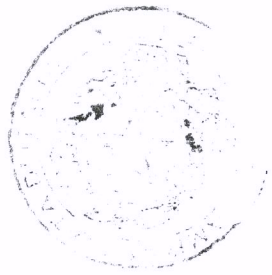
Ministry of External Affairs
Government of India
Europe West Division
NEW DELHI

The Embassy of Italy, while reiterating the sovereign right of a State to employ its military personnel in ongoing antipiracy military protection of national flagged merchant ship in international waters, underlines that the same right is not impaired by the ongoing national investigations involving Italian Navy Military Personnel.

The Italian Navy Military Personnel, currently held in judicial custody on remand, was carrying out official functions for the protection of the vessel from piracy and armed robbery in the extraterritorial maritime zones which at the relevant time were considered as "risk area", taking also in consideration information provided by IMO and other relevant multinational organization. Thus, while acknowledging the obligations of Italy under international law, including the obligation to cooperate with Indian authorities for the most comprehensive and mutually satisfactory investigation of the event, the Embassy of Italy recalls that 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.

The Embassy of Italy, New Delhi avails itself of this opportunity to renew to the Ministry of External Affairs, Government of India, the assurances of its highest consideration.



New Delhi, 29th February 2012

EMBASSY OF ITALY
NEW DELHI

**NOTEVERBALE** 89/635

The Embassy of Italy presents its compliments to the Ministry of External Affairs, Government of India and has the honor to refer to the Supreme Court decision of January 18th 2013, in which it was denied the Italian jurisdiction on the incident occurred in international water involving the Italian ship Enrica Lexie, and to the previous Note Verbales and meetings relating to the judgment of said incident.

From the beginning, Italy has considered the position adopted by Indian Authorities on the incident a violation of International Law obligations descending from International Customary and Conventional law, including the principle of immunity of jurisdiction for agents of a Foreign State and the provisions of the United Nation Convention on the Law of the Sea of 1982 (UNCLOS).

Also in the light of said decision of the Indian Supreme Court and of the lack of answer from India to the Note Verbale dated 6th of march 2013 relating to the cooperation among States in the fight against piracy provided by art. 100 of the UNCLOS, Italy deems that there is an existing controversy with India concerning the provisions of said Convention and the general principles of International Law applicable to this incident.

For these reasons, Italy requests the Indian Government to set up a meeting at diplomatic level in order to reach an amicable solution of this controversy, even through an arbitration or a judiciary solution. This exchange of views will result in the implementation of what is provided by art. 283 of the UNCLOS.

Considering the relevance of the issue and the mutual interest for the two Countries to reach a prompt solution of the controversy, Italy deems that the requested meeting should take place at the shortest time, possibly not beyond 30 days from the presentation of this Note Verbale.

Taking this opportunity, Italy has the honor to inform that, since a controversy between the two States has been established, the two Italian Marines, Mr. Latorre and Mr. Girone, will not return to India on the expiration of the permission granted to them.

While awaiting for a kind reply, the Embassy of Italy avails itself of this opportunity to renew to the Ministry of External Affairs, Government of India the assurances of its highest consideration.

New Delhi, 11 MAR 2013

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Ministry of External Affairs
Europe West Division
South Block – New Delhi

EMBASSY OF ITALY
NEW DELHI

**MOST URGENT**

# NOTE VERBALE 273/1570

The Embassy of Italy presents its compliments to the Ministry of External Affairs, Government of India and has the honour to refer to its Note Verbale no. WI(A)/415/6/2012-Vol.VII dated 5 July 2013, requesting the presence of Chief Master Sargeant Massimilano Latorre and Sargeant Salvatore Girone before the National Investigation Agency (NIA).

In view of the request made by the Ministry of External Affairs, the Embassy of Italy would like to convey that the two Marines will be present at 11:30 a.m. on Wednesday, July 10, 2013 at NIA, Ministry of Home Affairs, Splendor Forum, 3rd Floor, District Centre, Jasola, New Delhi- 110 025 in connection with FIR No. 2 of 2012 registered with Coastal Police Station, Neendakara, Kollam District, Kerala, now being investigated by NIA under Ministry of Home Affairs' Notification S.O. 964(E) dated April 15, 2013 and Ministry of Home Affairs' Order dated April 15, 2013.

The Embassy of Italy would also like to inform that Min. Gianluca Grandi, Deputy Head of Mission from the Embassy of Italy; Mr. Hari Pillai, Advocate, Titus & Co., Advocates; and Mr. Hansmukh Thakkar, Interpreter empanelled with the Embassy of Italy will be present with the two Marines to facilitate matters including translations as the two Marines do not speak or understand the English language. We request that the NIA may kindly be informed accordingly.

This Note Verbale is without prejudice to the rights and contentions as to the lack of jurisdiction of India to investigate and/or to try the present case. The determination of the question of jurisdiction i.e. whether the Indian Courts or the Italian Courts have the jurisdiction to try the two Italian Marines has been kept open by the Hon'ble Supreme Court of India vide its Judgment of January 18, 2013 and Order dated April 26, 2013. Save and except for the final outcome on the lawful determination of jurisdiction, none of our actions and those of the two Italian Marines shall be deemed as having subjected to Indian jurisdiction and/or having waived the contentions.

The Embassy of Italy avails itself of this opportunity to renew to the Ministry of External Affairs, Government of India the assurances of its highest consideration.

New Delhi, 9 July 2013

AMBASCIATA D'ITALIA NEW DELHI

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Ministry of External Affairs
Government of India
Europe West Division
South Block

***Copy to:***
Consular Section
Patiala House
New Delhi

EMBASSY OF ITALY
NEW DELHI

**NOTE VERBALE** 447/2517

The Embassy of Italy presents its compliments to the Ministry of External Affairs, Government of India and has the honour to refer to its Note Verbale no. 4464/AS (EW)/2013 dated November 1, 2013.

In view of the request made by the Ministry of External Affairs, the Embassy of Italy has the honour to confirm that the four Italian Marines namely Mr. Voglino Renato (Seargeant), Mr. Andronico Massimo (1st Corporal), Mr. Fontana Antonio (3rd Corporal) and Mr. Conte Alessandro (Corporal), will be present at the premises of the Embassy of India in Rome at 1300 hrs Indian Standard Time on Monday, November 11, 2013 for their examination through video conferencing by the National Investigation Agency (NIA).

The Embassy of Italy would also like to inform that a State lawyer from the Italian Government and an interpreter will accompany the aforesaid four Italian Marines to facilitate matters including translations as the four Italian Marines do not speak or understand the English language. We request that the officials of the Embassy of India in Rome and the NIA may kindly be informed accordingly.

The Embassy of Italy further confirms that the two Italian Marines, Chief Master Sergeant Massimiliano Latorre and Sergeant Salvatore Girone, will be present at 1200 hrs Indian Standard Time on Monday, November 11, 2013 at the National Investigation Agency Office, 7th Floor, NDCC-II Building, Jai Singh Road, New Delhi and will be available to accompany the Chief Investigating Officer from the NIA Office to the video conferencing venue and will remain available during the video conferencing.

The Embassy of Italy would also like to inform that Min. Gianluca Grandi, Deputy Head of Mission from the Embassy of Italy; Mr. Hari Pillai, Advocate, Titus & Co., Advocates; and Mr. Hansmukh Thakkar, Interpreter empanelled with the Embassy of Italy will be present with the two Italian Marines to facilitate matters including translations as the two Marines do not speak or understand the English language. We request that the NIA may kindly be informed accordingly.

This Note Verbale is without prejudice to the rights and contentions as to the lack of jurisdiction of India to investigate and/or try the present case. The

determination of the question of jurisdiction i.e. whether the Indian Courts or the Italian Courts have the jurisdiction to try the two Italian Marines has been kept open by the Hon'ble Supreme Court of India vide its Judgement of January 18, 2013 and Order dated April 26, 2013. Save and except for the final outcome on the lawful determination of jurisdiction, none of our actions and those of the Italian Marines shall be deemed as having subjected to Indian jurisdiction and/or having waived the contentions.

The Embassy of Italy avails itself of this opportunity to renew to the Ministry of External Affairs, Government of India the assurance of its highest consideration.

5 November 2013

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Ministry of External Affairs
Government of India
Europe West Division
South Block
New Delhi

EMBASSY OF ITALY
NEW DELHI

**NOTE VERBALE** 56/259

The Embassy of Italy presents its compliments to the Ministry of External Affairs, Government of India, and has the honour to refer to the incident of the Enrica Lexie and to the ensuing detention in India for the last two years of two Italian military officials for conduct carried out in the performance of their official duties under the national legislation of the Republic of Italy enacted in compliance with mandatory UN Security Council resolutions on the fight against piracy.

The Italian Embassy wishes to recall that, ever since the occurrence of the above incident on 15th February 2012, it has been the view of the Italian Government that the two Italian Marines enjoy immunity from jurisdiction of the Indian courts under international customary law, and that Italy has jurisdiction over the matter under the provisions of the UN Convention on the Law of the Sea. Consequently, there has been a long lasting difference on this matter between our two Governments.

The Italian Government has so far cooperated with the Indian Government and Judicial Authorities on the basis of the traditional relations of friendship and cooperation between our two Countries and not as a waiver of its international rights, therefore without prejudice to their exercise.

The above conduct, carried out as a matter of comity, has also been based on the confidence and the legitimate expectation by Italy that the Indian judicial system would expeditiously dispose of the case in full conformity with international law, including the principle of due process, as well as in line with the Judgment of the Supreme Court of India, dated 18th January 2013.

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Ministry of External Affairs
Europe West Division
South Block
New Delhi

However, despite the unequivocal indications contained in the above Judgment, and in the Orders of the same Supreme Court dated 22nd February 2013, 2nd April 2013 and 26th April 2013, the Union of India has been unable to date to present any case before the designated Special Court.

The Embassy of Italy has the honour to draw the attention of the Ministry of External Affairs, Government of India, on the above situation and to request consultations on it between delegations from our two Governments.

The Embassy of Italy awaits for a kind reply and avails itself of this opportunity to renew to the Ministry of External Affairs, Government of India, the assurances of its highest consideration.

New Delhi, - 7 FEB 2014

EMBASSY OF ITALY
NEW DELHI

**NOTE VERBALE** 67/319

The Embassy of Italy presents its compliments to the Ministry of External Affairs, Government of India, and has the honour to refer to the Note Verbale N. 377/2014 concerning the Enrica Lexie incident.

The Italian Embassy wishes to recall, once more, that the two Italian Marines enjoy immunity from jurisdiction of the Indian courts under international customary law and that Italy has jurisdiction over the matter under the provisions of the UN Convention on the Law of the Sea. Therefore the Italian Government has expected such international rights to be duly recognized and asserted by the Indian Judicial and Governmental Authorities in an expeditious manner as a means for reaching a final and amicable settlement of the dispute between our two Countries.

The Italian Embassy, as already pointed out in its Note Verbale N. 256/259 of 2014, wishes to remind that the Italian Government has so far cooperated with the Indian Government and Judiciary by way of comity and not recognizing any international obligation. However, the long series of delays incurred by India in even presenting the case has left the international dispute unsettled and frustrated the expectations of the Italian Republic that its cooperative approach would be reciprocated.

In view of the above, and while aware of the Note Verbale 377 /2014 of the Ministry of External Affairs, Government of India, the Embassy of Italy has the honour to draw once again the attention of the Ministry of External Affairs, Government of India, on its continuing concerns over the situation and on its previous request for consultations on the matter between delegations from our two Governments.

The Embassy of Italy awaits for a kind reply and avails itself of this opportunity to renew to the Ministry of External Affairs, Government of India, the assurances of its highest consideration.

New Delhi, 15th February 2014

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MINISTRY OF EXTERNAL AFFAIRS
EUROPE WEST DIVISION
SOUTH BLOCK
NEW DELHI

URGENT

EMBASSY OF ITALY
NEW DELHI

**NOTE VERBALE** 71/338

The Embassy of Italy presents its compliments to the Ministry of External Affairs, Government of India, and has the honour to refer to the Enrica Lexie incident and to its previous notes verbales concerning the above matter.

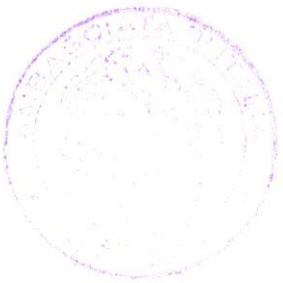
At today's hearing before the Supreme Court, Italy has learned of the further postponement of the decision according to the Court's schedule, as confirmed in the note verbale N. 377/214 of 10 February 2014 by the Ministry of External Affairs, Government of India.

This further postponement adds to previous delays and once again frustrates the legitimate expectation of Italy that the Indian authorities would dispose of the matter in an expeditious and amicable way, and in conformity with international law.

In view of the above, the Embassy of Italy has also the honour to inform the Ministry of External Affairs, Government of India, that the Italian Government has recalled its ambassador to New Delhi for consultations.

The Embassy of Italy avails itself of this opportunity to renew to the Ministry of External Affairs, Government of India, the assurances of its highest consideration.

New Delhi, 19 FEB 2014



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Ministry of External Affairs
Government of India
Europe West Division
South Block
New Delhi

EMBASSY OF ITALY
NEW DELHI

NOTE VERBALE 23/446

The Embassy of Italy presents its compliments to the Ministry of External Affairs, Government of India, and has the honour to refer to the *Enrica Lexie* incident and to its previous Notes Verbales concerning this matter (NV 56/259 of 7th February, NV 67/319 of 15th February and NV 71/338 of 19th February).

Italy regrets that the repeated delays in the proceeding before the Supreme Court of India, together with the lack of response by the Government of India to Italy's previous requests for consultations, continue to frustrate the legitimate expectation of Italy that the Indian authorities would dispose of the matter in an expeditious and amicable way, and in conformity with international law, 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.

The Embassy of Italy also regrets that after more than two years from the incident, no charges have been brought against the two Italian Marines still held in India, in contravention of internationally recognized human rights, enshrined in particular in the 1966 U.N. Covenant on Civil and Political Rights. In view of the above, the Embassy of Italy renews its request for consultations between delegations from our two Governments, also with a view to obtaining the return to Italy of the two Italian Marines pending a final settlement of the dispute.

The Embassy of Italy avails itself of this opportunity to renew to the Ministry of External Affairs, Government of India, the assurances of its highest consideration.

New Delhi, 10 MAR 2014

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Ministry of External Affairs
Europe West Division
South Block
New Delhi

AMBASCIATA D'ITALIA
NEW DELHI

NOTE VERBALE n. 123/714

The Embassy of Italy presents its compliments to the Ministry of External Affairs, Government of India, and has the honour to refer to the *Enrica Lexie* incident and to its previous Notes Verbale concerning this matter (NV 56/259 of 7th February, NV 67/319 of 15th February, NV 71/338 of 19 February and NV 93/446 of 10th March).

Ever since the outset of the above disputed matter, Italy has claimed that the conduct of the Indian authorities vis-à-vis the Italian marines is in contrast with the international obligations binding upon India under international customary and treaty law. Such obligations stem from the principle of jurisdictional immunity of State organs for acts carried out in the performance of their official duties and from the rules and principles of the Law of the Sea as codified by the 1982 United Nations Convention on the Law of the Sea.

Despite Italy's long cooperative attitude based exclusively on comity and on its confidence in the repeated assurances given by the Indian authorities that they would expeditiously dispose of the matter in compliance with relevant international principles and rules , the dispute regrettably remains unsettled after more than two years since its inception. The bilateral meeting, which took place at the Hague on 25th March 2014, between the Foreign Ministers of Italy and India regarding the *Enrica Lexie* incident, has further confirmed the differences between the two Parties and the need to work for a mutually agreeable settlement.

In a final effort to reach a negotiated settlement of the dispute, Italy proposes that a meeting and exchange of views be held between delegations from our two countries on the merits of the dispute and on the return of the Italian marines in Italy. In case a mutually acceptable solution will not be reached, Italy proposes that the same delegations agree on an appropriate third-party means of dispute settlement in accordance with Article 33 of the UN Charter, the Statute of the International Court of Justice, and Part XV of the 1982 Law of the Sea Convention.

In view of the importance of this matter and taking into account the common interest of our two Countries in the expeditious settlement of the dispute, Italy considers that the above meeting and exchange of views should be held at the earliest mutually convenient time.

The Embassy of Italy avails itself of this opportunity to renew to the Ministry of External Affairs, Government of India, the assurances of its highest consideration.

New Delhi, 18 April 2014