

**IT-43 (Redacted)**

ADDITIONAL AFFIDAVIT OF AMBASSADOR E. ANGELONI, AMBASSADOR  
OF ITALY IN INDIA, 7 DECEMBER 2015

NDOH 13/1/15

Section XI - A

## IN THE SUPREME COURT OF INDIA

Civil / CRL / Appellate / Original Jurisdiction

Special Leave Petition (Civil/Orig) No. 20370/2012 of 20

Civil/Criminal/Appeal/Writ Petition No. of 20

Review Civil/Criminal/Misc. Petition No. of 20

IN THE MATTER OF :

Massimiliano Latorre & Ors. PETITIONER (S)  
APPELLANT (S)

VERSUS

U.O.I & Ors. RESPONDENT (S)

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2.	Annexure A-1 to A-7	1+3	20/-
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4.			
5.			
6.			
7.	CC- Mr. D.S. Malwa Adv		
8.	Mr. B.K. Puri Adv		
9.	Mr. Ramesh Babu M.K. Adv.		
10.			

Total Rs. \_\_\_\_\_

All copies are correct

Filed by :

Filed on 7/12/2015

Jagjit Singh Chhabra  
ADVOCATE

Supreme Court of India

CODE- 1320

Appellant (s) / Petitioner (s)  
Respondent (s) / Caveator

RECORD OF PROCEEDINGS

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IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. 20370 OF 2012

IN THE MATTER OF:

MASSIMILANO LATORRE & OTHERS ...PETITIONERS

VERSUS

UNION OF INDIA& OTHERS ...RESPONDENTS

ADDITIONAL AFFIDAVIT ON BEHALF OF THE  
REPUBLIC OF ITALY

I, Ambassador Enzo Angeloni, aged about 57years, Ambassador of Italy in India, residing at the Embassy of Italy, 50 E, Chandragupta Marg, Chankyapuri, New Delhi, solemnly affirm and state as under:

1. That I am the Ambassador of the Italian Republic ("Italy") to the Republic of India ("India") and am duly authorised to swear the instant affidavit and otherwise competent to do so

on behalf of Italy.



The Deponent states that this Affidavit is to place on record before this Hon'ble Court the developments in the UN Convention on the Law of the Sea ("UNCLOS") Annex VII

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international arbitration proceedings between Italy and India in the dispute concerning the Enrica Lexie Incident. It also addresses the hearing scheduled by this Hon'ble Court on 13 January 2016 as well as the leave granted by this Hon'ble Court to Chief Master Sergeant Massimiliano Latorre to remain in Italy in consequence of his medical condition.

3. Italy commenced UNCLOS Annex VII arbitration proceedings against India in the dispute concerning the Enrica Lexie Incident and the matter of Chief Master Sergeant Massimiliano Latorre and Sergeant Salvatore Girone on 26 June 2015. Pending the constitution of the Annex VII Tribunal, Italy submitted a request for provisional measures to the International Tribunal for the Law of the Sea ("ITLOS") on 21 July 2015, as mandated by Article 290(5) of UNCLOS. Following a hearing of the Parties, the ITLOS made a binding Order prescribing provisional measures on 24 August 2015 ("Order" or "Provisional Measures Order"). The operative part of the Order is set out at paragraph 141(1) in the following terms:

"Italy and India shall both suspend all court proceedings

and shall refrain from initiating new ones which might

aggravate or extend the dispute submitted to the Annex

VII arbitral tribunal or might jeopardise or prejudice the



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carrying out of any decision which the arbitral tribunal may render.”

4. Having regard to the ITLOS Provisional Measures Order, this Hon'ble Court, at a hearing on 26 August 2015, passed an Order by agreement of both the parties that “during the pendency of the matter before the Annex VII Arbitral Tribunal” the “proceedings pending in the Courts shall remain stayed/deferred till further orders”. A typographical correction in the original Order of this Hon'ble Court was effected by an Order of 2 September 2015. Copies of the Orders dated 26.08.2015 and 02.09.2015 passed by this Hon'ble Court are annexed herewith as ANNEXURE-A-1 (Page No. 13-14) and ANNEXURE-A-2 (Page No. 15 ) respectively for ready reference.
5. Pursuant to paragraph 141(2) of the Provisional Measures Order, Italy and India were each required to “submit to the Tribunal the initial report referred to in paragraph 138 not later than 24 September 2015”. Paragraph 138 of the Provisional Measures Order addressed the requirement on the Parties to submit to ITLOS “a report on compliance with the [provisional] measure prescribed”.



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6. On 18 September 2015, India submitted a Report to the ITLOS as required by the operative part of the Provisional Measures Order. This stated *inter alia* as follows:

"The Government of the Republic of India has taken necessary steps to suspend all the court proceedings pending in India against the two Marines. In this connection, the Hon'ble Supreme Court of India has, in its Order dated 26 August 2015 and 02 September 2015, stayed/deferred all the proceedings before the Indian courts related to this case till further orders. Further, it is assured that no new case against the two Marines will be initiated which might aggravate or extend the dispute submitted to the Annex VII arbitral tribunal."

7. A copy of India's Report to the ITLOS is annexed herewith as ANNEXURE-A-3. (Page No. 16-18)

8. On 23 September 2015, Italy submitted its Report to the ITLOS as required by the operative part of the Provisional Measures Order. In this Report, Italy noted *inter alia* that the Rome Public Prosecutor "had decided to stay the investigation into the said Incident and to refrain from commencing any other connected investigation during the



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pendency of the Annex VII arbitral proceedings in order not to interfere with the determination of the case by the Annex VII arbitral tribunal.” Italy also noted the stay/deferment of the Indian proceedings pursuant to the Order of the Hon’ble Court including that of the Special Designated Court. Addressing the proceedings before this Hon’ble Court of 26 August 2015, in which the Court ordered the stay/deferment of the Indian proceedings, Italy noted as follows:

“Although no request to this effect was made by any party, the Supreme Court, in its Order of 26 August 2015, nonetheless also ordered that ‘the main case [be listed] on 13.01.2016 at 2.00 P.M’.

Given the Supreme Court’s stay/deferment of the named proceedings, Italy presumes that the purpose of the hearing scheduled before the Supreme Court on 13 January 2016 is largely procedural, to inform the Supreme Court of developments in the Annex VII arbitral proceedings.”

9. A copy of Italy’s Report to the ITLOS is annexed herewith as



**ANNEXURE-A-4.** (Page No. 19-24)

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10. Following consultations between Italy and India, the President of the ITLOS, acting pursuant to UNCLOS Annex VII, constituted the Annex VII Tribunal by appointment of its three remaining members on 30 September 2015. As now finally constituted, the Annex VII Tribunal is composed of the following arbitrators:

- (i) Professor Francesco Francioni, a national of Italy and Professor Emeritus of the European University Institute in Florence, nominated by Italy;
- (ii) Judge Patibandla Chandrasekhara Rao, a national of India and Judge and former President of the ITLOS, nominated by India;
- (iii) Judge Jin-Hyun Paik, a national of Korea and Judge of the ITLOS;
- (iv) Judge Patrick Robinson, a national of Jamaica and Judge of the International Court of Justice;
- (v) Judge Vladimir Golitsyn, a national of Russia and President of the ITLOS, as President of the Annex VII Tribunal.



11. The Parties subsequently agreed that the Permanent Court of Arbitration in The Hague ("PCA") should act as the Registry of the Annex VII arbitral proceedings and appointed a PCA senior legal officer to the position of Secretary of the Annex VII Tribunal. The PCA Press Release of 6 November 2015, agreed by the Parties, is annexed herewith as ANNEXURE-A-5. (Page No. 25-26)
12. Following the constitution of the Annex VII Tribunal and the appointment of the PCA as Registry, the PCA, on the instructions of the Tribunal, issued draft procedural documents to the Parties addressing the proposed procedural framework of the Annex VII arbitral proceedings. As the PCA Press Release indicates, a "first procedural meeting with the Parties" is now scheduled to address the proposed procedural framework after which the Annex VII Tribunal will issue its Rules of Procedure, including a timetable for the proceedings. It is anticipated that the Annex VII arbitral proceedings will take two to four years before the Tribunal renders a final award, the variation in timescale depending on whether India is successful in any preliminary objections to jurisdiction or admissibility that it may choose to submit. This anticipated timescale for Annex VII arbitration proceedings reflects a usual procedure and is not uncommon.



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13. On 4 December 2015 Italy wrote to the Annex VII Tribunal, with a copy to the Government of India, informing the Tribunal and India that Italy intends to submit a provisional measures application to the Annex VII Tribunal, requesting that it order that India shall take such measures as are necessary to relax the bail conditions on Sergeant Girone in order to enable him to return to Italy, under the responsibility of the Italian authorities, pending the final determination of the Annex VII Tribunal, having regard to the extended period of time before a final award of the Annex VII Tribunal can be expected, that no charges have yet been brought, and that all Indian proceedings have been stayed/deferred till further orders. A copy of Italy's letter to the Annex VII Tribunal is annexed herewith as ANNEXURE-A-6. (Page No. 27-30). Italy's recourse to the Annex VII Tribunal to request such an Order is required in consequence of the terms of the ITLOS Provisional Measures Order, which remains operative and binding on the Parties and precludes any new proceedings before this Hon'ble Court *inter alia* in respect of Sergeant Girone.

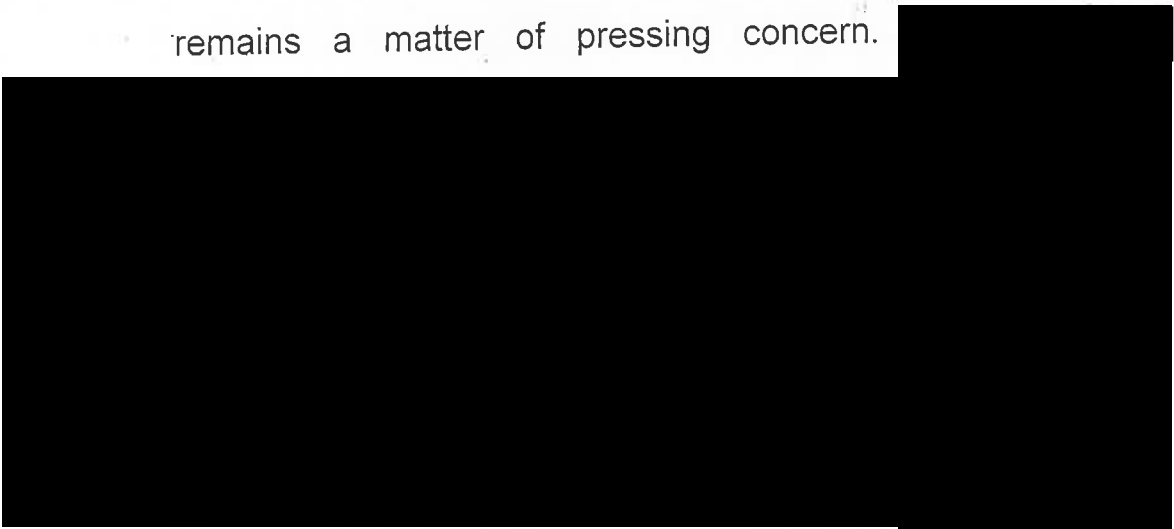
14. This Hon'ble Court has scheduled the hearing of the main

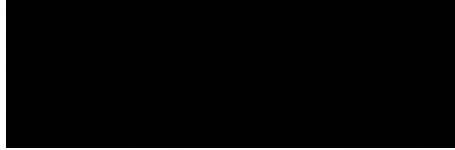
case, namely Writ Petition 236 of 2014 (tagged with Special Leave Petition (C) No. 20370 of 2012), on 13 January 2016



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on its own motion. As, at the time of the hearing before this Hon'ble Court on 26 August 2015, the Annex VII Tribunal had not yet been constituted, Italy presumes that the purpose of the scheduled hearing is largely to enable the Hon'ble Court to be informed of developments in the Annex VII arbitral proceedings, given its Order that all Indian proceedings be stayed/deferred till further orders. Proceeding with the highest respect for this Hon'ble Court, the purpose of this Affidavit is to inform the Hon'ble Court in a timely and transparent manner of developments in the Annex VII arbitral proceedings and to enable this Hon'ble Court to take such further steps *suo motu* as may be appropriate given the circumstances of the stay/deferment of all proceedings till further orders and the injunction on the Parties against any new proceedings pursuant to the ITLOS Provisional Measures Order.

15. This Hon'ble Court was pleased to grant extension of time to Sergeant Latorre to remain in Italy for further treatment and recuperation till 15 January 2016. Sergeant Latorre's health remains a matter of pressing concern.
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16. It is Italy's understanding that the ITLOS Provisional Measures Order precludes the initiation of any new proceedings before the courts of either Party, any such proceedings being bound to aggravate or extend the dispute submitted to the Annex VII Tribunal. As such, any new proceedings before this Hon'ble Court in respect of Sergeant Latorre, including any application to extend the time for Sergeant Latorre to remain in Italy, would be in breach of the said Provisional Measures Order.

17. The preclusion of any new proceedings by the ITLOS Provisional Measures Order, however, cannot be understood to require that Sergeant Latorre be returned to India notwithstanding his continuing health situation, the stay/deferment of the Indian proceedings, and the likely two to four year period of the pendency of the Annex VII arbitral proceedings. This follows as a matter of good sense and a plain reading of the operative part of the Provisional Measures Order. It also follows from the stay/deferment of the Indian proceedings in consequence of the Order of this Hon'ble Court of 26 August 2015, which must be construed

as applying to the Order of this Hon'ble Court dated 13 July 2015 granting Sergeant Latorre leave to remain in Italy. Any



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different understanding would have the consequence that contested proceedings before this Hon'ble Court would be necessarily required and that this would *per force* aggravate or extend the dispute submitted to the Annex VII Tribunal.

18. Having regard to the circumstances and issues herein described, Italy requests that this Hon'ble Court take such further steps and/or make such further Orders *suo motu* as may be necessary and appropriate, including in respect of Sergeant Latorre's extension of time to remain in Italy, given the above and the circumstances of the stay/deferment of all proceedings till further orders.

19. Having regard to these circumstances, this Affidavit is submitted to this Hon'ble Court to draw these issues to the attention of this Hon'ble Court in a timely and transparent manner, having the utmost respect and regard for this Hon'ble Court. In these circumstances, Italy formally assures this Hon'ble Court that it will continue to regard the existing Affidavit of Undertaking of the Deponent (Ambassador Angeloni) dated 20 July 2015 given to this Hon'ble Court in respect of Sergeant Latorre's leave to remain in Italy as operative and binding and to be read as extending and applying during the period of the stay/deferment of the Indian proceedings till further orders, which Italy understands will be



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during the pendency of the Annex VII arbitral proceedings.



*[Signature]*  
DEPONENT

**VERIFICATION:**

Verified at New Delhi on this 27<sup>th</sup> day of December 2015 that the contents of Para 1 to 19 of this Affidavit are true and correct as per my knowledge, belief and information received and believed to be true.



*[Signature]*  
DEPONENT

IDENTIFIED BY

*Akshat Kulkarni Adv*  
*[Signature]*



ATTESTED

*[Signature]*  
Notary Public, Delhi  
Govt. of India  
Regd. No. 10678/14

07/12/15



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ANNEXURE-A-1

ITEM NO.302

COURT NO.3

SECTION X

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

I.A. 3/2015 in Writ Petition(s)(Civil) No(s).236/2014

CHIEF MASTER SARGEANT MASSIM. LAT.& ANR Petitioner(s)

VERSUS

UOI & ORS

Respondent(s)

(For directions and office report)

Date: 26/08/2015 This application was called on for hearing today.

**CORAM:**

**HON'BLE MR. JUSTICE ANIL R. DAVE**  
**HON'BLE MR. JUSTICE KURIAN JOSEPH**  
**HON'BLE MR. JUSTICE AMITAVA ROY**

For Petitioner(s) Mr. Soli J. Sorabjee, Sr. Adv.  
Mr.KTS Tulsi, Sr.Adv.  
Mr.Sohail Dutt, Sr.Adv.  
Mr.Diljeet Titus, Adv.  
Mr.Ujjwal Sharma, Adv.  
Mr.Baljit Singh, Adv.  
Mr.Raj Kamal, Adv.  
Mr.Ninad Laud, Adv.  
Mr.Akshat Kulshrestha, Adv.  
Mr. Jagjit Singh Chhabra, Adv.

For Respondent(s) Mr.P.S.Narsimha, ASG  
Mr.Prateek Jalan, Adv.  
Mr.S.A.Haseeb, Adv.  
Mr.S.Potaraju, Adv.  
Mr. B. Krishna Prasad, Adv.  
Ms. Sushma Suri, Adv.(NP)

Upon hearing the counsel the Court made the following  
**O R D E R**

It has been agreed by both the parties that during the  
pendency of the matter before the International Tribunal for the

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Law of the Sea (ITLOS), the following proceedings pending in the Courts shall remain stayed/deferred till further orders:

1. Writ Petition (C)No.236 of 2014 (tagged with Special Leave Petition (C)No.20370 of 2012 by order dated 28th March, 2014).
2. I.A.No.5 of 2014 in Special Leave Petition (C)No.20370 of 2012.
3. Writ Petition (C)No.919 of 2014 (tagged with I.A.No.5 of 2014 in Special Leave Petition (C)No.20370 of 2012 by order dated 10<sup>th</sup> November, 2014).
4. R.C.No.04/2013/NIA/DLI pending before the Special Designated Court, Patiala House Courts, New Delhi.

I.A.No.3 of 2015 stands disposed of in view of the above order.

List the main case on 13.01.2016 at 2.00 P.M.

(SATISH KUMAR YADAV)  
AR-CUM-PS

(SNEH BALA MEHRA)  
ASSISTANT REGISTRAR

TRUE COPY

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ANNEXURE-A-2

ITEM NO.801

COURT NO.3

SECTION X

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

I.A. No. 3 of 2015

in

Writ Petition(s) (Civil) No(s). 236/2014

CHIEF MASTER SARGEANT MASSIM. LAT.& ANR Petitioner(s)

VERSUS

UOI & ORS

Respondent(s)

Date: 02/09/2015 This petition was mentioned today.

**CORAM: HON'BLE MR. JUSTICE ANIL R. DAVE**  
**HON'BLE MR. JUSTICE ADARSH KUMAR GOEL**

For Petitioner(s) Mr. Sohail Dutt, Sr. Adv.  
Mr. Ninad Laud, Adv.  
Mr. Ujjwal Sharma, Adv.  
Mr. Jagjit Singh Chhabra, Adv.

For Respondent(s) Mr. P.S. Narasimha, ASG (Mentioned by)  
Mr. Ishaan George, Adv.

UPON hearing counsel the Court made the following  
O R D E R

Taken on board.

The order dated 26.08.2015 is modified to the effect that  
"International Tribunal for the Law of the Sea (ITLOS)" shall be  
read as "Annex VII Arbitral Tribunal".

Rest of the order shall remain as it is.

(Jayant Kumar Arora)  
Sr. P.A.

(Mala Kumari Sharma)  
Court Master

TRUE COPY

ANNEXURE-A-3

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INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA  
TRIBUNAL INTERNATIONAL DU DROIT DE LA MER



Am Internationalen Seegerichtshof 1, 22609 Hamburg, Germany  
Telephone: + 49-40-35607-264 Facsimile: + 49-40-35607-275  
E-mail: RegistrarOffice@itlos.org

18 September 2015

BY E-MAIL

Excellency,

*The "Enrica Lexie" Incident*

Please find attached the Report on Compliance with the Provisional Measures prescribed by the Tribunal as submitted today by India.

Accept, Excellency, the assurances of my highest consideration.

A handwritten signature in dark ink, appearing to read 'Philippe Gautier'.

Philippe Gautier  
Registrar

H.E. Mr Francesco Azzarello  
Agent of Italy  
Ambassador  
Embassy of Italy in The Hague

[francesco.azzarello@esteri.it](mailto:francesco.azzarello@esteri.it); [agente.denhaag@esteri.it](mailto:agente.denhaag@esteri.it)

cc: [dbethlehem@20essexst.com](mailto:dbethlehem@20essexst.com); [andrea.tiriticco@esteri.it](mailto:andrea.tiriticco@esteri.it); [stefania.rosini@esteri.it](mailto:stefania.rosini@esteri.it)

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सत्यमेव जयते

विदेश मंत्रालय, नई दिल्ली  
MINISTRY OF EXTERNAL AFFAIRS  
NEW DELHI

L-151/01/2012

September 18, 2015

Excellency,

Pursuant to the requirement of Article 95 paragraph 1 of the Rules of the Tribunal, kindly find enclosed a *note verbale* from the Government of the Republic of India indicating compliance with the provisional measures prescribed by the Tribunal in its Order dated 24<sup>th</sup> August 2015 in the case concerning the Enrica Lexie Incident.

Please accept, Excellency, the assurances of my highest consideration.

(Dr. Neeru Chadha)  
Agent of the Republic of India

H.E. Mr. Vladimir Golitsyn  
President  
International Tribunal for the Law of the Sea

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सत्यमेव जयते

विदेश मंत्रालय, नई दिल्ली  
MINISTRY OF EXTERNAL AFFAIRS  
NEW DELHI

Report on Compliance with the Provisional Measures prescribed by the International Tribunal for the law of the Sea on 24 August 2015 in the case concerning the "Enrica Lexie" Incident (Italy v. India)

New Delhi, 17 September, 2015

The Government of the Republic of India, with respect to the Order of 24 August 2015 in the case concerning the "Enrica Lexie" Incident, wishes to inform the Tribunal as follows:

The Government of the Republic of India has taken necessary steps to suspend all the court proceedings pending in India against the two Marines. In this connection, the Hon'ble Supreme Court of India has, in its Order dated 26 August 2015 and 02 September 2015, stayed/deferred all the proceedings before the Indian courts related to this case till further orders. Further, it is assured that no new case against the two Marines will be initiated which might aggravate or extend the dispute submitted to the Annex VII arbitral tribunal.



ANNEXURE - A-4

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*Ministero degli Affari Esteri  
e della Cooperazione Internazionale*

The Hague, 23 September 2015

*Your Excellency, dear President,*

Report of the Italian Republic in the Case of *The "Enrica Lexie" Incident (Italy v. India)*  
Pursuant to Paragraph 141(2) of the Provisional Measures Order of 24 August 2015 of the  
International Tribunal for the Law of the Sea and Article 95(1) of the Rules of the Tribunal


1. The present Report is submitted by the Italian Republic ("Italy") in compliance with paragraph 141(2) of the Provisional Measures Order of 24 August 2015 ("Provisional Measures Order") of the International Tribunal for the Law of the Sea ("the Tribunal") and Article 95(1) of the Rules of the Tribunal ("the Rules") in the Case of *The "Enrica Lexie" Incident (Italy v. India)*.
2. In its Provisional Measures Order, the Tribunal prescribed the following provisional measures:
  - (1) Italy and India shall both suspend all court proceedings and shall refrain from initiating new ones which might aggravate or extend the dispute submitted to the Annex VII arbitral tribunal or might jeopardise or prejudice the carrying out of any decision which the arbitral tribunal may render.
  - (2) Italy and India shall each submit to the Tribunal the initial report referred to in paragraph 138 not later than 24 September 2015, and *authorizes* the President, after that date, to request such information from the Parties as he may consider appropriate.

H.E. Mr Vladimir Golitsyn  
President  
International Tribunal for the law of the sea  
Hamburg

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3. As regards proceedings in Italy, the Italian Ministry of Justice drew the Tribunal's Provisional Measures Order to the attention of the Rome Public Prosecutor, the Office that has independent constitutional responsibility for the open criminal investigation into the *Enrica Lexie Incident*. In response, the Public Prosecutor informed the Ministry of Justice that he had decided to stay the investigation into the Incident and to refrain from commencing any other connected investigation during the pendency of the Annex VII arbitral proceedings in order not to interfere with the determination of the case by the Annex VII arbitral tribunal.
4. As regards proceedings in India, following a hearing before the Special Designated Court in New Delhi on 25 August 2015 concerning the criminal proceedings in India against Sergeant Latorre and Sergeant Girone, that Court ordered as follows:  
  
"An application dated 27.11.2013 had been filed on behalf of NIA<sup>[1]</sup> seeking transfer of two accused into the custody of this Court. However, the proceedings have been stayed by the Order of Hon'ble Supreme Court of India. Therefore, the file is consigned to be revived as and when appropriate directions are received."
5. A copy of the Order of the Special Designated Court is attached hereto.
6. Following a hearing before the Supreme Court of India on 26 August 2015, the Supreme Court, by Order dated that day, ordered the four pending proceedings in Indian courts in this matter to "remain stayed/deferred till further orders".
7. Although no request to this effect was made by any party, the Supreme Court, in its Order of 26 August 2015, nonetheless also ordered that "the main case [be listed] on 13.01.2016 at 2.00 P.M."
8. A copy of this Order, and an associated Order of the Supreme Court of 2 September 2015 which modified the original Order, are attached hereto.
9. Given the Supreme Court's stay/deferment of the named proceedings, Italy presumes that the purpose of the hearing scheduled before the Supreme Court on 13 January 2016 is largely procedural, to inform the Supreme Court of developments in the Annex VII arbitral proceedings.

Please accept, Your Excellency, the assurances of my highest consideration.

  
Ambassador Francesco Azzarello  
Agent of the Italian Republic

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<sup>1</sup> National Investigation Agency



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**STATE (NIA) VS. MASSIMILIANO LTORRE & ANR.**

**RC-04/2013/NIA/DLI**

**25.08.2015**

Present: Sh. Amit Sharma, Ld. Special PP for the NIA.

Ld. Counsel Sh. Hari Pillai, Sh. Baljit Singh, Sh. Ujjwal Shurma, Sh. Akshat Kulshrestha and Raj Kamal for the accused persons.

An application dated 27.11.2013. had been filed on behalf of NIA seeking transfer of two accused into the custody of this Court. However, the proceedings have been stayed by the Order of Hon'ble Supreme Court of India. Therefore, the file is consigned to be revived as and when appropriate directions are received.

A copy of this Order be given datsi.

File be consigned to record room.

**(MEENA BANSAL KRISHNA)**

**ASI-01, New Delhi District,**

**28.08.2015(JP)**

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I.A. 3/15 in WP(C) 236/14

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ITEM NO.302

COURT NO.3

SECTION X

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

I.A. 3/2015 in Writ Petition(s) (Civil) No(s).236/2014

CHIEF MASTER SARGEANT MASSIM. LAT. &amp; ANR

Petitioner(s)

VERSUS

UOI &amp; ORS

Respondent(s)

(For directions and office report)

Date : 26/08/2015 This application was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ANIL R. DAVE  
HON'BLE MR. JUSTICE KURIAN JOSEPH  
HON'BLE MR. JUSTICE AMITAVA ROY

For Petitioner(s)

Mr.Soli J.Sorabjee, Sr.Adv.  
Mr.KTS Tulsi, Sr.Adv.  
Mr.Sohail Dutt, Sr.Adv.  
Mr.Diljeet Titus, Adv.  
Mr.Ujjwal Sharma, Adv.  
Mr.Baljit Singh, Adv.  
Mr.Raj Kamal, Adv.  
Mr.Ninad Laud, Adv.  
Mr.Akshat Kulshrestha, Adv.  
Mr. Jagjit Singh Chhabra, Adv.

For Respondent(s)

Mr.P.S.Narsimha, ASG  
Mr.Prateek Jalan, Adv.  
Mr.S.A.Haseeb, Adv.  
Mr.S.Potaraju, Adv.  
Mr. B. Krishna Prasad, Adv.  
Ms. Sushma Suri, Adv.(NP)

Upon hearing the counsel the Court made the following  
O R D E R

It has been agreed by both the parties that during the

Signatures of the matter before the International Tribunal for the  
Law of the Sea (ITLOS), the following proceedings pending in the

Courts shall remain stayed/deferred till further orders:

I.A. 3/15 in WP(C) 236/14

1. Writ Petition (C)No.236 of 2014 (tagged with Special Leave Petition (C)No.20370 of 2012 by order dated 28<sup>th</sup> March, 2014).
2. I.A.No.5 of 2014 in Special Leave Petition (C)No.20370 of 2012
3. Writ Petition (C)No.919 of 2014 (tagged with I.A.No.5 of 2014 in Special Leave Petition (C)No.20370 of 2012 by order dated 10<sup>th</sup> November, 2014).
4. R.C.No.04/2013/NIA/DLI pending before the Special Designated Court, Patiala House Courts, New Delhi.

I.A.No.3 of 2015 stands disposed of in view of the above order.

List the main case on 13.01.2016 at 2.00 P.M.

(SATISH KUMAR YADAV)  
AR-CUM-PS

(SNEH BALA MEHRA)  
ASSISTANT REGISTRAR

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ITEM NO.801

COURT NO.3

SECTION X

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

I.A.No. 3 of 2015  
in

Writ Petition(s) (Civil) No(s). 236/2014

CHIEF MASTER SARGEANT MASSIM. LAT.& ANR Petitioner(s)

VERSUS

UOI & ORS Respondent(s)

Date : 02/09/2015 This petition was mentioned today.

CORAM : HON'BLE MR. JUSTICE ANIL R. DAVE  
HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

For Petitioner(s) Mr. Sohail Dutt, Sr. Adv.  
Mr. Ninad Laud, Adv.  
Mr. Ujjwal Sharma, Adv.  
Mr. Jagjit Singh Chhabra, Adv.

For Respondent(s) Mr. P.S. Narasimha, ASG (Mentioned by)  
Mr. Ishaan George, Adv.

UPON hearing counsel the Court made the following  
O R D E R

Taken on board.

The order dated 26.08.2015 is modified to the effect that  
"International Tribunal for the Law of the Sea (ITLOS)" shall  
be read as "Annex VII Arbitral Tribunal".

Rest of the order shall remain as it is.

(Jayant Kumar Arora)  
Sr. P.A.

(Mala Kumari Sharma)  
Court Master

Signature Invalid  
Digitally signed by  
Jayant Kumar Arora  
Date: 2015.09.02  
11:26:51  
Reason:

ANNEXURE-A-5  
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**PERMANENT COURT OF ARBITRATION**

Peace Palace, Carnegieplein 2,  
2517 KJ The Hague, The Netherlands

Telephone : +31 70 302 4165  
Facsimile : +31 70 302 4167  
E-mail : bureau@pca-cpa.org  
Website : www.pca-cpa.org



**COUR PERMANENTE D'ARBITRAGE**

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Télécopie : +31 70 302 4167  
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Site Internet : www.pca-cpa.org

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**PCA PRESS RELEASE**

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**ARBITRATION BETWEEN THE ITALIAN REPUBLIC AND THE REPUBLIC OF INDIA**

**THE HAGUE, 6 November 2015**

**Arbitral Tribunal Constituted in Arbitration Concerning the "Enrica Lexie" Incident**

The constitution of the Arbitral Tribunal in an arbitration between the Italian Republic and the Republic of India under Annex VII to the 1982 United Nations Convention on the Law of the Sea (UNCLOS) has been completed.

Italy appointed Professor Francesco Francioni (a national of Italy) on 26 June 2015 as arbitrator. India appointed Judge Patibandla Chandrasekhara Rao (a national of India) on 24 July 2015 as arbitrator. Having consulted the Parties during a meeting in Hamburg, on 30 September 2015, the President of the International Tribunal for the Law of the Sea appointed Judge Jin-Hyun Paik (a national of Korea) and Judge Patrick Robinson (a national of Jamaica) as arbitrators, and Judge Vladimir Golitsyn (a national of Russia) as arbitrator and President of the Tribunal.

The Permanent Court of Arbitration (PCA) acts as Registry in the arbitration by agreement of the Parties.

The arbitral proceedings were commenced by Italy on 26 June 2015, when Italy served India with a notification of dispute under Article 287 and Annex VII, Article 1 of UNCLOS. According to Italy, the Parties' dispute 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 ... in respect of that incident". According to India, the "incident" in question concerns the killing of two Indian fishermen, on board an Indian vessel named the *St. Antony*, allegedly by two Italian marines stationed on the *Enrica Lexie*, and the subsequent exercise of jurisdiction by India.

The Tribunal now intends to hold a first procedural meeting with the Parties to discuss the procedural framework, including the applicable rules of procedure, and the timetable for written and oral pleadings.

Further information about the proceedings may be made available on the PCA Case Repository (<http://www.pcacases.com>).

The PCA is an independent intergovernmental organization established by the 1899 Hague Convention on the Pacific Settlement of International Disputes. The PCA has 117 Member States, including India and Italy. Headquartered at the Peace Palace in The Hague, the Netherlands, the PCA facilitates arbitration, conciliation, fact-finding and other dispute resolution proceedings among various combinations of States, State entities, intergovernmental organizations, and private parties.

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The PCA has served as Registry in numerous arbitrations between States, including in twelve cases brought under Annex VII to UNCLOS.

\* \* \*

Contact: Permanent Court of Arbitration  
E-mail: [bureau@pca-cpa.org](mailto:bureau@pca-cpa.org)

ANNEXURE-A-6

27



*Ministero degli Affari Esteri  
e della Cooperazione Internazionale*

The Hague, 4 December 2015

Dear Dr Pulkowski,

**In the Matter of the Arbitration Concerning *The "Enrica Lexie" Incident***

I write with regard to your letter of 2 November 2015 and the draft Terms of Appointment and Rules of Procedure enclosed therewith. Pending the finalisation of the Terms of Appointment, and as directed by the Tribunal in paragraph 3 of your letter, I address this correspondence to each member of the Tribunal with simultaneous copies going to the Agent of the Republic of India and to the Registry.

By paragraph 2 of your letter, the Tribunal invites the Parties to bring to the Tribunal's attention any matters that may have implications for the envisaged timetable for the arbitration in advance of the first procedural meeting scheduled for 18 January 2016. Italy will write to the Tribunal more fully in advance of the scheduled meeting to address certain elements of the draft Terms of Appointment and Rules of Procedure in the spirit of facilitating the efficiency of the meeting.

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Dr Dirk Pulkowski  
Senior Legal Counsel  
Permanent Court of Arbitration  
Peace Palace  
Carnegieplein 2  
2517 KJ The Hague  
The Netherlands

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The purpose of the present letter is to draw to the Tribunal's attention in a timely manner, and similarly to the attention of the Republic of India, that Italy intends to submit a request for provisional measures to the Tribunal in accordance with Article 290, paragraph 1 of UNCLOS, as contemplated by Article 11 of the Tribunal's draft Rules of Procedure. As presently envisaged, this provisional measures request will address the position of Sergeant Girone, detained in India, notwithstanding the absence of any charge preferred against him and the stay/deferment of all proceedings in India during the pendency of the Annex VII proceedings.

Pending the first procedural meeting on 18 January 2016, and the finalisation thereafter of the Tribunal's Terms of Appointment and Rules of Procedure, there is no procedural framework for the submission of such provisional measures request or addressing the proceedings that would follow. Italy accordingly writes to request an interim direction from the Tribunal on how this matter should be handled and to propose a possible modality of proceedings.

In writing in these terms, Italy notes for the Tribunal's attention that, notwithstanding the stay/deferment of all Indian court proceedings in this matter by Order of the Indian Supreme Court, pursuant to the ITLOS Provisional Measures Order of 24 August 2015, the Indian Supreme Court has scheduled a hearing in the main case on 13 January 2016. Given the stay/deferment of the Indian proceedings, the purpose of the 13 January 2016 hearing is not entirely clear, although Italy presumes that it is largely to enable the Supreme Court to be informed of developments in the Annex VII proceedings. Italy notes, though, that the leave granted by the Indian Supreme Court to Sergeant Latorre to remain in Italy expires on 15 January 2016.

Italy will shortly be submitting, for purposes of information, an affidavit to the Indian Supreme Court to update the Court on the developments in the Annex VII proceedings and to address, in a timely and transparent manner, both for the Court and for the Government of India, the implications of the ITLOS Provisional Measures Order for the position of Sergeant Latorre. Italy hopes that its appreciation of the effect of the Provisional Measures Order in respect of Sergeant Latorre will coincide with that of the Government of India, and indeed of the Court. Italy will include, for the attention of the Tribunal, in the documentation to be annexed to its intended provisional measures request, the affidavit and accompanying papers that will be submitted to the Indian Supreme Court.



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Given these anticipated developments, Italy considers that, save in the case that the Tribunal issues a direction to the contrary, it is necessary and appropriate that Italy submits its intended request for provisional measures to the Tribunal before the first procedural meeting scheduled for 18 January 2016, this meeting only to take place after the scheduled hearing of the Indian Supreme Court on 13 January 2016. Having regard to the circumstances, and a fair and realistic timetable, Italy does not propose to request that the Tribunal schedule a hearing on its provisional measures request, let alone deliberate and render its Order thereon, in advance of the 13 January 2016 Indian Supreme Court hearing. Italy hopes and anticipates, however, that the Government of India will join with Italy in informing the Indian Supreme Court of the developments in the Annex VII proceedings, including the proposed provisional measures request, with a view to ensuring that nothing is done that may aggravate or extend the dispute of which the Tribunal is seised.

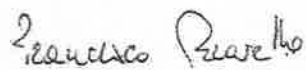
Save in the case that the Tribunal issues a direction to the contrary, Italy will be in a position to submit its intended request for provisional measures in electronic form by no later than 11 December 2015, and will endeavour to do so before this date. Having done so, the question that will arise for the Tribunal, and for the Parties in the absence of finalised Terms of Appointment and Rules of Procedure, will be how to proceed thereafter.

Having regard to the forthcoming seasonal recess, and wishing to proceed in a spirit of fairness and accommodation both to India (and its counsel) and to the Tribunal, Italy proposes that a possible modality of proceeding would be to afford India an extended period in which to address Italy's request (by the usual standards of provisional measures proceedings) and that the Tribunal schedule a hearing thereafter at a time to accommodate the Parties no less than 10 days after the submission of the Indian response. A schedule along these lines would allow the Tribunal to finalise its Terms of Appointment and Rules of Procedure, following the first procedural meeting on 18 January 2016, but would not so delay the provisional measures proceedings as would be the case were Italy to be required to delay submission of its proposed provisional measures request until the Tribunal's Terms of Appointment and Rules of Procedure are finalised and issued.

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As will be developed fully in Italy's provisional measures request, any restriction on the liberty of an individual causes an irreversible prejudice to fundamental rights. There is therefore a proper urgency in proceeding to address the issues that Italy will put before the Tribunal with appropriate expedition. Having in mind the likelihood that the Annex VII proceedings may extend for three to four years, or indeed more, before the Tribunal renders its final award, Italy considers that the interests of all will best be served by a timetable that will facilitate considered deliberation of the issues that will be raised.

Best regards, yours sincerely,



Francesco Azzarello  
Agent of the Italian Republic

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