

PCA Case No. 2015-28

IN THE MATTER OF AN ARBITRATION

- before -

AN ARBITRAL TRIBUNAL CONSTITUTED UNDER ANNEX VII
OF THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

THE ITALIAN REPUBLIC

- v. -

THE REPUBLIC OF INDIA

- concerning -

THE "ENRICA LEXIE" INCIDENT

ORDER

REQUEST FOR THE PRESCRIPTION OF PROVISIONAL MEASURES

29 April 2016

ARBITRAL TRIBUNAL:

H.E. Judge Vladimir Golitsyn (President)
H.E. Judge Jin-Hyun Paik
H.E. Judge Patrick Robinson
Professor Francesco Francioni
H.E. Judge Patibandla Chandrasekhara Rao

REGISTRY:

Permanent Court of Arbitration

I. HISTORY OF THE PROCEEDINGS

1. The present Order arises from a request for the prescription of provisional measures in an arbitration conducted pursuant to Article 287 and Annex VII, Article 1, of the 1982 United Nations Convention on the Law of the Sea (hereinafter “UNCLOS” or the “Convention”).

A. INSTITUTION OF THE PROCEEDINGS

2. The proceedings were instituted on 26 June 2015, when the Italian Republic (hereinafter “Italy”) served on the Republic of India (hereinafter “India”) a “Notification under Article 287 and Annex VII, Article 1 of UNCLOS and Statement of Claim and Grounds on Which it is Based” (hereinafter “Notification and Statement of Claim”).
3. Italy is represented by H.E. Ambassador Francesco Azzarello, Ambassador of Italy to the Kingdom of the Netherlands, as Agent.
4. India is represented by Dr. Neeru Chadha, Former Additional Secretary and Legal Adviser to the Ministry of External Affairs, as Agent; H.E. Ambassador J.S. Mukul, Ambassador of India to the Kingdom of the Netherlands, as Co-Agent; and Dr. Vishnu Dutt Sharma, Joint Secretary and Legal Adviser to the Ministry of External Affairs, as Deputy Agent.
5. According to Italy, the Parties’ dispute arises from 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 the vessel and two Italian marines from the Italian Navy, Chief Master Sergeant Massimiliano Latorre and Sergeant Salvatore Girone, 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”, and the subsequent exercise of jurisdiction by India. It is alleged that the fishermen were killed by the two Italian marines stationed on the “Enrica Lexie”. Both Parties have referred to the events forming the subject of the present arbitration as the “Enrica Lexie” incident, and the Arbitral Tribunal shall do likewise in the present Order.

B. ITLOS PROCEEDINGS ON PROVISIONAL MEASURES

6. On 21 July 2015, pending the constitution of the Arbitral Tribunal, Italy filed with the International Tribunal for the Law of the Sea (hereinafter “ITLOS”) a request for the prescription

of provisional measures under Article 290, paragraph 5, of the Convention (hereinafter “ITLOS Request”).¹

7. In its final submissions before ITLOS, Italy requested that ITLOS prescribe the following provisional measures:

- (a) India shall refrain from taking or enforcing any judicial or administrative measures against Sergeant Massimiliano Latorre and Sergeant Salvatore Girone in connection with the Enrica Lexie Incident, and from exercising another form of jurisdiction over the Enrica Lexie Incident; and
- (b) India shall take all necessary measures 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.²

8. On 6 August 2015, India filed written observations on Italy’s ITLOS Request. In its final submissions before ITLOS, India requested ITLOS to “reject the submissions made by the Republic of Italy in its Request for the prescription of provisional measures and [to] refuse prescription of any provisional measure[s] in the present case”.³

9. On 10 and 11 August 2015, a hearing on provisional measures was held at the premises of ITLOS in Hamburg, Germany.

10. On 24 August 2015, ITLOS rendered an order in which it prescribed the following provisional measure:

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 jeopardize or prejudice the carrying out of any decision which the arbitral tribunal may render.⁴

In addition, ITLOS decided:

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.⁵

¹ Request of the Italian Republic for the Prescription of Provisional Measures under Article 290, paragraph 5, of the United Nations Convention on the Law of the Sea, 21 July 2015.

² *The “Enrica Lexie” Incident (Italy v. India)*, ITLOS, Provisional Measures, Order of 24 August 2015, para. 29, annexed to the Request (Annex IT-35).

³ *The “Enrica Lexie” Incident (Italy v. India)*, cit., n. 2, para. 30.

⁴ *The “Enrica Lexie” Incident (Italy v. India)*, cit., n. 2, para. 141.

⁵ *The “Enrica Lexie” Incident (Italy v. India)*, cit., n. 2, para. 141.

11. Both Parties submitted initial reports within the time limit stipulated by ITLOS. Italy informed ITLOS that the Public Prosecutor had decided to stay the investigation into the “Enrica Lexie” incident and to refrain from commencing any other connected investigation during the pendency of the Annex VII arbitral proceedings.⁶ India informed ITLOS that the Supreme Court of India had ordered that four proceedings that were pending in the Indian courts be “stayed/deferred till further orders”.⁷

C. CONSTITUTION OF THE ARBITRAL TRIBUNAL AND FIRST PROCEDURAL MEETING

12. In its Notification and Statement of Claim, Italy appointed Professor Francesco Francioni as arbitrator pursuant to Annex VII, Article 3, subparagraph (b), to the Convention.⁸
13. By *note verbale* dated 24 July 2015, India appointed H.E. Judge Patibandla Chandrasekhara Rao as arbitrator pursuant to Annex VII, Article 3, subparagraph (c), to the Convention.
14. Pursuant to Italy’s request dated 8 September 2015, having consulted the Parties during a meeting in Hamburg, on 30 September 2015, the President of ITLOS appointed H.E. Judge Jin-Hyun Paik and H.E. Judge Patrick Robinson as arbitrators, and H.E. Judge Vladimir Golitsyn as arbitrator and President of the Arbitral Tribunal pursuant to Annex VII, Article 3, subparagraphs (d) and (e), to the Convention.
15. By letter dated 9 October 2015, the President of the Arbitral Tribunal informed the Secretary-General of the Permanent Court of Arbitration (hereinafter “PCA”) that the Parties had agreed to request the PCA to act as registry in the present arbitration (hereinafter “Registry”). By letter of 12 October 2015, the Secretary-General of the PCA confirmed that the PCA was prepared to act in this capacity.
16. On 18 January 2016, a first procedural meeting with the Parties was held at the premises of the PCA at the Peace Palace in The Hague, the Netherlands.

⁶ Report of the Italian Republic pursuant to paragraph 141(2) of the ITLOS Order and Article 95(1) of the Rules of the Tribunal, 23 September 2015, with attachments, annexed to the Request (Annex IT-37).

⁷ Report of the Republic of India pursuant to paragraph 141(2) of the ITLOS Order and Article 95(1) of the Rules of the Tribunal, 18 September 2015, annexed to the Request (Annex IT-36).

⁸ Italy’s Notification and Statement of Claim, para. 3.

17. On 19 January 2016, taking account of the discussion at the first procedural meeting, the Arbitral Tribunal, pursuant to Annex VII, Article 5, to the Convention adopted its Rules of Procedure (hereinafter “Rules of Procedure”).⁹

D. PROCEEDINGS ON PROVISIONAL MEASURES

18. On 11 December 2015, Italy submitted to the Arbitral Tribunal a “Request for the Prescription of Provisional Measures Under Article 290, Paragraph 1, of the United Nations Convention on the Law of the Sea” (hereinafter “Request”).

19. On 19 January 2016, having regard to consultations with the Parties at the first procedural meeting, the Arbitral Tribunal issued Procedural Order No. 1 fixing the following procedural timetable for the provisional measures phase:

1. India shall submit a response to Italy’s Request no later than 26 February 2016.
2. A hearing on provisional measures shall be held on 30 and 31 March 2016 at the Peace Palace in The Hague.¹⁰

20. On 24 February 2016, the Arbitral Tribunal issued procedural directions regarding the schedule for the hearing on provisional measures, including the allocation of time for each Party’s presentations, and determined the modalities for public attendance of the hearing.

21. On 26 February 2016, India filed the “Written Observations of the Republic of India on the Request of the Italian Republic for the Prescription of Provisional Measures under Article 290, Paragraph 1, of the United Nations Convention on the Law of the Sea” (hereinafter “Written Observations”).

22. On 30 and 31 March 2016, a hearing on provisional measures was held at the Peace Palace in The Hague.

23. Italy was represented at the hearing by:

H.E. Ambassador Francesco Azzarello
Ambassador of the Italian Republic to the Kingdom of the Netherlands

as Agent;

Sir Daniel Bethlehem KCMG QC
Member of the Bar of England and Wales

⁹ Rules of Procedure, adopted by the Arbitral Tribunal on 19 January 2016.

¹⁰ Procedural Order No. 1, adopted by the Arbitral Tribunal on 19 January 2016.

Mr. Suhail Dutt
Senior Advocate; Member of the Delhi Bar

Dr. Mauro Politi
Professor of International Law, University of Trento; Member of the Human Rights Committee

Mr. Sudhanshu Swaroop QC
Member of the Bar of England and Wales

Mr. Guglielmo Verdirame
Professor of International Law, King's College, London; Member of the Bar of England and Wales

Sir Michael Wood KCMG
Member of the International Law Commission; Member of the Bar of England and Wales

as Counsel and Advocates;

Mr. Paolo Busco
Member of the Rome Bar

Dr. Ida Caracciolo
Professor of International Law, University of Naples 2; Member of the Rome Bar

Dr. Ben Juratowitch
Solicitor Advocate, England and Wales; Solicitor of the Supreme Court of Queensland; Partner, Freshfields Bruckhaus Deringer, Paris

Mr. Kevin Lee
Advocate of the Supreme Court of Singapore, Singapore

Ms. Natasha McNamara
Lawyer of the Supreme Court of Victoria; Associate, Freshfields Bruckhaus Deringer, Paris

Dr. Daniel Müller
Associate, Freshfields Bruckhaus Deringer, Paris

Mr. Mario Antonio Scino
Advocate, State Attorney, Office of the Attorney General, Rome

Dr. Attila Tanzi
Professor of International Law, University of Bologna

Mr. Diljeet Titus
Advocate, Titus & Co Advocates; Member of the Delhi Bar

Dr. Philippa Webb
Reader in Public International Law, King's College, London; Member of the New York Bar

as Counsel;

Ms. Francesca Lionetti
Freshfields Bruckhaus Deringer, Paris

as Legal Assistant.

24. India was represented at the hearing by:

Dr. Neeru Chadha
Former Additional Secretary and Legal Adviser, Ministry of External Affairs

as Agent;

H.E. Ambassador J.S. Mukul
Ambassador of the Republic of India to the Kingdom of the Netherlands

as Co-Agent;

Dr. Vishnu Dutt Sharma
Joint Secretary and Legal Adviser, Ministry of External Affairs

as Deputy Agent;

Dr. Alain Pellet
Emeritus Professor, University of Paris Ouest, Nanterre-La Défense; Former Member
& Chairman of the International Law Commission; Member of the *Institut de droit
international*

Mr. Rodman R. Bundy
Eversheds LLP Singapore; Member of the New York Bar and former Member of the
Paris Bar

as Counsel;

Mr. Benjamin Samson
Ph.D. Candidate, Centre de droit international de Nanterre (CEDIN), University of Paris
Ouest, Nanterre-La Défense

Ms. Laura Yvonne Zielinski
Eversheds Paris LLP; Member of the New York Bar

as Junior Counsel;

Mr. Anurag Tankha
Inspector-General, National Investigation Agency

Mr. S.K. Chhikara
Deputy Secretary (Internal Security-I), Ministry of Home Affairs

Dr. Kajal Bhat
First Secretary Legal, Embassy of India, The Hague

as Advisers.

II. THE PARTIES' FINAL SUBMISSIONS

25. At the end of the oral hearing, in its final submissions, which reiterate its earlier submissions in the Request, Italy requested that the Arbitral Tribunal prescribe the following provisional measure:

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.¹¹

26. At the end of the oral hearing, in its final submissions, which reiterate its earlier submissions in the Written Observations, India requested the Arbitral Tribunal:

to reject the submission made by the Italian Republic in its Request for the prescription of provisional measures and to refuse to prescribe any new provisional measures in the present case.¹²

III. FACTUAL BACKGROUND

27. Both Parties have made extensive factual submissions to the Arbitral Tribunal. Bearing in mind that the matters to be addressed in the present Order do not concern the merits of the proceedings, the Arbitral Tribunal shall restate these facts only to the extent necessary to put in context the Parties' arguments in respect of the requested provisional measure.

A. THE "ENRICA LEXIE" INCIDENT

28. Following the developments that led to the docking of the "Enrica Lexie" at the oil terminal of Kochi port, the circumstances of which are contested by the Parties, on 19 February 2012, the Indian authorities, in the exercise of their jurisdiction, arrested Sergeant Latorre and Sergeant Girone and took them into custody. India's jurisdiction in this regard has been challenged by Italy since the occurrence of the incident. Both marines are currently on bail, subject to conditions established by the Supreme Court of India.

¹¹ Hearing Transcript, Day 2, 26:6-10; Request, paras 6 and 112.

¹² Hearing Transcript, Day 2, 66:17-21; Written Observations, p. 49.

29. On 12 September 2014, for medical reasons related to a brain stroke suffered by Sergeant Latorre, the Supreme Court of India granted a relaxation of Sergeant Latorre's bail conditions to allow him to travel to Italy for an initial period of four months. This bail arrangement was subsequently extended on several occasions. The Supreme Court last extended Sergeant Latorre's stay in Italy until 30 April 2016.
30. Sergeant Girone remains in India. He lives at the residence of the Italian Ambassador in New Delhi, subject to the obligation to report weekly to a nearby police station. His family is entitled to visit him and has done so on several occasions. His son and his wife have visited him nine times, his sister six times, and his parents five times.¹³
31. As noted in paragraph 11 above, in light of the ITLOS Order of 24 August 2015, the Supreme Court of India has ordered that the proceedings against Sergeant Latorre and Sergeant Girone that are pending in the Indian courts remain "stayed/deferred".¹⁴

B. QUESTIONS FROM THE ARBITRAL TRIBUNAL AND RESPONSES FROM THE PARTIES

32. After the conclusion of the first day of the hearing, by letter dated 30 March 2016, the Arbitral Tribunal put four questions to the Parties. By letter dated 31 March 2016, the Arbitral Tribunal put a further question to the Parties.
33. On 31 March 2016, in the course of their presentations, the Parties provided their responses to the questions of the Arbitral Tribunal. The questions and responses are as follows.

1. Question 1

34. The first question posed by the Arbitral Tribunal to the Parties was:

In the presentation of Mr. Bundy (Hearing Transcript, Day 1, 168:2-3), mention is made of "intense diplomatic efforts" that were required to ensure that the Marines would return to India. What were those diplomatic efforts that took place?

35. In response, Counsel for Italy stated:

I cannot speak for Mr Bundy on the question of what he had in mind when he spoke about "intense diplomatic efforts". What we can say is that there were at that point, as there have been on other occasions, diplomatic exchanges between the two States in an attempt to resolve the impasse of this dispute. There were certainly diplomatic exchanges at that time,

¹³ Written Observation, para. 3.63.

¹⁴ Report of the Republic of India, cit., n. 7.

and the Marines were returned to India within the deadline that was required by Italy's undertaking.¹⁵

He further added:

for the three and a half years of this dispute, from 15th February 2012, the point of the incident, to the Notification instituting these proceedings on 21st July 2015, there were diplomatic exchanges between the two States in an attempt to resolve the dispute.

Those exchanges, however, as it turned out, were akin to broken telephone conversations between intermediaries representing what they thought were the views of those for whom they spoke. The Parties have misunderstood one another on this issue more than they have understood one another.

Italy has on occasion brought applications before the Indian courts because they thought they understood from their Indian interlocutors that this was the way to resolve the dispute, whereas in reality either Italy misunderstood what India was saying, or those speaking for India did not sufficiently understand the complexity of the issues about which they were talking.

[...] the point is simply that the Parties failed, in their diplomatic dialogue, both to sufficiently understand one another, and to find a way through the issues that divide them.¹⁶

36. Counsel for India stated:

The Tribunal will recall that Italy sent a Note Verbale on 11th March 2013 to India saying that the Marines would not return upon the expiry of the leave they had been granted by India's Supreme Court in February.

Italy's Note also indicated that Italy considered that a controversy between the two parties, Italy and India, had been established by that time, the controversy had been established by that time, and this was the reason for the Marines' non return.

[...] Italy's view that a controversy had been established by March 2013 was more than two years before Italy filed its Annex VII Notification stating that there was a dispute between the Parties and indicating that Italy would seek provisional measures. I mentioned yesterday that time lag is not conducive to an argument based on urgency.

Italy's Note was contrary to the personal undertaking that the Italian Ambassador had given in support of the Marines' application for permission to return to Italy for four weeks to vote in the Italian elections.

India immediately responded on 12th March 2013 by means of a diplomatic Note to Italy. India's Ministry of External Affairs informed Italy that the latter's position was not acceptable to the Government of India, and that the failure of the Marines to return within the stipulated time limit would be a breach of the sovereign undertakings given by the Republic of Italy to the Supreme Court of India.

The Secretary of the Ministry of External Affairs responsible for Western Europe then met the Ambassador of the European Union on 14th March 2013. In that meeting, the Secretary conveyed the position that Italy's decision not to send the Marines back at the expiration of the permission granted to them was a breach of Italy's undertakings. The EU Ambassador was also informed that the breach of an express undertaking by one of the EU Member States ran counter to the EU's support for the propagation of the principle of the Rule of Law and an independent judiciary, values that the EU holds in the highest regard. He added that India did not desire an intervention by the EU on what was essentially a bilateral issue.

¹⁵ Hearing Transcript, Day 2, 4:12-22.

¹⁶ Hearing Transcript, Day 2, 5:19-24, 6:1-18.

In the event, the Marines did return within the stipulated time, but this was as a result of what I have said were intense diplomatic efforts.¹⁷

2. Question 2

37. The second question posed by the Arbitral Tribunal to the Parties was:

Could the Parties clarify the following point: What were the reasons for the “Enrica Lexie” to be called to go to the port of Kochi?

38. In response, Counsel for Italy stated:

As a preliminary matter, I note that this goes to the merits and is therefore an issue that we will address more fully by reference to the evidence in due course. I confine myself for the moment, therefore, to addressing this issue by reference to the documentation that is already in the record.

The answer to the question comes in three parts. The first part is the issue of what India communicated to the “Enrica Lexie” at the time. The “Enrica Lexie” was requested by India to proceed to Kochi to assist in the investigation of an incident that the Indian authorities, in their communication to the vessel, characterised as involving a firing on skiffs suspected of piracy. What the vessel subsequently learnt was that the Indian authorities were not in fact treating the incident as a suspected pirate attack, but were simply saying as such to the “Enrica Lexie”. The communication gave no indication that the vessel or anyone on board the vessel was suspected of any wrongdoing.

Second, the true reason for that request, which was not communicated to the “Enrica Lexie” while it was outside India’s territorial sea, was to arrest the ship and the individuals on board suspected of killing the two Indian fishermen.

Third, regardless of the reason given in the communication, the “Enrica Lexie” had no choice but to comply with India’s direction and to enter India’s territorial sea and proceed to anchor at Kochi. The vessel was interdicted in international waters. It was encircled. It was directed to alter course, and it was continuously contacted and shadowed until it arrived in Kochi.¹⁸

39. Counsel for India stated:

Kochi is the nearest port to the place of the incident. The local police received information about the incident through a call from the sea. The Coast Guard and Indian Marine Rescue Co-ordination Centre in Mumbai were alerted, and a preliminary analysis of the situation from plotting showed that there were six vessels, including the “Enrica Lexie”, in the area where the firing took place. Phone contacts were obtained for each vessel, and the “Enrica Lexie” was the first vessel to be contacted over the phone by the Marine Rescue Co-ordination Centre.

On enquiry, the captain and another officer on board the “Enrica Lexie” confirmed that there was a firing incident from the ship. The captain also informed that they had sent a notice about the incident to the United Kingdom Marine Trade Operations.

On request from the Marine Rescue Co-ordination Centre, the captain e-mailed a copy of the same to the Centre the same day.

¹⁷ Hearing Transcript, Day 2, 33:7-25, 34:1-26, 35:1-4.

¹⁸ Hearing Transcript, Day 2, 10:12-26, 11:1-18.

I would now like to read out from the e mail sent to the captain of the “Enrica Lexie” by the Centre in Mumbai on the evening of the incident:

“Understand there has been piracy/firing incident by your vessel on a suspicious skiff at 1600 hours LT [local time] off Allepey.

“You are requested to head to Kochi and establish communication with Indian Coast Guard for further deposition/clarification. Request ETA Kochi”.

That communication, Mr President, by its plain terms, indicates that there was no preconceived mindset of the Indian authorities to arrest the ship or anyone on board. While this is obviously clearly a merits issue, the e-mail refers to two possibilities confronted by the Indian authorities, piracy and a firing incident. Therefore, in order to clarify what happened, the vessel was requested -- those are the words -- to head to Kochi, and there are no grounds whatsoever for Sir Daniel’s assertion this morning that the purpose of the request was to arrest the ship and the individuals on board suspected of killing the two Indian fishermen.¹⁹

3. Question 3

40. The third question posed by the Arbitral Tribunal to the Parties was:

ITLOS stressed, in paragraphs 134 and 135 of its Order of 24 August 2015, the need to take into account the “grief and suffering of the families of the two Indian fishermen who were killed” as well as “the consequences that the lengthy restrictions on liberty entail for the two Marines and their families”. Could the Parties comment on any implications that they believe these two paragraphs might have for the current proceedings?

41. In response, Counsel for Italy stated:

The Tribunal evidently wanted to indicate that it did not regard the human dimension of this inter-state dispute as an abstraction.

It would not be correct, however, to read, as Mr Bundy seemed to suggest yesterday, these two paragraphs as defining the “balance to be struck” in this case. This was clearly not the point of these paragraphs. ITLOS was not trying to “split the suffering”. That could never be the way in which justice, including international justice, can serve the interests of victims. Those interests are served principally by ensuring that a proper process of law and an appropriate and fair trial takes place, and that the truth of what happened is established, and that anyone found guilty of an offence at the end of a domestic criminal process serve a punishment commensurate with the offence.

So far as concerns the families of the fishermen, their interest is in seeing that justice be done. But for reasons we have explained, that does not require that Sergeant Girone, who is to be presumed innocent, stay in India for a lengthy period during which no trial can take place. So the families will not suffer prejudice from the measure sought by Italy.

On the other hand, the consequences that “the lengthy restrictions on liberty” entail for Sergeant Girone and his family must certainly weigh in favour of the provisional measure requested by Italy.²⁰

¹⁹ Hearing Transcript, Day 2, 42:19-26, 43:1-26, 44:1-8.

²⁰ Hearing Transcript, Day 2, 22:22-26, 23:1-24.

42. Counsel for India stated:

India maintains that if one has to place the decision of the ITLOS in its correct perspective, the fundamental premise of the Order dated 24th August 2015, and paragraphs 134 and 135, points to the need for balanced provisional measures, capable of equally protecting the interests and rights of both the parties. This consideration, in India's view, remains relevant in the context of the question put by the Tribunal.²¹

4. Question 4

43. The fourth question posed by the Arbitral Tribunal to the Parties was:

Ambassador Mukul stated (Hearing Transcript, Day 1, 132:16-22) that, "in none of the hearings mentioned, the Union of India objected to the relaxation of bail conditions. In all these hearings, the Union of India and the Supreme Court have acceded to every request of Sergeant Latorre and Sergeant Girone, whether they are medical needs or the exercise of their right to vote". On the other hand, Italy stated (Request, para. 51) that, "[o]n 16 December 2014, at a hearing before the Supreme Court of India [...] the Government of India, through its Additional Solicitor General, opposed the petition of Sergeant Girone. During the hearing, the Court made it clear that the petition would be rejected. For that reason, the petition was withdrawn". How do the Parties explain this apparent discrepancy?

44. In response, Counsel for Italy stated:

It is accurate to say that Sergeant Girone's petition was withdrawn. It is inaccurate to a quite startling degree to say that the Government of India did not oppose that petition.

It is equally inaccurate to suggest that Sergeant Girone simply withdrew his petition. His petition was withdrawn, and a decision made not to resubmit it, in the face both of Indian Government opposition to the petition, and a categorical statement by the Chief Justice of India in the court that he would reject the petition.²²

45. Counsel for India stated:

India stands by what it said: the petition was not opposed by India and the court took note of the Marines' withdrawal of their petition and ruled accordingly, without soliciting the views of India or relying on them.

Italy itself has asserted that the petition was withdrawn because the Supreme Court, not India, had made it clear that the petition would be rejected. The support for that statement by Italy is a news account filed by it, which is in annex IT-42.

That account indicates that the Government of India did not oppose Sergeant Latorre's application because he made an application at the same time, and it does not indicate that India took any different position with respect to Sergeant Girone. Not a word about Indian opposition to the petition is mentioned in the press report.

As to how the Supreme Court would have ruled, it's impossible to speculate, since the application was withdrawn before a ruling could be made. But what we do know from the record that is in this case is that the subsequent applications of Sergeant Latorre which were on health grounds were not opposed by India, and were granted by the Supreme Court. But as I pointed out yesterday, when it comes to Sergeant Girone, he made no further application

²¹ Hearing Transcript, Day 2, 65:7-16.

²² Hearing Transcript, Day 2, 7:14-24.

that the Supreme Court was called upon to rule on after February 2013, that was the application that led to the incident I just discussed a few moments ago, in response to the Tribunal's first question.²³

5. Question 5

46. The fifth question posed by the Arbitral Tribunal to the Parties was:

In light of Italy's request, what commitments on the part of Italy would be acceptable to India?

47. The Agent for India responded to this question, stating:

India does not seek anything more onerous than the benchmark set by the Supreme Court of India, and some of these conditions were indicated by Italy's counsel yesterday.

India needs to be assured that in case the Tribunal finds that India has jurisdiction, the presence of Sergeant Girone would be ensured. Towards that end, India would deem it necessary that the Tribunal itself fix these guarantees.²⁴

IV. *PRIMA FACIE* JURISDICTION

48. Article 290, paragraph 1, of the Convention provides that the Arbitral Tribunal must establish that *prima facie* it has jurisdiction under Part XV of the Convention to exercise its powers to prescribe any provisional measures.

A. THE PARTIES' POSITIONS

49. Italy submits that the requirement of *prima facie* jurisdiction is satisfied.²⁵ Since Italy and India have not accepted the same procedure for the settlement of disputes, Article 287, paragraph 5, of the Convention has the effect that any dispute between Italy and India concerning the interpretation or application of the Convention may be submitted only to arbitration in accordance with Annex VII of the Convention.²⁶
50. Italy also contends that there exists a dispute concerning the interpretation or application of the Convention which shall be submitted to "the court or tribunal having jurisdiction" as required by Article 286 of the Convention. According to Italy, the dispute concerns India's breaches of its obligations under Articles 2, paragraph 3, 27, 33, 56, 58, 87, 89, 92, 94, 97, 100 and 300 of the

²³ Hearing Transcript, Day 2, 35:20-26, 36:1-23.

²⁴ Hearing Transcript, Day 2, 65:21-26, 66:1-3.

²⁵ Request, para. 60.

²⁶ Request, para. 60(b).

Convention through, *inter alia*, its interference with Italy's freedom of navigation, its arrest and detention of the "Enrica Lexie", its exercise of jurisdiction over the "Enrica Lexie" and the incident, and its exercise of penal jurisdiction over the Italian marines who enjoy immunity from India's penal jurisdiction as Italy's officials.²⁷

51. While India had reserved its position in respect of jurisdiction at the first procedural meeting, India does not address the issue of jurisdiction in its Written Observations. At the hearing, India explained:

India does not intend to respond to [Italy's] arguments about whether the Tribunal *prima facie* has jurisdiction in order to prescribe provisional measures, or the link between the measures and the rights Italy seeks to protect. In its Order of 24th August 2015, ITLOS dealt with both of these points, and [...] India does not intend to second guess or seek to modify the Law of the Sea Tribunal's conclusions on these matters.²⁸

B. THE ARBITRAL TRIBUNAL'S ANALYSIS

52. Italy and India are parties to the Convention. While, after its ratification of the Convention, on 26 February 1997, Italy made a declaration pursuant to Article 287 of the Convention accepting the jurisdiction of ITLOS and the International Court of Justice (hereinafter "ICJ"), India has not made any such declaration. Therefore, any dispute that may arise between the Parties regarding the interpretation or application of the Convention has to be submitted to arbitration in accordance with Annex VII, pursuant to Article 287, paragraphs 3 and 5, of the Convention.
53. In international proceedings, a dispute exists when the parties have "a disagreement on a point of law or fact, a conflict of legal views or of interests".²⁹ The Arbitral Tribunal finds that there is a dispute between the Parties in the present case.
54. The Arbitral Tribunal considers that this dispute relates to the interpretation or application of the Convention because Italy has alleged the violation of various rights conferred under provisions of the Convention and India has contested such violations.
55. Accordingly, the Arbitral Tribunal concludes that *prima facie* it has jurisdiction over the dispute.

²⁷ Request, para. 60(d)-(h).

²⁸ Hearing Transcript, Day 2, 28:3-12.

²⁹ *Mavrommatis Palestine Concessions (Greece v. Great Britain)*, Judgment of 30 August 1924, 1924 *PCIJ* (Ser. A) No. 2, p. 11.

V. ADMISSIBILITY OF THE REQUEST

56. The Arbitral Tribunal turns to the question whether Italy's Request is admissible.
57. The Arbitral Tribunal notes that the Parties have failed to reach a resolution of their dispute through a series of diplomatic and political exchanges so that the requirement of an "exchange of views" pursuant to Article 283 of the Convention is satisfied.
58. The Parties disagree as to whether Italy's Request meets the requirements of Article 290 of the Convention, and whether it is admissible, given that Italy had previously sought an order from ITLOS in respect of the situation of Sergeant Girone.

A. THE PARTIES' POSITIONS

59. Italy relies on Article 290, paragraph 1, of the Convention in requesting that this Arbitral Tribunal prescribe a provisional measure. The provision reads:

If a dispute has been duly submitted to a court or tribunal which considers that *prima facie* it has jurisdiction under this Part or Part XI, section 5, the court or tribunal may prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment, pending the final decision.

60. In this regard, Italy emphasizes that, unlike the ITLOS Request, the present Request seeks the "relaxation of bail conditions", rather than the "immediate lifting of all restrictions".³⁰ Italy explains that the language of the Request to this Arbitral Tribunal "is an attempt to signal that Italy acknowledges that India continues to have an interest in securing Sergeant Girone's presence in India during any trial",³¹ that "the Indian Supreme Court would continue to have an interest in the matter",³² and that this Arbitral Tribunal "may consider it appropriate to impose certain conditions on Sergeant Girone's return to Italy".³³
61. India perceives Italy's reliance on Article 290, paragraph 1, of the Convention as "misleading"³⁴ because it seems to convey the impression that the current Request is "new, or over and above what ITLOS has already prescribed".³⁵ Pointing to the ITLOS Request of 21 July 2015, India

³⁰ Hearing Transcript, Day 1, 38:18-22.

³¹ Hearing Transcript, Day 1, 39:7-10.

³² Hearing Transcript, Day 2, 12:19-20.

³³ Hearing Transcript, Day 1, 39:15-17.

³⁴ Written Observations, para. 3.3.

³⁵ Hearing Transcript, Day 1, 119:11-14.

argues that the current Request has the “same object” as the ITLOS Request “as far as Sergeant Girone is concerned”.³⁶ The substance of the current Request “has been fully argued between the Parties and rejected by the ITLOS in its Order of 24 August 2015”.³⁷

62. According to India, Article 290, paragraph 5, of the Convention does not allow Italy to “seek the same provisional measure before the Annex VII arbitral tribunal after its original request was rejected by ITLOS”.³⁸ This is consistent with the principle of *res judicata* and the principle of *ne bis in idem*.³⁹ India concedes that orders prescribing provisional measures are “binding but not final” and, therefore, in this respect, “are not properly *res judicata*”.⁴⁰
63. In its Request to the present Arbitral Tribunal, Italy is, in India’s view, in reality seeking a modification of the ITLOS Order of 24 August 2015.⁴¹ Accordingly, pursuant to Article 290, paragraph 2, of the Convention, Italy must show that the “circumstances justifying [the provisional measures prescribed by ITLOS] have changed or ceased to exist”.⁴² India finds support in several decisions of the ICJ,⁴³ including the order in the *Timor-Leste v. Australia* case, in which the ICJ held that, to modify a previous order indicating interim measures, the judicial or arbitral body must first ascertain whether, in light of the facts brought before it by the requesting State, there has been a change in the situation which called for the indication of the initial provisional measures and whether such change justified the modification or revocation of the measures previously indicated.⁴⁴
64. In the view of India, “there has been no such change”.⁴⁵ India argues that all the circumstances put forward by Italy to justify a reversal of the ITLOS Order were known to ITLOS last August.⁴⁶ While recognizing the difference in jurisdiction between ITLOS and this Arbitral Tribunal with

³⁶ Written Observations, para. 3.6.

³⁷ Written Observations, para. 3.9.

³⁸ Written Observations, para. 3.10.

³⁹ Written Observations, paras 3.10, 3.11 and 3.13.

⁴⁰ Hearing Transcript, Day 1, 137:4-9.

⁴¹ Hearing Transcript, Day 1, 123:1-5.

⁴² Written Observations, para. 3.17.

⁴³ Hearing Transcript, Day 1, 140:10-16 referring to *Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Provisional Measures*, I.C.J. Reports 1993, p. 337, para. 22; *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Provisional Measures, Order of 16 July 2013, I.C.J. Reports 2013, p. 234, para. 17; *Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Australia)*, Provisional Measures, Order of 22 April 2015, para. 12.

⁴⁴ Hearing Transcript, Day 1, 140:17-22, 141:1-2 referring to *Timor-Leste v. Australia*, cit., n. 43, para. 12.

⁴⁵ Hearing Transcript, Day 1, 141:7-8.

⁴⁶ Hearing Transcript, Day 1, 146:2-7.

respect to the merits of the case, India argues that this “does not make any difference to their respective competence in respect to provisional measures”.⁴⁷ Hence the present Arbitral Tribunal is not vested with jurisdiction to “review the ITLOS Order” in the absence of any change in circumstances.⁴⁸

65. Italy argues that there is no requirement for it to show “new facts” or a change of circumstances.⁴⁹ Italy considers India’s invocation of ICJ jurisprudence to be “misplaced” as “in none of the cases was the ICJ acting under Article 290, paragraph 1, following a prescription of provisional measures under the special procedure of paragraph 5”.⁵⁰
66. Italy asserts that, assuming arguendo that there were such a requirement, “there has manifestly been a change of circumstances”⁵¹ as “the ITLOS Order of August 2015 was made under very different circumstances from those before [the Arbitral Tribunal] today”.⁵²
67. In this regard, Italy states that, first, ITLOS was called upon to determine what would be appropriate “in a relatively short period” pending the constitution of this Arbitral Tribunal rather than “what was needed pending the final award on the merits”.⁵³
68. Second, Italy contends that this Arbitral Tribunal is vested with jurisdiction over the merits and thus “particularly well-placed to decide on the appropriateness of the provisional measure now sought”.⁵⁴ Italy explains that ITLOS possessed “special jurisdiction” under the first sentence of Article 290, paragraph 5,⁵⁵ which was constrained by the “temporal dimension” of its competence pending the constitution of the Annex VII Tribunal.⁵⁶ Italy submits that the reason ITLOS did not prescribe one of the provisional measures that Italy had requested was that it “considered that any

⁴⁷ Hearing Transcript, Day 1, 149:2-6.

⁴⁸ Hearing Transcript, Day 1, 148:21-22.

⁴⁹ Hearing Transcript, Day 1, 54:4-7.

⁵⁰ Hearing Transcript, Day 1, 58:1-5.

⁵¹ Hearing Transcript, Day 1, 26:8-10.

⁵² Hearing Transcript, Day 1, 59:12-14.

⁵³ Hearing Transcript, Day 1, 59:15-21.

⁵⁴ Hearing Transcript, Day 1, 60:1-3.

⁵⁵ Hearing Transcript, Day 1, 58:6-8.

⁵⁶ Hearing Transcript, Day 1, 55:7-11 citing *The MOX Plant Case (Ireland v. United Kingdom)*, Order of 13 November 2001, Separate Opinion of Judge Mensah, ITLOS Reports 2001, p. 118.

such measure was a matter for this [Arbital] Tribunal”.⁵⁷ To support this contention, Italy quotes paragraph 132 of the ITLOS Order, which reads:

Considering that, since it will be for the Annex VII Arbitral Tribunal to adjudicate the merits of the case, the Tribunal does not consider it appropriate to prescribe provisional measures in respect of the situation of the two Marines because that touches upon issues related to the merits of the case.⁵⁸

69. Third, according to Italy, “it is now clear, as it was not when ITLOS heard the argument, that it will be years before [...] charges are laid against [Sergeant Girone]”.⁵⁹ Fourth, “both parties have taken steps, following [the ITLOS Order], to suspend all criminal proceedings”.⁶⁰
70. Italy relies on Order No. 3 of the arbitral tribunal in the *MOX Plant* case, which held that, although provisional measures had previously been prescribed by ITLOS, “Ireland’s request for additional provisional measures is the first such request to this Tribunal, [and therefore] the Tribunal’s competence to prescribe provisional measures is contained in article 290, paragraph 1”.⁶¹
71. India contends that Order No. 3 of the arbitral tribunal in the *MOX Plant* case “does not help Italy’s case at all”.⁶² The *MOX Plant* tribunal itself confirmed that it was due to apply Article 290, paragraph 2, of the Convention⁶³ and considered that a longer delay in reaching a final decision on the merits could constitute “a change in the circumstances”.⁶⁴ India notes that, despite the indisputable existence of such a change, the arbitral tribunal in the *MOX Plant* case dismissed the request for further provisional measures.⁶⁵

B. THE ARBITRAL TRIBUNAL’S ANALYSIS

72. At the outset, the Arbitral Tribunal would like to observe that Article 290, paragraph 1, and Article 290, paragraph 5, envisage different procedures. The object and purpose of Article 290, paragraph 1, is to enable a tribunal to prescribe any provisional measures that it considers

⁵⁷ Hearing Transcript, Day 1, 55:16-18.

⁵⁸ Hearing Transcript, Day 1, 35:2-10 citing *The “Enrica Lexie” Incident (Italy v. India)*, cit., n. 2, para. 132.

⁵⁹ Hearing Transcript, Day 1, 60:10-13.

⁶⁰ Hearing Transcript, Day 1, 60:21-23, 61:1.

⁶¹ Hearing Transcript, Day 1, 24:22-23, 25:1-4. *See also* Hearing Transcript, Day 1, 57:1-4.

⁶² Hearing Transcript, Day 2, 51:1-3.

⁶³ Hearing Transcript, Day 2, 51:4-8 referring to *The MOX Plant Case (Ireland v. United Kingdom)*, Order No. 3 of 24 June 2003, para. 39.

⁶⁴ Hearing Transcript, Day 2, 51:9-15 citing *The MOX Plant Case*, cit., n. 63, para. 40.

⁶⁵ Hearing Transcript, Day 2, 52:11-15.

appropriate to preserve the respective rights of the parties to a dispute pending the final decision, without being limited by a prior decision of ITLOS pursuant to Article 290, paragraph 5, of the Convention. However, that does not imply that a decision of ITLOS should not be taken into account in the analysis of the dispute.

73. The Arbitral Tribunal observes that the Request submitted to it is a new request for the prescription of provisional measures, made pursuant to Article 290, paragraph 1, of the Convention. It does not constitute an attempt to modify or revise any provisional measures previously prescribed by ITLOS. Consequently, in relation to the proceedings before this Arbitral Tribunal, the provision of Article 290, paragraph 2, is not applicable.
74. In this regard, the Arbitral Tribunal refers to the *MOX Plant* case, in which the tribunal held that Ireland's request for additional provisional measures was the "first such request" to that tribunal.⁶⁶ An Annex VII arbitral tribunal, as the tribunal to which the dispute has been submitted, exercises a different form of jurisdiction than ITLOS acting under the first sentence of Article 290, paragraph 5.
75. Moreover, the Arbitral Tribunal notes that, as a matter of fact, the requests that Italy has submitted to ITLOS and the present Arbitral Tribunal are different in significant respects. Before ITLOS, Italy had made the far-reaching request "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". The effect of that request, if granted, would have been to remove Sergeant Girone entirely from the reach of India's legal system. Italy's position at ITLOS amounted to a denial that India might have any legitimate interest in retaining authority over the Marine. By contrast, before the present Arbitral Tribunal, Italy now requests that India "take such measures as are necessary to relax the bail conditions on Sergeant Girone in order to enable him to return to Italy". It is evident from the focus on Sergeant Girone's bail conditions that Italy is prepared to accept that, should he be allowed to return to Italy, he will remain under the jurisdiction of the courts of India. The requested measures are intended to change the physical location of Sergeant Girone's bail without prejudice to the authority of India's courts.
76. In light of the foregoing, the Arbitral Tribunal finds that Italy's Request is admissible and, therefore, the Arbitral Tribunal shall consider Italy's Request pursuant to Article 290, paragraph 1, of the Convention.

⁶⁶ *The MOX Plant Case*, cit., n. 63, para. 39.

VI. THE REQUIREMENT OF URGENCY

77. Having determined that this Arbitral Tribunal *prima facie* has jurisdiction to prescribe provisional measures and that Italy's Request is admissible, the Arbitral Tribunal turns to the question whether urgency is a requirement under Article 290, paragraph 1, of the Convention and if so, whether that requirement is satisfied in this case.

A. THE PARTIES' POSITIONS

78. Italy notes that the requirement of urgency is only expressly mentioned in Article 290, paragraph 5.⁶⁷ Italy argues that, if urgency is relevant in the context of Article 290, paragraph 1, "it refers to the risk of irreparable harm suffered in advance of the issuance of the final award".⁶⁸ Hence, according to Italy, "'urgency', while often referred to, does not really add anything to the requirement that the measure sought should be appropriate in the circumstances to preserve the respective rights of the parties".⁶⁹ In this regard, Italy points to the definition of "urgency" by a Special Chamber of ITLOS as the "need to avert a real and imminent risk that irreparable prejudice may be caused to the rights in issue".⁷⁰

79. Italy submits that India "conflates the requirement of urgency under the first sentence of paragraph 5 [of Article 290] with the requirement of a real and imminent risk of irreparable prejudice prior to a final decision of the [Arbitral Tribunal]".⁷¹ Italy further contends that, in the latter sense of urgency, "the prescription of the requested measure is urgent".⁷²

80. Italy asserts that on the facts of this Request, the elements of imminence and real risk are clearly satisfied.⁷³ According to Italy, "the irreparable prejudice to Italy's right is more than a matter of real risk, as it is certain, and [...] ongoing."⁷⁴ Italy also considers that it has demonstrated that the

⁶⁷ Hearing Transcript, Day 1, 71:16-18.

⁶⁸ Hearing Transcript, Day 2, 15:5-9.

⁶⁹ Hearing Transcript, Day 1, 71:9-13.

⁷⁰ Request, para. 107 citing *Delimitation of the Maritime Boundary in the Atlantic Ocean (Ghana/Côte d'Ivoire)*, ITLOS, Provisional Measures, Order of 25 April 2015, para. 41.

⁷¹ Hearing Transcript, Day 1, 71:23-24, 72:1-3.

⁷² Request, para. 107.

⁷³ Request, para. 109.

⁷⁴ Request, para. 109.

prejudice to its rights in the present case is even more acute than in other cases where similar measures were prescribed.⁷⁵

81. India submits that “urgency is required in order to exercise the power to prescribe provisional measures”.⁷⁶ India argues that “the International Court of Justice takes the same view, despite the fact that Article 41 of the Court’s Statute, just like paragraph 1 of Article 290 of UNCLOS, makes no specific reference to urgency”.⁷⁷
82. According to India, Italy acknowledges that “urgency” has been defined by a Special Chamber of ITLOS as the “need to avert a real and imminent risk that irreparable prejudice may be caused to the rights”⁷⁸ at issue. In the context of the present case, “the question really is whether there are any new circumstances that have arisen since [the ITLOS Order]”,⁷⁹ which did not find any situation of urgency with respect to Sergeant Girone.⁸⁰ India submits that Italy has failed to show any such new circumstances.
83. India recalls that Sergeant Girone requested, and was granted, permission to travel to Italy on two occasions.⁸¹ It points out that, for a period of two and a half years before the ITLOS Request, Italy had not requested Sergeant Girone’s return to Italy.⁸² In addition, Italy allowed almost three and a half years to pass between the date of the “Enrica Lexie” incident and the institution of this arbitration.⁸³ These extended time periods, in India’s view, show that there was no urgency.⁸⁴

⁷⁵ Request, para. 108.

⁷⁶ Written Observations, para. 3.30 referring to *Ghana/Côte d’Ivoire*, cit., n. 70, para. 42; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Provisional Measures, Order of 8 March 2011, I.C.J. Reports 2011 (I), p. 21, para. 63; *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Provisional Measures, Order of 28 May 2009, I.C.J. Reports 2009, pp. 152-153, para. 62; *Certain Criminal Proceedings in France (Republic of the Congo v. France)*, Provisional Measures, Order of 17 June 2003, I.C.J. Reports 2003, p.107, para. 22.

⁷⁷ Hearing Transcript, Day 1, 155:1-5 referring to *Certain Activities Carried Out by Nicaragua*, cit., n. 76, para. 63.

⁷⁸ Written Observations, para. 3.29 citing *Ghana/Côte d’Ivoire*, cit., n. 70, para. 42.

⁷⁹ Hearing Transcript, Day 2, 30:6-10.

⁸⁰ Hearing Transcript, Day 2, 30:2-6.

⁸¹ Written Observations, para. 3.33.

⁸² Written Observations, para. 3.33; Hearing Transcript, Day 1, 157:8-11.

⁸³ Written Observations, para. 3.33.

⁸⁴ Written Observations, para. 3.33.

84. India also recalls that “it was the Government of Italy itself and the Marines who, by means of repeated applications to the Supreme Court of India, blocked the Special Court that had been established to rule on the matter from making a determination”.⁸⁵

B. THE ARBITRAL TRIBUNAL’S ANALYSIS

85. Although urgency is not expressly mentioned in Article 290, paragraph 1, of the Convention, as it is in paragraph 5, the Arbitral Tribunal is mindful of the international jurisprudence developed by courts and tribunals on this question, which supports the view that urgency is an important element in considering a request for provisional measures.

86. In this regard, the Arbitral Tribunal refers to an order of the Special Chamber of ITLOS regarding a request for the prescription of provisional measures in the *Ghana/Côte d’Ivoire* case. The Special Chamber made the following finding:

41. Considering that the Special Chamber may not prescribe provisional measures unless it finds that there is “a real and imminent risk that irreparable prejudice may be caused to the rights of the parties in dispute” [...];
42. Considering, in this regard, that urgency is required in order to exercise the power to prescribe provisional measures, that is to say the need to avert a real and imminent risk that irreparable prejudice may be caused to rights at issue before the final decision is delivered [...];
43. Considering that the decision whether there exists imminent risk of irreparable prejudice can only be taken on a case by case basis in light of all relevant factors;⁸⁶

87. Similarly, the ICJ, even though its Statute, in Article 41 concerning provisional measures, does not contain any specific reference to urgency, has consistently held that it would only exercise its power to indicate provisional measures if there is urgency. For example, in an order for provisional measures in the *Costa Rica v. Nicaragua* case, the ICJ held as follows:

63. Whereas the Court, pursuant to Article 41 of its Statute, has the power to indicate provisional measures when irreparable prejudice could be caused to rights which are the subject of the judicial proceedings [...];
64. Whereas the power of the Court to indicate provisional measures will be exercised only if there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice may be caused to the rights in dispute before the Court has given its final decision [...]; and whereas the Court must therefore consider whether such a risk exists in these proceedings.⁸⁷

⁸⁵ Written Observations, para. 3.39.

⁸⁶ *Ghana/Côte d’Ivoire*, cit., n. 70, paras 41-43.

⁸⁷ *Certain Activities Carried Out by Nicaragua*, cit., n. 76, p. 21, paras 63-64. See also, amongst other precedents, *Belgium v. Senegal*, cit., n. 76, pp. 152-153, para. 62; *Republic of the Congo v. France*, cit., n. 76, p. 107, para. 22; Hearing Transcript, Day 1, 154:15-18; Written Observations, para. 3.30.

88. In the *Timor-Leste v. Australia* proceedings, the ICJ likewise affirmed that it had “the power to indicate provisional measures when irreparable prejudice could be caused to rights which are the subject of the judicial proceedings before it”.⁸⁸ The Court further observed that it would exercise such power only “if there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to the rights in dispute before the Court gives its final decision”.⁸⁹
89. The Arbitral Tribunal therefore considers that a showing of urgency in some form is inherent in provisional measures proceedings. Generally, urgency is linked to the criterion of preservation of the respective rights of the parties to the dispute in order to avert a real and imminent risk that irreparable prejudice may be caused to the rights at issue, pending the final decision on the merits pursuant to Article 290, paragraph 1, of the Convention. In this case, the link is particularly pronounced. In light of this consideration, the Arbitral Tribunal now turns to this criterion.

VII. PRESERVATION OF THE RESPECTIVE RIGHTS OF THE PARTIES

90. The Arbitral Tribunal will now examine whether there is a need “to preserve the respective rights of the parties to the dispute” in accordance with Article 290, paragraph 1, of the Convention.

A. THE PARTIES’ POSITIONS

91. Italy refers to several provisions of the Convention which it claims set out rights that this Arbitral Tribunal should preserve.⁹⁰ Italy invokes the right to exercise exclusive jurisdiction over the “Enrica Lexie” incident and Sergeant Girone. Specifically, Italy argues that Article 89 of the Convention excludes India’s exercise of criminal jurisdiction in India’s EEZ,⁹¹ which Italy refers to as “international waters”.⁹² Italy further cites Article 92, which subjects ships flying Italy’s flag to its exclusive jurisdiction when sailing in India’s EEZ.⁹³ Italy also contends that Article 97 of the Convention grants exclusive jurisdiction to Italy, as the flag State of the “Enrica Lexie” and as the State of which Sergeant Girone is a national, over any collision or incident of navigation

⁸⁸ *Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Australia)*, Provisional Measures, Order of 3 March 2014, I.C.J. Reports 2014, p.154, para. 31.

⁸⁹ *Timor-Leste v. Australia*, cit., n. 88, p.154, para. 32.

⁹⁰ Request, para. 63(a)-(g).

⁹¹ Request, para. 63(e).

⁹² Hearing Transcript, Day 1, 15:10-15.

⁹³ Request, para. 63(f).

“involving the penal or disciplinary responsibility of the master or any other person in the service” of the ship.⁹⁴

92. Italy emphasizes that it has the right to exercise jurisdiction over the “Enrica Lexie” incident and over Sergeant Girone, and that it enjoys the right of immunity of its officials and agents. These rights of Italy under UNCLOS and other relevant rules of international law, “which UNCLOS requires to be respected and which pursuant to Article 293 form part of the law to be applied by this Tribunal”,⁹⁵ should be preserved. Italy contends that Sergeant Girone is “an official of the Italian State who was arrested for acts committed in the performance of official duties”⁹⁶ and, therefore, Sergeant Girone enjoys immunity from Indian jurisdiction under the relevant rules of international law.
93. Italy notes that “India continues to exercise penal jurisdiction over Sergeant Girone by requiring him to stay in Delhi”.⁹⁷ Therefore, for Italy, “each day that India exercises jurisdiction to keep an Italian Marine, who is immune from Indian jurisdiction, within Delhi is a day on which Italy suffers irreversible prejudice”.⁹⁸
94. Italy emphasizes that, if Sergeant Girone remains in India and the Arbitral Tribunal ultimately decides against India on the merits, “there will be no way to remedy the prejudice Italy will have suffered in the [time which has elapsed]”.⁹⁹ On the other hand, if Sergeant Girone is allowed to return to Italy for the duration of the proceedings, “he can be sent back to India, if this is required by the final decision of the Tribunal”.¹⁰⁰ In this case, Italy considers that neither State would have suffered any prejudice.¹⁰¹ In this regard, Italy points out that the provisional measure prescribed by ITLOS precludes proceedings in either State.¹⁰² Therefore, Italy argues that the interests of the families of the fishermen “in seeing that justice be done” do not require that “Sergeant Girone,

⁹⁴ Request, para. 63(g).

⁹⁵ Request, para. 64.

⁹⁶ Request, para. 66.

⁹⁷ Request, para. 72.

⁹⁸ Request, para. 73.

⁹⁹ Hearing Transcript, Day 1, 74:8-12.

¹⁰⁰ Hearing Transcript, Day 1, 74:15-17.

¹⁰¹ Hearing Transcript, Day 1, 74:17-18.

¹⁰² Hearing Transcript, Day 1, 74:18-20.

who is to be presumed innocent, stay in India for a lengthy period during which no trial can take place”.¹⁰³

95. Italy has given and reaffirmed a solemn undertaking that Sergeant Girone will be returned to India if so required by the Arbitral Tribunal.¹⁰⁴ In Italy’s view, such an undertaking addresses India’s concern to secure Sergeant Girone’s presence in India for trial.¹⁰⁵ Italy argues that the Arbitral Tribunal should proceed on the basis that Italy will comply with the orders of the Arbitral Tribunal and honour its own undertaking, because to proceed otherwise would represent “an extraordinary and unacceptable departure from principles of sound administration of international justice”.¹⁰⁶
96. In India’s view, Italy’s arguments focus on the prejudice that Italy considers it will suffer “without paying the slightest attention to the rights that India possesses”.¹⁰⁷ Specifically, India notes that “[t]he real victims were the two innocent fishermen on board the ‘St Antony’” and invokes “India’s right to see that justice is done on their behalf”.¹⁰⁸
97. India observes that the object of provisional measures is to preserve the rights of both Parties. This principle is enshrined in Article 290, paragraph 1, of the Convention.¹⁰⁹ Accordingly, India notes that a balance must be struck between these rights, of which “ITLOS was perfectly conscious [...] when it issued its Order last August”.¹¹⁰ In this respect, India reiterates that Italy has failed to show any new circumstance since ITLOS issued its Order “that genuinely alters the balance” struck by ITLOS a short time ago.¹¹¹
98. India further rejects Italy’s contention that Italy suffers irreversible prejudice as a result of India’s continued exercise of jurisdiction over Sergeant Girone. India emphasizes that Sergeant Girone is “not in jail”¹¹² and is subject only to “(mild) measures of restraint”.¹¹³

¹⁰³ Hearing Transcript, Day 2, 23:14-19.

¹⁰⁴ Request, p. 1 (last paragraph) and paras 82 and 110; Hearing Transcript, Day 1, 8:9-13.

¹⁰⁵ Request, para. 82; Hearing Transcript, Day 1, 76:14-23, 77:1-2.

¹⁰⁶ Request, para. 111. *See also* Hearing Transcript, Day 1, 72:13-20 citing *Timor-Leste v. Australia*, cit., n. 88, p. 158, para. 44.

¹⁰⁷ Written Observations, para. 3.48.

¹⁰⁸ Hearing Transcript, Day 1, 151:6-10.

¹⁰⁹ Written Observations, para. 3.49.

¹¹⁰ Hearing Transcript, Day 1, 152:15-19.

¹¹¹ Hearing Transcript, Day 1, 153:17-22.

¹¹² Written Observations, para. 3.63.

¹¹³ Written Observations, para. 3.61.

99. At the same time, India recalls that Sergeant Girone is accused of having committed a serious crime “over which the State has a duty to exercise jurisdiction”.¹¹⁴ India submits that Sergeant Girone’s bail conditions pale “in comparison to the prejudice that the victims and their families have suffered”.¹¹⁵
100. India submits that the requested measure, if granted, would prejudice its ability to exercise jurisdiction over Sergeant Girone “because there is a risk that he would not return to India in the event that India is found to have jurisdiction over the incident”.¹¹⁶ In response to Italy’s argument that it has given a solemn undertaking to return Sergeant Girone to India if the Arbitral Tribunal so requires, India points to an occasion on which an undertaking of a similar nature by Italy was complied with only after “intense diplomatic efforts”.¹¹⁷ Therefore, for India, Italy’s undertaking provides “absolutely no assurance”.¹¹⁸

B. THE ARBITRAL TRIBUNAL’S ANALYSIS

101. When acting under Article 290, paragraph 1, of the Convention, the Arbitral Tribunal is called upon to examine whether the continuation of the existing situation affects the respective rights of the Parties, and whether, and to what extent, the prescription of provisional measures may be required.
102. In the present case, the Arbitral Tribunal must consider whether there is a risk of irreparable prejudice to Italy’s rights if Sergeant Girone remains in India during the arbitral proceedings (assuming that Italy ultimately prevails on the merits), and whether India’s rights are unduly affected if Sergeant Girone returns to Italy during the pendency of these arbitral proceedings (assuming that India ultimately prevails on the merits). The Arbitral Tribunal must ensure that the respective rights of the Parties are preserved in this respect in the most appropriate manner if the Arbitral Tribunal decides to prescribe provisional measures.
103. In deciding how to preserve Italy’s rights, the Arbitral Tribunal is mindful of the fact that in the current situation Sergeant Girone is under India’s authority alone, although the decision as to which of the States may exercise jurisdiction, and the related question of Sergeant Girone’s

¹¹⁴ Written Observations, para. 3.52.

¹¹⁵ Hearing Transcript, Day 1, 151:18-21.

¹¹⁶ Written Observations, para. 3.50.

¹¹⁷ Written Observations, para. 2.34(b); Hearing Transcript, Day 1, 167:23-24.

¹¹⁸ Written Observations, para. 3.53.

entitlement to immunity, remain to be decided when the Arbitral Tribunal considers the merits of the case.

104. The Arbitral Tribunal also notes that Sergeant Girone's social ties are in Italy. So is his family life. According to uncontroverted evidence submitted by Italy, Sergeant Girone's children suffer considerably under the current situation, involving the separation from their father during years of their lives. The distance of thousands of miles between Sergeant Girone's home and his current residence reduces contact with his family to sporadic visits. Such visits, as have occurred on occasion, cannot replace family life. In this regard, the Arbitral Tribunal notes that social isolation has been recognized as a relevant factor in considering the relaxation of bail conditions, including in cases where the distance between family members was much less significant than in the present instance.¹¹⁹ Considerations of humanity therefore make it appropriate for the Arbitral Tribunal to address Sergeant Girone's current conditions. In this regard, the Arbitral Tribunal reiterates that, as stated by ITLOS, "[c]onsiderations of humanity must apply in the law of the sea, as they do in other areas of international law".¹²⁰
105. To preserve India's rights, the Arbitral Tribunal considers that any provisional measures that may be prescribed by the Arbitral Tribunal should not alter the situation where the Supreme Court of India exercises jurisdiction over Sergeant Girone. Such jurisdiction would continue if the Supreme Court, in light of the order of the Arbitral Tribunal, authorizes Sergeant Girone to spend time in Italy as part of his bail until the Arbitral Tribunal delivers a decision on the merits of the case.
106. The Arbitral Tribunal holds the view that its decision should seek to give effect to the concept of considerations of humanity, while preserving the respective rights of the Parties.
107. The Arbitral Tribunal considers that the rights of both Parties could be appropriately preserved by alleviating Sergeant Girone's bail conditions so as to allow him to spend the time of his bail in Italy pending a final decision in this case. Such a measure would significantly lessen the hardship for Sergeant Girone resulting from India's exercise of jurisdiction, without affecting India's legal position in relation to Sergeant Girone. As a result of the ITLOS Order of 24 August 2015, court proceedings are suspended, and new proceedings may not be initiated, so that there would appear to be no legal interest in Sergeant Girone's physical presence in India.

¹¹⁹ *Secretary of State for the Home Department v. AP*, [2010] UKSC 24 referred to in Hearing Transcript, Day 1, 98:7-99:1 and Request, para. 100.

¹²⁰ *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment, ITLOS Reports 1999, p. 62, para. 155.

108. With appropriate guarantees of return, no material change would result for India from an alleviation of Sergeant Girone's bail conditions. Appropriate guarantees should include, as stated by Italy in its Request, a binding undertaking by Italy to guarantee the return of Sergeant Girone, should this Arbitral Tribunal find in India's favour on the merits. In this regard, the Arbitral Tribunal notes that Italy has repeatedly made such undertakings, including in its Request:

Italy has offered, and hereby renews, solemn undertakings to the effect that it will comply with an award of the Annex VII Tribunal requiring the return of the Marines to India.¹²¹

109. The Arbitral Tribunal shall return to the question of assurances later in this Order.

VIII. DUE PROCESS

110. As a further argument for the appropriateness of a relaxation of Sergeant Girone's bail conditions, Italy has referred to what it perceives as violations of due process in the course of the criminal investigations and court proceedings against the two marines. India rejects Italy's allegations to that effect.

A. THE PARTIES' POSITIONS

111. Italy argues that international human rights law requires that criminal charges be formulated promptly and in detail and that any measure depriving individuals of liberty or otherwise restricting their liberty and movement be necessary, proportionate and reasonable.¹²²

112. Italy maintains that the obligation to formulate charges promptly and in detail follows from Article 9, paragraph 2, and Article 14, paragraph 3, of the International Covenant on Civil and Political Rights ("ICCPR").¹²³ Under international human rights law, Italy argues, the delay in bringing charges against an accused should not exceed a few days.¹²⁴ Moreover, the accused must be informed about the law and the alleged general facts on which the charges are based, either orally or in writing.¹²⁵ In support of its argument, Italy refers to jurisprudence of international

¹²¹ Request, p. 1, last paragraph.

¹²² Request, para. 91.

¹²³ Italy ratified the ICCPR on 15 September 1968 and India acceded to it on 10 April 1979.

¹²⁴ Request, para. 95.

¹²⁵ Request, para. 96.

courts and treaty bodies.¹²⁶ According to Italy, Sergeant Girone has been detained in India for “well over four years”, and he has not been the subject of a valid charge during this time.¹²⁷

113. Italy points out that the principle that restrictions of liberty are permitted only under certain conditions is enshrined in Article 9, paragraph 1, of the ICCPR, which provides that “no one shall be subjected to arbitrary arrest or detention” or “be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law”. Taking into consideration Sergeant Girone’s “concrete situation”,¹²⁸ Italy submits that the current bail conditions imposed on Sergeant Girone by India “amount to a deprivation of liberty that is disproportionate, unnecessary and unreasonable”.¹²⁹
114. India refers to a detailed account of the proceedings before the Indian courts to demonstrate “the expeditiousness with which India attempted to bring the case [of the two marines] to a quick closure”.¹³⁰ India points out that, within 90 days following the arrest of the marines, the Kerala Police filed a charge-sheet against them.¹³¹ In this regard, India argues that Italy and the two marines were fully aware of the charges that the marines may be facing, as is evident from an application dated 13 January 2014 to the Supreme Court of India in which the marines challenged certain grounds on which the National Investigation Agency was purporting to investigate the case.¹³² India considers that “the only reason the charge-sheet could not subsequently be filed with the Special Court” was Italy’s challenge to the jurisdiction of that Court.¹³³ In India’s view, this situation “cannot be laid at India’s doorstep”.¹³⁴
115. Replying to Italy’s contention that the bail conditions imposed upon Sergeant Girone are arbitrary, disproportionate and unreasonable, India recalls that Sergeant Girone is not in prison but resides at the house of the Italian Ambassador and that his family has the right to visit him—a right that

¹²⁶ Hearing Transcript, Day 1, p. 86-88.

¹²⁷ Hearing Transcript, Day 1, 99:16-21.

¹²⁸ Hearing Transcript, Day 1, 99:11.

¹²⁹ Request, para. 103.

¹³⁰ Written Observations, para. 2.25.

¹³¹ Written Observations, para. 2.25.

¹³² Written Observations, para. 3.56 referring to Application for Directions, 13 January 2014, paras 11-17, annexed to the Request (Annex IT-51).

¹³³ Written Observations, para. 3.57.

¹³⁴ Hearing Transcript, Day 1, 175:2-3.

his family has exercised.¹³⁵ India also maintains that the limitations to which Sergeant Girone has been submitted must be balanced against the charge of murder.¹³⁶

116. India concludes that there has been no failure of the Indian legal system with regard to due process.¹³⁷ In particular, India argues that the marines were never “prevented or precluded from resorting to judicial remedies”¹³⁸ and that their applications were always considered with sympathy.¹³⁹

B. THE ARBITRAL TRIBUNAL’S ANALYSIS

117. At the outset, the Arbitral Tribunal recalls that the purpose of provisional measures is to avert a real and imminent risk of irreparable prejudice to the Parties’ rights. In this case, the Arbitral Tribunal’s focus in prescribing provisional measures is primarily forward-looking.
118. As to the positions of the Parties with regard to alleged breaches of due process, the Arbitral Tribunal notes that, in the exercise of its *prima facie* jurisdiction at the stage of provisional measures, it should avoid engaging with questions of wrongfulness of past conduct unless this is absolutely necessary. The Arbitral Tribunal concludes that, in light of its determination that Sergeant Girone’s bail conditions should be relaxed so that he may be able to return to Italy during the pendency of these arbitral proceedings, it is not necessary to consider questions relating to the lawfulness of his detention.
119. The present situation is characterized by the prospect of prolonged social isolation of Sergeant Girone throughout the duration of the present Annex VII proceedings. In the Arbitral Tribunal’s opinion, there should be no undue restraint on individuals as a result of extended arbitration proceedings between States.

IX. PROVISIONAL MEASURES TO BE TAKEN

120. Having concluded that a relaxation of Sergeant Girone’s bail conditions is appropriate to preserve the rights of the Parties, the Arbitral Tribunal must consider what measure or measures it shall adopt. In this regard, the Arbitral Tribunal is not bound by the Parties’ requests. Instead, it is free

¹³⁵ Written Observations, para. 3.63.

¹³⁶ Hearing Transcript, Day 1, 187:6-8.

¹³⁷ Hearing Transcript, Day 2, 39:4-7.

¹³⁸ Hearing Transcript, Day 2, 40:9-12.

¹³⁹ Hearing Transcript, Day 1, 126:12-13.

to adopt measures that are different in whole or in part from those requested, as is recognized in Article 11, paragraph 3, of the Rules of Procedure for the present arbitration.

A. RELAXATION OF SERGEANT GIRONE'S BAIL CONDITIONS

121. Sergeant Girone's bail conditions are currently determined by the Supreme Court of India.¹⁴⁰ The record makes it clear that the Supreme Court of India has in the past been prepared to accommodate appropriate requests for modifications of the marines' bail conditions when the circumstances so required. In this regard, the Arbitral Tribunal takes note of India's unequivocal statements to the effect that the Union of India as well as the Supreme Court have been supportive of such requests. The Co-Agent of India stated during the hearing:

I must emphasise that in none of the hearings mentioned, the Union of India objected to the relaxation of bail conditions. In all these hearings, the Union of India and the Supreme Court have acceded to every request of Sergeant Latorre and Sergeant Girone, whether they are medical needs or the exercise of their right to vote.¹⁴¹

India reaffirmed its statement later at the hearing.¹⁴²

122. The Arbitral Tribunal notes that, following successful applications for a temporary relaxation of their bail conditions, both marines have repeatedly been able to travel to Italy on various grounds.

123. The Arbitral Tribunal further notes that, in her final statement before this Arbitral Tribunal, the Agent for India stated the following:

Mr President, India does not seek anything more onerous than the benchmark set by the Supreme Court of India, and some of these conditions were indicated by Italy's counsel yesterday.

India needs to be assured that in case the Tribunal finds that India has jurisdiction, the presence of Sergeant Girone would be ensured. Towards that end, India would deem it necessary that the Tribunal itself fix these guarantees.¹⁴³

124. In light of the Arbitral Tribunal's conclusion regarding Sergeant Girone's bail conditions, and taking into account the above statements by India, the Arbitral Tribunal considers it appropriate that Italy and India cooperate, including in proceedings before the Supreme Court of India, to achieve a relaxation of the bail conditions of Sergeant Girone so as to give effect to the concept of considerations of humanity, so that Sergeant Girone may return to Italy during the present

¹⁴⁰ *Republic of Italy & Ors v. Union of India & Ors*, Supreme Court of India, Judgment of 18 January 2013, annexed to Notification and Statement of Claim (Annex IT-19).

¹⁴¹ Hearing Transcript, Day 1, 132:13-19.

¹⁴² Hearing Transcript, Day 2, 35:20-24.

¹⁴³ See para. 47 of this Order.

Annex VII arbitration. As the Arbitral Tribunal has noted above, Sergeant Girone would remain, during all this period, under the authority of the Supreme Court of India.

125. While it remains for the Supreme Court of India to fix the precise conditions of Sergeant Girone's bail, the Arbitral Tribunal has been provided with information about the conditions, guarantees and procedures that have been established in respect of Sergeant Latorre. The Arbitral Tribunal would consider equivalent arrangements to be appropriate. Such arrangements may, *inter alia*, include the following conditions and guarantees: Italy shall ensure that Sergeant Girone reports to an authority in Italy designated by the Supreme Court of India in intervals to be determined by the Supreme Court of India; Sergeant Girone shall be required by Italy to surrender his passport to the Italian authorities and shall be prohibited from leaving Italy unless the Supreme Court of India grants leave to travel; Italy shall on its own motion apprise the Supreme Court of India of the situation of Sergeant Girone every three months.

B. APPROPRIATE GUARANTEES OF RETURN TO INDIA

126. Finally, as the Arbitral Tribunal has set out above, India must be assured, unequivocally and with legally binding effect, that Sergeant Girone will return to India in case the Arbitral Tribunal finds that India has jurisdiction over him in respect of the "Enrica Lexie" incident.
127. In its Request, Italy made the following undertaking:

Italy has offered, and hereby renews, solemn undertakings to the effect that it will comply with an award of the Annex VII Tribunal requiring the return of the Marines to India.¹⁴⁴

128. At the hearing, the Agent for Italy reaffirmed this undertaking before the Arbitral Tribunal by stating:

Italy has given, and I now re-affirm before this Tribunal in the most solemn terms an undertaking that it will abide by any order of this Tribunal and that it will return Sergeant Girone to India if so required by an order of this Tribunal.¹⁴⁵

129. The Arbitral Tribunal places on record the undertakings given by Italy and affirms that these undertakings constitute an obligation binding upon Italy under international law.
130. The Arbitral Tribunal notes in this regard that, as the ICJ has held, once a State has made an undertaking as to its conduct, "its good faith in complying" with such an undertaking "is to be

¹⁴⁴ Request, p. 1, last paragraph.

¹⁴⁵ Hearing Transcript, Day 1, 8:9-13.

presumed”.¹⁴⁶ In the present case, in the Arbitral Tribunal’s view, there is no doubt as to Italy’s good faith in complying with its undertaking.

131. Taking note of the statement by the Agent of India referred to in paragraph 123, the Arbitral Tribunal confirms that Italy is under an obligation to return Sergeant Girone to India if the Arbitral Tribunal finds that India has jurisdiction over him in respect of the “Enrica Lexie” incident.

X. DISPOSITIF

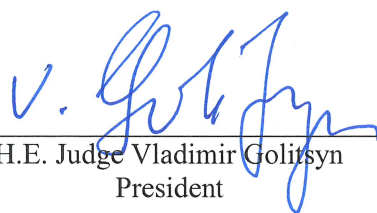
132. In light of the foregoing the Arbitral Tribunal unanimously prescribes the following provisional measures:

- a) **Italy and India shall cooperate, including in proceedings before the Supreme Court of India, to achieve a relaxation of the bail conditions of Sergeant Girone so as to give effect to the concept of considerations of humanity, so that Sergeant Girone, while remaining under the authority of the Supreme Court of India, may return to Italy during the present Annex VII arbitration.**
- b) **The Arbitral Tribunal confirms Italy’s obligation to return Sergeant Girone to India in case the Arbitral Tribunal finds that India has jurisdiction over him in respect of the “Enrica Lexie” incident.**
- c) **The Arbitral Tribunal decides that Italy and India each shall report to the Arbitral Tribunal on compliance with these provisional measures, and authorizes the President to seek information from the Parties if no such report is submitted within three months from the date of this Order and thereafter as he may consider appropriate.**

¹⁴⁶ *Timor-Leste v. Australia*, cit., n. 88, p. 158, para. 44.

Done in The Hague, the Netherlands, this twenty-ninth day of April, two thousand and sixteen, in three copies:

For the Arbitral Tribunal:



A handwritten signature in blue ink, appearing to read 'V. Golitsyn', is written over a horizontal line.

H.E. Judge Vladimir Golitsyn
President

For the Registry:



A handwritten signature in blue ink, appearing to read 'Pulkowski', is written over a horizontal line.

Dr. Dirk Pulkowski
Senior Legal Counsel