

**PRESS RELEASE****THE “ENRICA LEXIE” INCIDENT (THE ITALIAN REPUBLIC V. THE REPUBLIC OF INDIA)**

THE HAGUE, 2 JULY 2020

**Publication of the Operative Part (*Dispositif*) of the Arbitral Tribunal’s Award**

In the arbitration under Annex VII to the United Nations Convention on the Law of the Sea (“UNCLOS” or the “Convention”) in respect of the “Enrica Lexie” Incident, the operative part (*dispositif*) of the award of the Arbitral Tribunal has been published on the case repository of the Permanent Court of Arbitration (“PCA”). The PCA acts as registry for the proceedings.

The Arbitral Tribunal has issued its award to the Parties. In accordance with the [Rules of Procedure](#), as amended by [Procedural Order No. 7](#), the Parties now have the opportunity to consider whether any parts of the award should be designated as containing “confidential information”. The full award, with redactions as may be necessary, will be published in due course, once the confidentiality review has been completed.

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The arbitration was instituted on 26 June 2015 when Italy served on India a Notification and Statement of Claim<sup>1</sup> under Annex VII to UNCLOS in respect of “the dispute concerning the ‘Enrica Lexie’ Incident”.

On 21 July 2015, pending the constitution of an arbitral tribunal, Italy filed a request for the prescription of provisional measures with the International Tribunal for the Law of the Sea (“ITLOS”). On 6 August 2015, India submitted written observations on Italy’s request. Following a public hearing, on 24 August 2015, ITLOS rendered an order prescribing certain provisional measures.

On 11 December 2015, Italy filed a request for the prescription of provisional measures with the Arbitral Tribunal. On 26 February 2016, India submitted written observations on that request. Following a public hearing, on 29 April 2016, the Arbitral Tribunal issued an order prescribing certain provisional measures.

On 30 September 2016, Italy submitted its Memorial. On 14 April 2017, India filed its Counter-Memorial, containing a response to Italy’s Memorial as well as counter-claims raised by India. On 11 August 2017, Italy filed its “Reply on the Merits – Counter-Memorial on Jurisdiction – Counter-Memorial on India’s Counter-Claims”. On 15 December 2017, India submitted its “Rejoinder on the Merits – Reply to Jurisdiction – Reply to Italy’s Counter on India’s Counter-Claims”. On 9 March 2018, Italy filed its “Rejoinder on Jurisdiction and on India’s Counter-Claims”.

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<sup>1</sup> The full title of the document is “Notification under Article 287 and Annex VII, Article 1 of UNCLOS and Statement of Claim and Grounds on Which it is Based.”

From 8 to 20 July 2019, the Arbitral Tribunal held a hearing concerning its jurisdiction as well as the merits of Italy’s claims and India’s counter-claims at the headquarters of the PCA at the Peace Palace in The Hague, the Netherlands. The opening statements presented by the Agents of the Parties at the hearing are publicly available on the PCA Case Repository (<https://pca-cpa.org/en/cases/117/>).

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According to Italy, the Parties’ dispute concerns an incident that occurred on 15 February 2012 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 jurisdiction over the incident, and over two Italian Marines from the Italian Navy, Chief Master Sergeant Massimiliano Latorre and Sergeant Salvatore Girone, who were on official duty on board the “Enrica Lexie” at the time of the incident (the “Marines”). Italy has argued that (i) India’s legislation on which, according to Italy, India’s conduct vis-à-vis the “Enrica Lexie” and the Marines was based (the 1976 Maritime Zones Act<sup>2</sup> and a 1981 Notification<sup>3</sup>), is incompatible with UNCLOS, (ii) India violated provisions of Part VII (High Seas) of UNCLOS, specifically Article 87 (Freedom of the High Seas), Article 92 (Status of Ships), Article 97 (Penal Jurisdiction in Matters of Collision or Any Other Incident of Navigation), Article 100 (Duty to Cooperate in the Repression of Piracy), and Article 300 (Good Faith and Abuse of Rights), and (iii) by the same conduct, India violated the immunity of the Marines.

India raised objections to the jurisdiction of the Arbitral Tribunal and the admissibility of Italy’s claims on the grounds that (i) the “core issue, the real subject matter of the dispute” is a question of immunity and therefore “not one concerning the interpretation or application of the Convention”, (ii) in the alternative, the Arbitral Tribunal lacks jurisdiction over the claim concerning the immunity of the Italian Marines because this claim does not concern the interpretation or application of the Convention, (iii) the Arbitral Tribunal lacks jurisdiction over the claim concerning India’s legislation because there was “no dispute between the Parties” in this respect “at the date of filing of Italy’s Notification and Statement of Claim”, and (iv) in the further alternative, the claim concerning India’s legislation is inadmissible because it was “not raised, directly or indirectly in the Statement of Claim” and constitutes a new claim that “transforms the dispute before this Tribunal”.

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 rifle fire from the two Marines stationed on the “Enrica Lexie”. India has argued that Italy (i) violated India’s rights under Article 56 (Rights, Jurisdiction and Duties of the Coastal State in the Exclusive Economic Zone) of UNCLOS, (ii) breached its obligation under Article 58 (Rights and Duties of Other States in the Exclusive Economic Zone) of UNCLOS, (iii) violated India’s right and freedom under Article 87 (Freedom of the High Seas) and Article 90 (Right of Navigation) of UNCLOS, and (iv) infringed upon India’s rights under Article 88 (Reservation of the High Seas for Peaceful Purposes) of UNCLOS.

The operative part (*dispositif*) of the Arbitral Tribunal’s award of 21 May 2020 reads as follows (*NB*: all footnotes have been added by the registry for ease of reference, and are not contained in the award):

**For the reasons set out in this Award, the Arbitral Tribunal**

**A. In relation to jurisdiction and admissibility**

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<sup>2</sup> The full title of the act is “The Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976”.

<sup>3</sup> The full title of the notification is “The Notification of the Ministry of Home Affairs of the Republic of India, No. S.O. 671(E), dated 27 August 1981”.

1. **FINDS, by four votes to one, in respect of Italy’s Submission (1)<sup>4</sup> and India’s Submission (1),<sup>5</sup> that in the present Arbitration there is a dispute between the Parties as to which State is entitled to exercise jurisdiction over the incident of 15 February 2012 involving the “Enrica Lexie” and the “St. Antony”, and that the dispute concerns the interpretation or application of the Convention;**
2. **FINDS, by four votes to one, that the Arbitral Tribunal has jurisdiction over the dispute, subject to its decision on the specific objections to its jurisdiction raised by India in its Submission (1.a);<sup>6</sup>**
3. **FINDS, unanimously, that India’s counter-claims are admissible;**
4. **FINDS, by three votes to two, in respect of Italy’s Submission (2)(f),<sup>7</sup> that Article 2, paragraph 3, Article 56, paragraph 2, and Article 58, paragraph 2, of the Convention are not pertinent and applicable in the present case;**
5. **FINDS, by three votes to two, in respect of Italy’s Submission (2)(f) and India’s Submission (1.a), that it has jurisdiction to deal with the question of the immunity of the Marines;**
6. **FINDS, unanimously, in respect of India’s submission (1.a), that there is no need to address the question of the compatibility with UNCLOS of India’s 1976 Maritime Zone Act and its 1981 Notification;**

**B. In relation to the merits of the dispute between the Parties**

1. **FINDS, unanimously, in respect of Italy’s Submission (2)(b)-(e)<sup>8</sup> and (g),<sup>9</sup>**
  - a. **that India has not acted in breach of Article 87, paragraph 1, subparagraph (a), of the Convention;**
  - b. **that India has not violated Article 92, paragraph 1, of the Convention;**

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<sup>4</sup> Italy’s Submission (1) reads: “Italy respectfully requests the Tribunal to dismiss all of India’s objections to the jurisdiction of the Tribunal and the admissibility of Italy’s claims.”

<sup>5</sup> India’s Submission (1) reads: “[...] India respectfully requests the Tribunal to [a]djudge and declare that it has no jurisdiction with respect to the case submitted to it by Italy.”

<sup>6</sup> India’s Submission (1.a) reads: “In the alternative, [India respectfully requests the Tribunal to] adjudge and declare that it has no jurisdiction with respect to Italy’s Claims 2(a), 2(f), 2(h), and 3(a) and, in the further alternative, to dismiss and reject those Claims [...]”.

<sup>7</sup> Italy’s Submission (2)(f) reads: “By asserting and continuing to exercise its criminal jurisdiction over Chief Master Sergeant Massimiliano Latorre and Sergeant Salvatore Girone, India is in violation of its obligation to respect the immunity of the Marines as Italian State officials exercising official functions, in breach of Articles 2(3), 56(2), 58(2) and 100 of UNCLOS.”

<sup>8</sup> Italy’s Submission (2)(b) reads: “By directing and inducing the *Enrica Lexie* [emphasis in original] to change course and proceed into India’s territorial sea through a ruse, as well as by interdicting the *Enrica Lexie* [emphasis in original] and escorting her to Kochi, India violated Italy’s freedom of navigation, in breach of UNCLOS Article 87(1)(a), and Italy’s exclusive jurisdiction over the *Enrica Lexie* [emphasis in original], in breach of Article 92 of UNCLOS.”

Italy’s Submission 2(c) reads: “By directing and inducing the *Enrica Lexie* [emphasis in original] to change course and proceed into India’s territorial sea through a ruse, India abused its right to seek Italy’s cooperation in the repression of piracy, in breach of Article 300 read in conjunction with Article 100 of UNCLOS.”

Italy’s Submission 2(d) reads: “By instituting criminal proceedings against the Marines, India violated and continues to violate Italy’s exclusive right to institute penal or disciplinary proceedings against the Marines, in breach of Article 97(1) of UNCLOS.”

Italy’s Submission 2(e) reads: “By ordering the detention of the *Enrica Lexie* [emphasis added] between February and May 2012, and investigating those on board, India violated the prohibition against the arrest or detention of a ship by a State other than the flag State in breach of Article 97(3) of UNCLOS.”

<sup>9</sup> Italy’s Submission 2(g) reads: “By failing to cooperate in the repression of piracy, India violated UNCLOS Article 100.”

- c. that Article 97, paragraphs 1 and 3, of the Convention are not applicable in the present case;
  - d. that India has not violated Article 100 of the Convention and that therefore Article 300 cannot be invoked in the present case;
2. DECIDES, by three votes to two, in respect of Italy's Submission (2)(f), that the Marines are entitled to immunity in relation to the acts that they committed during the incident of 15 February 2012, and that India is precluded from exercising its jurisdiction over the Marines;
  3. DECIDES, by three votes to two, in respect of Italy's Submission (3)(a)<sup>10</sup> and (c),<sup>11</sup> taking note of the commitment expressed by Italy during the proceedings to resume its criminal investigation into the events of 15 February 2012, that India must take the necessary steps to cease to exercise its criminal jurisdiction over the Marines, and that no other remedies are required;
  4. FINDS, in respect of India's Submissions (4),<sup>12</sup> (5),<sup>13</sup> and (7),<sup>14</sup>
    - a. by three votes to two, that Italy has not violated India's sovereign rights under Article 56 of the Convention;
    - b. by three votes to two, that Italy has not violated Article 58, paragraph 3, of the Convention;
    - c. unanimously, that Italy has not infringed on India's rights under Article 88 of the Convention;
  5. FINDS, unanimously, in respect of India's Submission (6),<sup>15</sup> that by interfering with the navigation of the "St. Antony" Italy has acted in breach of Article 87, paragraph 1, subparagraph (a), and Article 90 of the Convention;
  6. DECIDES, unanimously, in respect of India's Submission (8),<sup>16</sup>
    - a. that a finding in the present Award that Italy has breached Article 87, paragraph 1, subparagraph (a), and Article 90 of the Convention constitutes adequate satisfaction for the injury to India's non-material interests;
    - b. that as a result of the breach by Italy of Article 87, paragraph 1, subparagraph (a), and Article 90 of the Convention, India is entitled to payment of compensation in connection with loss of life, physical harm,

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<sup>10</sup> Italy's Submission 3(a) reads: "India must cease all wrongful acts that have caused and continue to cause any of the continuing breaches of UNCLOS. It shall, in particular, cease to apply the provisions of the 1976 Maritime Zones Act and the 1981 Notification insofar as they are incompatible with UNCLOS. It shall also cease to exercise any form of criminal jurisdiction over the Marines, including measures of restraint and legal proceedings in India."

<sup>11</sup> Italy's Submission 3(c) reads: "India must pay compensation for the non-material damage suffered by Chief Master Sergeant Massimiliano Latorre and Sergeant Salvatore Girone as a result of India's unlawful exercise of jurisdiction over them, and the material damage suffered in consequence of the detention of the *Enrica Lexie* [emphasis in original]."

<sup>12</sup> India's Submission (4) reads: "By firing at the St Antony and killing two Indian fishermen on board, Italy [v]iolated India's sovereign rights under Article 56 of UNCLOS."

<sup>13</sup> India's Submission (5) reads: "By firing at the St Antony and killing two Indian fishermen on board, Italy [b]reached its obligation to have due regard to India's rights in its EEZ under Article 58(3) of UNCLOS."

<sup>14</sup> India's Submission (7) reads: "By firing at the St Antony and killing two Indian fishermen on board, Italy [i]nfringed India's right to have its EEZ reserved for peaceful purposes under Article 88 of UNCLOS."

<sup>15</sup> India's Submission (6) reads: "By firing at the St Antony and killing two Indian fishermen on board, Italy [v]iolated India's freedom and right of navigation under Articles 87 and 90 of UNCLOS."

<sup>16</sup> India's Submission (8) reads: "[...] India requests the Tribunal to order that Italy make full reparation for its breaches of Article 56, 58(3), 87, 88 and 90 of UNCLOS."

- material damage to property (including to the “St. Antony”) and moral harm suffered by the captain and other crew members of the “St. Antony”, which by its nature cannot be made good through restitution;
- c. that the Parties are invited to consult with each other with a view to reaching agreement on the amount of compensation due to India referred to in paragraph 6(b) above;
  - d. that the Arbitral Tribunal shall retain jurisdiction should either Party or both Parties wish to apply for a ruling from the Arbitral Tribunal in respect of the quantification of compensation due to India, in which event the Arbitral Tribunal would fix a timetable for further proceedings, and that, should no such application be received within one year after the date of the present Award, the proceedings shall be closed;

**C. In relation to the costs of these proceedings, DECIDES that each Party shall bear its own costs.<sup>17</sup>**

As noted by the Arbitral Tribunal in its award, the ruling of the Arbitral Tribunal is without prejudice to “the domestic law aspects” of the conduct of the Marines, which “will be subject to determination by a competent criminal court”.

The five-member Arbitral Tribunal is chaired by Judge Vladimir Golitsyn as President (a national of the Russian Federation). The other members are Judge Jin-Hyun Paik (Republic of Korea), Judge Patrick L. Robinson (Jamaica), Professor Francesco Francioni (Italy), and Dr. Pemmaraju Screenivasa Rao (India). Professor Francioni was appointed by Italy. Dr. Pemmaraju Screenivasa Rao was appointed by India in accordance with Article 3, paragraph 2, subparagraph (f), of Annex VII to UNCLOS and Article 6, paragraph 1, subparagraph (a), of the [Rules of Procedure](#), after India’s original appointee, Judge Patibandla Chandrasekhara Rao, had passed away on 11 October 2018. Judges Golitsyn, Paik and Robinson were appointed by the President of ITLOS in accordance with the procedure set out in Article 3, paragraph 2, subparagraph (e), of Annex VII to UNCLOS.

Judge Robinson and Dr. Pemmaraju Sreenivasa Rao appended a joint dissenting opinion to the award. Judge Robinson further appended a dissenting opinion to the award. Dr. Pemmaraju Sreenivasa Rao further appended a concurring and dissenting opinion to the award.

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The Permanent Court of Arbitration is an intergovernmental organization established by the 1899 Hague Convention on the Pacific Settlement of International Disputes. The PCA has 122 Contracting Parties. 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. The PCA’s International Bureau is currently administering 3 interstate disputes, 109 investor-State arbitrations, and 49 cases arising under contracts involving a State or other public entity and 5 other disputes. More information about the PCA can be found at [www.pca-cpa.org](http://www.pca-cpa.org).

The PCA has acted as Registry in numerous arbitrations and conciliations between States, including in 15 proceedings under UNCLOS.

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<sup>17</sup> Award, para. 1094.