

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**

- between -

THE ITALIAN REPUBLIC

(APPLICANT)

- and -

THE REPUBLIC OF INDIA

(RESPONDENT)

- concerning -

THE “ENRICA LEXIE” INCIDENT

RULES OF PROCEDURE

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:

The Permanent Court of Arbitration

WHEREAS the Italian Republic and the Republic of India are Parties to the 1982 United Nations Convention on the Law of the Sea (“**UNCLOS**” or the “**Convention**”);

WHEREAS Article 286 of the Convention provides that “[s]ubject to section 3, any dispute concerning the interpretation or application of this Convention shall, where no settlement has been reached by recourse to section 1, be submitted at the request of any party to the dispute to the court or tribunal having jurisdiction under this section”;

WHEREAS Italy has made a declaration pursuant to Article 287 of the Convention accepting the jurisdiction of the International Tribunal for the Law of the Sea and the International Court of Justice, and India has not made such a declaration;

WHEREAS Article 287(3) of the Convention provides that “[a] State Party, which is a party to a dispute not covered by a declaration in force, shall be deemed to have accepted arbitration in accordance with Annex VII”; and whereas Article 287(5) of the Convention provides that “[i]f the parties to a dispute have not accepted the same procedure for the settlement of the dispute, it may be submitted only to arbitration in accordance with Annex VII, unless the parties otherwise agree”;

WHEREAS Article 1 of Annex VII to the Convention provides that “[s]ubject to the provisions of Part XV, any party to a dispute may submit the dispute to the arbitral procedure provided for in this Annex by written notification addressed to the other party or parties to the dispute. The notification shall be accompanied by a statement of the claim and the grounds on which it is based”;

WHEREAS Italy has invoked Articles 286 and 287 of the Convention and Article 1 of Annex VII to the Convention with regard to the dispute concerning the Enrica Lexie Incident (the “**Dispute**”), as set out in Italy’s “Notification under Article 287 and Annex VII, Article 1 of UNCLOS and Statement of Claim and Grounds on Which it is Based”, dated 26 June 2015 (the “**Notification and Statement of Claim**”);

WHEREAS India has reserved its position as to the jurisdiction of the Arbitral Tribunal and admissibility of Italy’s Notification and Statement of Claim;

WHEREAS Article 5 of Annex VII to the Convention provides that “[u]nless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own procedure, assuring to each party a full opportunity to be heard and to present its case”;

WHEREAS on 18 January 2016, a first procedural meeting with the Parties was held at the premises of the Permanent Court of Arbitration (“**PCA**”) at the Peace Palace in The Hague; and whereas, at that meeting, the procedure to be followed in the arbitration was considered;

NOW, THEREFORE, taking account of the discussion at the first procedural meeting, the Arbitral Tribunal, with the concurrence of the Parties, adopts the following Rules of Procedure (the “**Rules**”) for the arbitration:

SECTION I. INTRODUCTION

Scope of Application

Article 1

1. The Arbitral Tribunal shall function in accordance with these Rules, the relevant provisions of the Convention and Annex VII to the Convention. These Rules are subject to such modifications or additions as the Parties may agree in writing after consultation with the Arbitral Tribunal.
2. To the extent that any question of procedure is not expressly governed by these Rules or by Annex VII to the Convention or other provisions of the Convention, and the Parties have not otherwise agreed, the question shall be decided by the Arbitral Tribunal after consultation with the Parties.
3. The Permanent Court of Arbitration shall serve as the Registry (the “**Registry**”) and shall take charge of the archives of the arbitration proceedings. Notwithstanding the possibility for the Arbitral Tribunal to hold hearings in other places as provided in Article 8 below, the seat of the Arbitral Tribunal shall be The Hague.

Notice, Calculation of Periods of Time

Article 2

1. For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received by the Arbitral Tribunal or by a Party when it has been delivered to the Registry or to the agent of the Party appointed pursuant to Article 4.
2. For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official holiday or a non-work day in the State Party concerned or in The Netherlands, the period is

extended until the first work day which follows. Official holidays or non-work days occurring during the running of the period of time are included in calculating the period.

3. Unless otherwise provided, all time limits expire at midnight in The Hague on the relevant date.

Commencement of Proceedings

Article 3

The proceedings were instituted on 26 June 2015.

Representation and Assistance

Article 4

Each Party shall be represented by an agent and, if it so decides, one or more co-agents. The Parties may also be assisted by counsel and other persons of their choice. The name and address of the agent and any co-agent shall be communicated in writing to the other Party, to the Registry and to all members of the Arbitral Tribunal.

SECTION II. COMPOSITION OF THE ARBITRAL TRIBUNAL

Number and Appointment of Arbitrators

Article 5

The Arbitral Tribunal consists of five members who have been appointed in accordance with Article 3 of Annex VII to the Convention.

Replacement of an Arbitrator

Article 6

1. In the event of incapacity, withdrawal or death of an arbitrator during the course of the proceedings, a substitute arbitrator shall be appointed:
 - (a) Where the arbitrator being replaced was originally appointed by one of the Parties in accordance with Articles 3(b) or 3(c) of Annex VII to the Convention, by the Party making the original appointment if possible within thirty (30) days, or otherwise not later than sixty (60) days, from the date of the incapacity, withdrawal or death of an arbitrator. If the

appointment is not made within that period, the other Party to the dispute may, within two (2) weeks of the expiration of that period, request that the appointment be made in accordance with Article 3(e) of Annex VII to the Convention.

- (b) Where the arbitrator being replaced was originally appointed by the President of the International Tribunal for the Law of the Sea in accordance with Article 3(e) of Annex VII to the Convention, if the Parties do not agree otherwise within thirty (30) days from the date of incapacity, withdrawal or death of the arbitrator, in accordance with Article 3(e) of Annex VII to the Convention.
2. In such an event, the proceedings shall resume at the stage where the arbitrator who was replaced ceased to perform his or her functions, unless the Arbitral Tribunal decides otherwise.

SECTION III. THE PROCEEDINGS

General Provisions

Article 7

1. Subject to these Rules, the Arbitral Tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the Parties are treated with equality and that at any stage of the proceedings each Party is given a full opportunity to be heard and to present its case.
2. Subject to these Rules, the Parties shall facilitate the work of the Arbitral Tribunal in accordance with Article 6 of Annex VII to the Convention.

Place of Meetings and Hearings and Language of Arbitration

Article 8

1. The place of any hearings shall be The Hague unless decided otherwise by the Arbitral Tribunal in consultation with the Parties.
2. The Arbitral Tribunal may hold meetings at any place it deems appropriate.
3. The language of the arbitration is English. Any document submitted to the Arbitral Tribunal that is written in a language other than English shall be accompanied by a certified translation into English. When a Party considers that the content of a document is not relevant in its entirety, any translation may be limited to the relevant passages and such other portions of the

document that are necessary to put such passages in context. A full translation shall be provided if the Arbitral Tribunal so requests, including on application of the other Party.

Order and Content of Pleading

Article 9

1. On or before **16 September 2016**, Italy shall submit to India, to the Registry, and to each of the arbitrators a Memorial containing:
 - (a) A statement of any facts on which Italy relies;
 - (b) Italy's submissions on law;
 - (c) A statement of the decision and relief sought by Italy.
2. On or before **31 March 2017**, India shall submit a Counter-Memorial containing:
 - (a) An admission or denial of any facts alleged in the Memorial and a statement of any additional facts on which India relies;
 - (b) Observations concerning the submissions on law in the Memorial and India's submissions on law in answer thereto;
 - (c) Any objections to jurisdiction and/or admissibility that India may wish to make pursuant to Article 10(2)(b) herein;
 - (d) A statement of the decision and relief sought by India.
3. On or before **28 July 2017**, Italy may submit a Reply, including a Counter-Memorial on any objections to jurisdiction and/or admissibility made by India pursuant to Articles 9(2)(c) and 10(2)(b) herein.
4. On or before **1 December 2017**, India may submit a Rejoinder, including a Reply to any Counter-Memorial on jurisdiction and/or admissibility made by Italy pursuant to Articles 9(3) herein.
5. In the event that India submits objections to jurisdiction and/or admissibility pursuant to Article 10(2)(b) herein, or pursuant to Article 10(2)(a) in circumstances in which the proceedings thereon were not bifurcated, Italy may submit a Rejoinder to any Reply on jurisdiction and/or admissibility limited to question of jurisdiction and/or admissibility made by India pursuant to Article 9(4) herein on or before **2 February 2018**.

6. At the request of either Party, and after having ascertained the views of the other Party, the Arbitral Tribunal may extend the time for the submission of pleadings.
7. There shall be submitted with every pleading certified copies of any relevant documents relied upon in support of any facts alleged or contentions advanced in it.
8. Each Party shall deliver 20 paper copies and 20 USB flash drives or equivalents of its written pleadings to the Registry, which will transmit 10 paper copies and 10 USB flash drives or equivalents to the other Party.
9. During the course of the arbitral proceedings either Party may amend or supplement its claim or defence unless the Arbitral Tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other Party or any other circumstances. However, a claim may not be amended in such a manner that the amended claim falls outside the scope of the arbitration clause or separate arbitration agreement.

Objections to Jurisdiction and/or Admissibility

Article 10

1. The Arbitral Tribunal shall have the power to rule on objections to its jurisdiction or to the admissibility of the Notification or of any claim made in the proceedings.
2. A submission that the Arbitral Tribunal does not have jurisdiction or that the Notification and Statement of Claim or a claim made in the pleadings is inadmissible shall be raised:
 - (a) as soon as possible but not later than three (3) months after the submission of the Memorial, in circumstances in which India requests that the objection/s be addressed as a preliminary matter;
 - (b) in all other circumstances, not later than the next written pleading that is due from the Party raising the objection;
 - (c) with the leave of the Arbitral Tribunal, in circumstances in which Italy proposes to raise an objection to a claim made in the Rejoinder.
3. If an objection to jurisdiction or admissibility is made and either party applies for any modification of the schedule or content of pleadings as listed in Article 9, the Arbitral Tribunal shall consult with both Parties before determining whether to make any such modification and, if so, on its terms.

4. The Arbitral Tribunal, after hearing the Parties, shall rule on objections to jurisdiction or admissibility as a preliminary issue or in its final Award.

Provisional Measures

Article 11

1. A Party may submit a request for the prescription of provisional measures under Article 290, paragraph 1, of the Convention at any time during the course of the proceedings. The request shall be in writing and specify the measures requested, the reasons therefor and the possible consequences, if it is not granted, for the preservation of the respective rights of the Parties.
2. The Arbitral Tribunal, or the President if the Arbitral Tribunal is not sitting, shall fix the earliest possible date for a hearing.
3. The Arbitral Tribunal may prescribe measures different in whole or in part from those requested and indicate the Party or the Parties which are to take or to comply with each measure.
4. Pending the meeting of the Arbitral Tribunal, the President of the Arbitral Tribunal may call upon the Parties to act in such a way as will enable any order the Arbitral Tribunal may make on the request for provisional measures to have its appropriate effects.
5. A Party may request in writing the modification or revocation of provisional measures. Before taking any decision on the request, the Arbitral Tribunal shall afford the Parties an opportunity of presenting their observations on the subject.

Evidence and Hearings

Article 12

1. Each Party shall have the burden of proving the facts relied on to support its claim or defence. The Arbitral Tribunal shall determine the admissibility, relevance, materiality and weight of the evidence adduced.
2. Each document submitted to the Arbitral Tribunal shall be given a number (for Italy's documents, IT-1, IT-2, etc.; for India's documents, IN-1, IN-2, etc.); and each page of each document shall be numbered. In so far as is possible, all documentary evidence shall be submitted in the first round of written pleadings.

3. Each document shall also be provided electronically. In this regard, each document shall be saved under a separate file name containing its document number.
4. At any time during the arbitral proceedings, the Arbitral Tribunal may call upon the Parties to produce documents, exhibits or other evidence within such a period of time as the Arbitral Tribunal shall determine. The Arbitral Tribunal shall take note of any refusal to do so as well as any reasons given for such refusal.
5. After having obtained the views of the Parties, the Arbitral Tribunal may upon notice to the Parties appoint one or more experts to report to it, in writing, on specific issues to be determined by the Arbitral Tribunal. A copy of the expert's terms of reference, established by the Arbitral Tribunal, shall be communicated to the Parties.
6. The Parties shall cooperate in pursuance of Article 6 of Annex VII to the Convention with any expert(s) the Arbitral Tribunal has appointed pursuant to paragraph 4 of this Article of the Rules. Any Report prepared by the expert shall be communicated to the Parties, who shall be given an opportunity, within a reasonable period to be determined by the Arbitral Tribunal, to present their observations on the report. A Party shall be entitled to examine any document to which the expert refers in his or her report.

Article 13

1. There shall be hearings at which the Parties may make their oral submissions. Subject to overriding considerations to the contrary, the hearings shall be held no later than three (3) months after the Rejoinder has been submitted. The dates for the hearings shall be set by the Arbitral Tribunal in good time after consultation with the Parties.
2. The Arbitral Tribunal shall give the Parties adequate advance notice of the time and place of any oral hearing.
3. If witnesses, including expert witnesses, are to be heard, each Party shall communicate to the Registry, to the members of the Arbitral Tribunal and to the other Party the names and addresses of the witnesses it intends to present, the subject upon which and the languages in which such witnesses will give their testimony. Each Party shall communicate an initial communication on witnesses at least sixty (60) days before the hearing and a final communication on witnesses at least forty-five (45) days before the hearing. Within ten (10) days of the final communication, a Party wishing to cross-examine a witness or witnesses of the other Party whose presence has not been communicated in accordance with the procedure just noted shall communicate the name or

names of such witness or witnesses to the Registry, to the members of the Arbitral Tribunal and to the other Party. Where a language other than English is to be used by a witness, the necessary arrangements for interpretation into English shall be made by the Registry, at the expense of the Party concerned.

4. Save with the leave of the Arbitral Tribunal on application by a Party, no witness may be heard unless he or she has provided a written report or witness statement, as applicable, which shall form part of the pleadings as set out in Article 9 and shall stand as his or her evidence in chief.
5. The Arbitral Tribunal may require the retirement or presence of any witness or witnesses, including expert witnesses, during the testimony of other witnesses. Taking account of the views of the Parties, the Arbitral Tribunal shall determine the manner in which witnesses are to be examined and cross-examined no later than three (3) weeks prior to the hearing.
6. The Registry shall make arrangements for a verbatim record of each hearing to be produced.
7. Following the hearing, the Arbitral Tribunal shall decide on the closure of the proceedings

Decisions of the Arbitral Tribunal

Article 14

Decisions of the Arbitral Tribunal, both on procedure and substance, shall be taken by a majority vote of its members, except that questions of administration or routine procedure may be decided by the President of the Arbitral Tribunal, unless the President wishes to have the opinion of the other members of the Arbitral Tribunal or the Parties request a decision of the Arbitral Tribunal.

SECTION IV. THE AWARD

Rendering of the Award

Article 15

The Arbitral Tribunal shall endeavour to render its Award within six (6) months of the close of the proceedings.

Form and Effect of the Award

Article 16

1. The Award of the Arbitral Tribunal shall be rendered in accordance with Article 10 of Annex VII to the Convention.
2. The Award shall have effect as provided for in Article 11 of Annex VII to the Convention.
3. In addition to making a final Award, the Arbitral Tribunal shall be empowered to make interim, interlocutory, or partial Awards.

Settlement or other Grounds for Termination

Article 17

If, before an Award is made, the Parties agree on a settlement of the dispute, the Arbitral Tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by the Parties and accepted by the Arbitral Tribunal, record the settlement in the form of an arbitral Award on agreed terms.

Interpretation or Implementation of the Award

Article 18

1. Any request for interpretation of the Award or concerning a manner of its implementation in accordance with Article 12 of Annex VII to the Convention shall be made within six (6) months after the receipt of the Award by giving notice to the Arbitral Tribunal and the other Party.
2. The Arbitral Tribunal shall endeavour to give its decision on interpretation or implementation in writing within forty-five (45) days after receipt of the request. The decision shall form part of the Award and the provisions of Article 16 of these Rules shall apply.

Correction of the Award

Article 19

1. Within thirty (30) days after the receipt of the Award, either Party, with notice to the other Party, may request the Arbitral Tribunal to correct in the Award any errors in computation, any clerical

or typographical errors, or any errors of similar nature. The Arbitral Tribunal may within thirty (30) days after the communication of the Award make such corrections on its own initiative.

2. Such corrections shall be in writing, and the provisions of Article 16 of these Rules shall apply.

SECTION V. EXPENSES AND COSTS

Expenses and Costs

Article 20

1. The expenses of the Arbitral Tribunal, including the remuneration of its members, shall be borne by the Parties in equal shares.
2. The expenses of the Arbitral Tribunal shall be reasonable in amount, taking into account the complexity of the subject-matter, the time spent by the arbitrators and any other relevant circumstances of the case.
3. The Registry shall keep a record of all expenses of the Arbitral Tribunal, and shall furnish a final statement thereof to the Parties.

Article 21

Unless decided otherwise by the Arbitral Tribunal, each Party shall bear its own costs. The Arbitral Tribunal may make an Award in respect of the costs incurred by the Parties in presenting their cases, as appropriate.

Deposit for Expenses

Article 22

1. The Registry may request each Party to deposit an equal amount as an advance for the expenses referred to in Article 20. All amounts deposited by the Parties pursuant to this Article shall be directed to the Registry, and disbursed by it for such expenses, including, inter alia, fees to the arbitrators, and the Registry.
2. During the course of the proceedings, the Registry or the Arbitral Tribunal may request supplementary amounts from the Parties in respect of the expenses referred to in Article 20.

3. If the requested amounts are not paid in full within sixty (60) days after the receipt of the request, the Arbitral Tribunal shall so inform the Parties in order that one or another of them may make the required payment. If such payment is not made in full within a further thirty (30) days, the Arbitral Tribunal may order the suspension or termination of the proceedings or take such other steps as it considers appropriate.
4. After the Award has been made, the Registry shall render an accounting to the Parties of the amounts received and return any unexpended balance to the Parties, as directed by the Arbitral Tribunal.

SECTION VI. TRANSPARENCY

Article 23

1. The existence of this arbitration shall be public. The Registry is requested to identify on its website the names of the Parties, the Arbitral Tribunal, and the agents and counsel for the Parties. The Parties will have an opportunity to review the content of any website relating to the case prior to the publication by the Registry.
2. The documents, pleadings and submissions of the Parties shall be confidential until the opening of the hearing to which they relate, save that any document or information designated by a Party as confidential shall remain confidential and shall not otherwise be made publicly available save by order of the Arbitral Tribunal on application by a Party, having afforded the Parties an opportunity to be heard.
3. The hearings shall in principle be open to the public subject to such arrangements to be prescribed by the Arbitral Tribunal, after consultation with the Parties, for the orderly conduct of the proceedings and the protection of information, including the oral submissions of a Party, designated as confidential. In lieu of webcasting, the corrected hearing transcripts shall be published.
4. Procedural orders and decisions of the Arbitral Tribunal shall be public and made publicly available on the website of the Permanent Court of Arbitration the day after they have been notified to the Parties.
5. Any Award of the Arbitral Tribunal shall be made public unless both Parties object. The version of the Award made public shall redact any confidential information designated as such by either Party, for which purpose the Parties shall be provided with a reasonable opportunity, in advance

of publication of the Award, to review the version of the Award that the Arbitral Tribunal proposes to make public.

6. The Registry, after consultation with the Parties, may issue press releases on the status of the proceedings.

For the Arbitral Tribunal:

A handwritten signature in black ink, appearing to read "V. Golitsyn", followed by a short horizontal line.

19 January 2016