The Dispute Concerning the *Enrica Lexie* Incident and the Role of International Tribunals in Provisional Measure Proceedings Instituted Pursuant to the United Nations Convention on the Law of the Sea

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1 Introduction

This article deals with the ‘*Enrica Lexie* Incident (*Italy v India*) by taking as its starting point the two orders on provisional measures issued in the case, respectively, on 24 August 2015 and 29 April 2016. The first order was rendered by the International Tribunal for the Law of the Sea (ITLOS) pending the constitution of the Arbitral Tribunal under Annex VII to the United Nations Convention on the Law of the Sea (LOSC),\(^1\) to which the dispute has been submitted; the second, by the Annex VII Arbitral Tribunal.\(^2\)

The aforesaid orders raise a variety of issues, only some of which will be discussed here. More specifically, two main issues will be addressed: (i) the function of provisional measures according to two different paragraphs of Article 290 LOSC (§ 3); and (ii) the tendency to interpret LOSC provisions in coordination with other norms of international law, particularly those that concern human rights (§ 4). In examining these issues, an attempt will be made to shed light on the role of international tribunals in facilitating the resolution of international disputes for which provisional measure proceedings have been initiated, especially when said tribunals issue orders that impose obligations of cooperation on the parties involved—a topic we will return to in the short concluding remarks.

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1 See 1833 UNTS 3. The Convention was signed at Montego Bay on 10 December 1982 and entered into force internationally on 16 November 1994; it was ratified by Italy on 12 February 1995 and by India on 29 June 1995.

Before going any further, it seems worthwhile to recall briefly the facts and subject-matter of the dispute between Italy and India concerning the Enrica Lexie incident.3

Over the last twenty years, many States and some organs of international organizations, including the United Nations Security Council, have adopted measures, of varying forms, to counter maritime piracy.4 One of these measures is Italian Law No. 130 of 2 August 2011,5 which, among other things, provides for ‘the deployment of Vessel Protection Detachments (‘VPDS’) from the Italian Navy on board vessels flying the Italian flag to ensure the security of such vessels travelling in international waters that are at high risk of piracy’.6 Now, while the costs of the presence of Italian military units on board an Italian-flagged merchant vessel are to be borne by the shipowner,7 the rules of

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6 See PCA, supra, note 2, Italy’s Notification of Dispute to India of 16 June 2015, para. 4.

7 Article 5(3) of Italian Law No. 130/2011 provides that: ‘Shipowners who benefit from the protection referred to in paragraph 1 shall repay the costs thereof, including the expenses for the personnel referred to in paragraph 2 and operating expenses’ to the Ministry of Defence.