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An account of the relevant facts and of the proceedings on provisional measures that took place between Italy and India before the International Tribunal for the Law of the Sea (ITLOS), including the order rendered on 24 August 2015, has already been given in an earlier issue of this Journal. Reference should therefore be made to that contribution for basic background information on the case.

It is worth recalling, however, that proceedings before an Arbitral Tribunal established under Annex VII of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) had been instituted by Italy on 26 June 2015 and that on 11 December 2015, after the constitution of the Arbitral Tribunal and the delivery of the ITLOS order, Italy submitted to the Arbitral Tribunal a “Request for the Prescription of Provisional Measures Under Article 290, Paragraph 1, of the [UNCLOS]”.

Italy’s request read as follows: “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”. As well known, the other Marine involved, Sergeant Latorre, had been allowed to travel to, and remain in, Italy on health grounds.

After the procedural directions were issued and India filed “Written Observations” in reply to Italy’s submissions, requesting the Arbitral Tribunal “to reject the submissions 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”, a hearing on provisional measures was held on 30 and 31 March 2016. An order was rendered on 29 April 2016.

The order is of particular interest for four main reasons that are briefly discussed below.

First of all, and having regard to the question of *prima facie* jurisdiction, it is worth noting India’s decision not to deal with this aspect of the litigation in its Written Observations after having reserved its position in this respect at the first procedural meeting. This is in sharp contrast to the approach taken by India before ITLOS on the basis of the alleged absence in the instant case of an “incident of navigation” or a collision. As noted by the Arbitral Tribunal, India explained at the hearing that it did not “intend to second guess or seek to modify [ITLOS]’ conclusions on these matters”. In any event, the conclusion of the Arbitral Tribunal on this point is in favour of its own *prima facie* jurisdiction, considering that “Italy has alleged the violation of various rights conferred under provisions of [UNCLOS] and India has contested such violations”.

A second aspect of interest in the order concerns the admissibility of Italy’s request, given the allegation by India that it amounted to an attempt to seek “a modification of the ITLOS Order of 24 August 2015”. This would require evidence that there had been a change in the circumstances justifying such a modification.

The Arbitral Tribunal reaffirmed that the scope of the procedures envisaged by Art. 290(5) and (1) is not the same. Yet it found Italy’s request different in several respects from the one submitted to ITLOS, namely because of the (new) focus on the relaxation of Sergeant Girone’s bail conditions rather than on the overall lifting of restrictions on the liberty, security and movement of the two Marines.

A third element worth noting in the Arbitral Tribunal’s order is the approach taken with regard to the requirement of urgency. Several years had elapsed between the occurrence of the relevant facts (2012) and the institution of proceedings by Italy (2015) and, nonetheless, both ITLOS and the Arbitral Tribunal found the requirement to be satisfied under Arts. 290(5) and (1) UNCLOS, respectively. The Arbitral Tribunal devotes particular attention to the underlying criterion of “preservation of the respective rights of the parties to the dispute” so as to avoid “a real and imminent risk that irreparable prejudice may be caused to the rights at issue, pending the final decision on the merits”. In this respect, the Arbitral Tribunal expresses the view that “considerations of