To the
Public Prosecutor's Office Rome
Piazzale Clodio n. 12
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FOR THE ATTENTION OF:

- Giancarlo Capaldo, attorney general
- Elisabetta Cennicola, public prosecutor

EXPOSÉ

OBJECT: Technical analysis and observations about the case of the Italian oil tanker Enrica Lexie and of the two Italian marines Massimiliano Latorre and Salvatore Girone, who are jailed in India and accused of the murder of two persons.
# TABLE OF CONTENTS

Premeise .................................................................................................................................................. 3
The "Black and Red" vessels ..................................................................................................................... 4
The Greek Oil Tanker Enrica Lexie and Indian authorities' negligence in the criminal investigations .................................................................................................................................................................................. 6
The AIS system and the missing vessel .................................................................................................. 11
Analysis of the AIS data ......................................................................................................................... 13
The Olympic Flair after the 15th February 2012 ................................................................................ 14
Repeatedly concealment of critical facts and destruction of relevant exhibits (so called Investigative Acts that cannot be repeated) ......................................................................................................................... 15
Conclusions ........................................................................................................................................... 19
Attached documents to this Exposé .................................................................................................... 20
**PREMISE**

The undersigned Luigi Di Stefano, born in Rom on 3/5/1952 and herein residing in [redacted] n. [redacted] Zip code 00 [redacted], tel. [redacted]

Presents the following exposé about the events which will be described below with the purpose of providing the Public Prosecutor’s Office with observations and insights. If the Bench notices that my observations contain relevant elements which lead to the conclusion that the defendants' right of a fair process and fair trial has been violated or that any other violation has been committed the decision of injunction shall be left to the judgment of the Bench.

I have been following the case mentioned in the object in the press since many months. I collected some elements which can likely give a quite exhaustive frame about the many and diverse aspects of the case.

As I have acquired experience in conducting complicated technical surveys over time (see attached document 01 – professional CV) both as a technical expert of the defendant and as an assessor of the public prosecutor’s office (see attached document 02 – expert for the public prosecutor’s office at Ancona) all the elements I collected and organized in a unitary frame are of technical nature and are about positions and course of the vessels, timeline, analysis of the available evidences.

Even if no official information about the investigations conducted by the Indian authorities has been released, there are documents issued by international organisms about the case which I will take into account and analyze in the following.

Moreover, according to best practice, in the Italian judicial system and legal proceedings the rights of the defendant must be respected, especially concerning a fair technical analysis of the exhibits or evidences for the prosecution.

Finally, in the case of more than one alleged culprit the prosecutors have to look into all alleged guilty parties in order to verify the culpability of each party.

In analyzing the whole story, I became convinced that the Indian authorities conducted the criminal investigations neglectfully, they did not take into account other alleged culprits and repeatedly concealed critical facts.

Under these premises, a fair trial in India for Latorre and Girone can not be guaranteed, as the Italian judicial system would require.

Therefore, as the prosecutors base their accuses on investigations conducted neglectfully and repeatedly concealed critical facts and destroyed relevant exhibits, the two Italian marines must be detained in Italy in order to be taken to trial according to the Italian judicial system.

This is one of their inalienable rights as Italian citizens.
Elements proving the neglectfulness of the investigations of the Indian authorities which overlooked other potential and alleged culprits.

**THE "BLACK AND RED" VESSELS**

As it is known, the accusations against Girone and Latorre are based on two elements:

- the eyewitness account of one or more fishermen embarked on the fishing boat St Anthony, who reported that they came under fire and that the shots were fired from a black and red vessel
- the report of the Indian authorities, who state that they called by radio all the vessels in the area, four altogether, and asked them if they had been involved in a pirate attack.

At 18.20h local time, after having received an alert from the fishermen who had hastily brought the ship into port with the two colleagues shot dead on board, the Indian Coast Guard picked up the presence of 4 vessels navigating over the area and compatible with the eyewitness accounts by the fishermen who had survived the attack.

Actually, the black and red vessels in the area were 5: Enrica Lexie, Kamome Victoria, MBA Giovanni, Ocean Breeze e Olympic Flair.

The only vessel which was not contacted by radio is the Olympic Flair. None of the contacted vessels responded. Only the Enrica Lexie responded positively and the crew reported that the marines on board shot warning shots into the water. The Enrica Lexie turned around and docked at Kochi.

It is easy to verify that the five vessels are all black and red and that the decision of prosecuting the Enrica Lexie only, both at once and later in the criminal investigations points to negligence. Moreover, the fishermen's eyewitness account was not taken into account.

All this happened in spite of the fact that the Indian authorities were well aware of the pirate attacks off the coasts of Southern Indian and especially off the coast of Kochi, as the international organizations monitoring piracy in the area and engaged in the fight against piracy reported.

Hence, the Indian authorities could not ignore the fact that at the same time two different attacks occurred, which had involved two different vessels.

The arbitrary decision of considering the alleged culprit to be the vessel which responded the call points to a negligent way of conducting the criminal investigations.

The most striking decision of the Indian authorities is the decision of not contacting by radio the Olympic Flair. I will come back to this point later on.

The ICC–IMB (International Chamber of Commerce - International Maritime Bureau) in its report with the title "Piracy and armed robbery against ship" (attached document - 03) about the period from 1st January to 30th September 2011 declares that 6 attacks occurred, 4 of them in the harbor of Kochi.
This confirms that in the area off the coast of Kochi pirate attacks occurred more frequently than in other areas off the Indian coast. And it was well-known. But it also confirms that the decision of prosecuting the crew of the Enrica Lexie alone is intentional, determined by reasons which can not be analyzed here and which are not aimed at shedding light on what really happened.

The five vessels in the area (Enrica Lexie, Kamome Victoria, MBA Giovanni, Ocean Breeze and Olympic Flair) have the same colours and the same structure.

It is evident that taking the eyewitness accounts by the fishermen into account the investigations both after the incident and later on should involve all five vessels because of their similarities.
The pictures of the vessels are easily to be found on the net, and it seems to be completely odd that the eyewitness accounts by the fishermen did not lead the Indian authorities to supplementary investigations and to invite the other crews to give statements.

The behavior of the Indian authorities seems to show a certain degree of negligence and to be intentional. Their purpose of accusing of murder one and only one alleged culprit seems to be evident.

**THE GREEK OIL TANKER ENRICA LEXIE AND INDIAN AUTHORITIES’ NEGLIGENCE IN THE CRIMINAL INVESTIGATIONS**

While the Enrica Lexie was turning back to Kochi overtaken by two unities of the Indian Navy, Samar e Lakshimibai, and by a maritime patrol aircraft, Dornier 228, at 22.20 local time the Indian Coast Guard at Mumbai and the maritime authorities at Kochi were informed that the Greek oil tanker had been attacked by alleged pirates.
This document (attached document 04) released by the IMO (International Maritime Organization) certifies that except all other authorities both the Indian Coast Guard and the maritime authorities in Kochi at 16:50 UTC (22:20 local time) were informed that the Greek oil tanker Olympic Flair had been attacked by pirates.

On the following page we can see the report by the ICC (attached document 05) about the same pirate attack reported by the Greek oil tanker Olympic Flair.

Hence, we have the documents of two international organizations which certify that the pirate attack against the Olympic Flair did occur and that at 22:20 local time both the Indian Coast Guard in Mumbai and the maritime authorities in Kochi were informed about the attack.
At this point and against this background we have to point out that

- Time and position of the pirate attack indicated by the Olympic Flair are false
- It is not credible that the Indian authorities did not know that time and position indicated by the Olympic Flair were false

If one day one will find out that the Indian authorities were really not informed about the pirate attack against the Olympic Flair, this would only confirm their negligence – voluntary or not – in conducting the investigations. This would change nothing at all.
As a matter of fact, we can observe that at 22:20 local time (16:50 UTC) when the Indian authorities received from the ICC (or from the IMO or from both of them) the message about the pirate attack against the Olympic Flair, the oil tanker Enrica Lexie together with the warships Samar and Lakshimi Bhai and with a maritime patrol aircraft Do-228 of the Indian Coast Guard were exactly in the stretch indicated by the Olympic Flair as the stretch where it was attacked.

The following picture (attached document 06), which is the result of the reconstruction of the course and position with reference to the motion data and timeline (from an official document of the Indian Coast Guard, attached document 07), allows to come to the conclusion that the pirate attack against the "Olympic Flair" happened while the oil tanker "Enrica Lexie", the warships Samar and Lakshimi Bhai and a maritime patrol aircraft Do-228 of the Indian Coast Guard were nearby.

It is not credible that none of them noticed the attack against the Olympic Flair and that the Olympic Flair did not give the alarm. Moreover, this sequence of the events would imply both negligence of the Indian Coast Guard and a quite strange behavior of the crew of the Olympic Flair, which during the pirate attack decided not to ask the military units for help, which could be seen both on the on board radar and at sight.

The only possible explanation is that the Olympic Flair was attacked by pirates elsewhere and at a previous time.

And this explains why the Indian Coast Guard did not contact the Olympic Flair when the Indian authorities contacted the vessels in the area by radio.

In the same document of the Indian Coast Guard (attached document 07) it is reported that the vessels involved in the incident of the St. Anthony were searched using the AIS system.

Evidently the Olympic Flair did not appear in the AIS system of the Indian Coast Guard, otherwise they would have been contacted by radio like the other vessels.

We need the confirmation for this.
It was further contended that the Coast Guard was alerted about the incident by the third respondent at 17.40 hours on 15.2.2012. Accordingly, the Coast Guard passed urgent messages to three Coast Guard ships — ICGS Samar, CGAE, Kochi and ICGS Lakhsmi, which identified MT ENRICA LEXIE as the suspected ship.

At about 18.25 h on 15 Feb 12, NRCC (MB) analysed space based AIS (AIS-36) plot and identified four probable merchant ships which could have transited from the incident position.

The updated position of the suspected vessel was immediately passed to ships at sea and CG Dornier. The vessel was in position 243 Kochi, 37 n miles, about 7-8 hours from the incident point and directed to alter course and proceed to Kochi anchorage for further investigation.

It was further stated that after the incident, the vessel traversed almost 3 hours and made good a distance of 70 NM from the original position, and only after interception by the Indian Coast Guard, the vessel sent an e-mail to her owner, at about 19.17 hours on 15.2.2012 reporting the incidents.

On receipt of information, ICGS Samrat on patrol off Vattanam coast was diverted and ICGS Lakhsmi was sailed from Kochi at 1935 h on 15 Feb 12 (with 04 police personnel embarked) to the most probable area for search and interdiction of the suspected merchant vessel.

At 1658 h on 15 Feb 12, CG Dornier located MT Enrica LEXIE and vectored ICG ships for interception. CG Dornier also requested NRCC (MB) to provide assistance for interdiction of the suspected merchant vessel.

The Lakhsmi, intercepted the MT Enrica LEXIE at about 2045 h on 15 Feb 12 and escorted the vessel till Kochi anchorage.

Meanwhile, the ill-fated fishing vessel St Anthony entered Neendakara harbour. Quilon at about 2315 h on 15 Feb 12 and it was confirmed by the police that the boat had a total crew of eleven fishermen and two were killed during the firing incident.

It was alleged that while fishing at 33 Nautical Miles (NM) away from the police station, without any warning or alarm, there suddenly occurred repeated firing for about two minutes from a ship painted black and red. Since the assailants were not identified, the case was registered against some officers in the above ship.

and after it covered 38 NM, information over phone was passed to the NRCC, Mumbai directing the vessel to come to the Kochi Port to assist and identify the suspected pirates who had been apprehended. Accordingly, the vessel turned course and proceeded to Kochi port anchorage on 16.2.2012.
THE AIS SYSTEM AND THE MISSING VESSEL

The AIS or Automatic Identification System is an automatic tracking system used on ships and by vessel traffic services (VTS) for identifying and locating vessels by electronically exchanging data with other nearby ships AIS Base stations and Satellites. Information provided by AIS equipment, such as unique identification, position, course, and speed, can be displayed on a screen or an ECDIS.

AIS is intended to assist a vessel's watchstanding officers and allow maritime authorities to track and monitor vessel movements. AIS integrates a standardized VHF transceiver with a positioning system such as a LORAN-C or GPS receiver, with other electronic navigation sensors, such as a gyrocompass or rate of turn indicator. Vessels fitted with AIS transceivers and transponders can be tracked by AIS base stations located along coast lines or, when out of range of terrestrial networks, through a growing number of satellites that are fitted with special AIS receivers which are capable of deconflicting a large number of signatures.

The International Maritime Organization's International Convention for the Safety of Life at Sea requires AIS to be fitted aboard international voyaging ships with gross tonnage (GT) of 300 or more tons, and all passenger ships regardless of size.

Therefore, the AIS is a security and control system, in which each vessel records its navigation data, which can be retrieved by other vessels and land stations, and allows in this way to monitor and prevent incidents and to bring help when necessary.

As the AIS is an open source system and hence accessible for anyone who has the necessary equipment, many private and public sites on the net record the AIS data of the vessels and store them in a database. These data are available for the Internet users.

It is hence possible for each vessel equipped with an AIS system to reconstruct positions and timeline and this is what was done in the case of the Olympic Flair, because both the indicated position and the indicated time of the pirate attacks seemed to be false.

The result confirmed our hypothesis. The Greek vessel disappeared from the AIS attendance monitoring system off the coasts of Southern India for a very long time during the days of the events. It has a one-week time gap.
In order to verify the AIS data I used the BLM-SHIPPING rel. 2.0 software and the database of the AIS data of the BoLooMo International Group Ltd. (Beijing, China) http://www.boloomo.com/shippingMain_en.html.

The data are available on the net, free or not.

The picture (attached document 08) is about the AIS data of the Greek oil tanker Olympic Flair from 12\textsuperscript{th} February 2012 to 20\textsuperscript{th} February 2012, a period which includes the day of the incident of the Enrica Lexie occurred on 15\textsuperscript{th} February 2012.

The Greek vessel disappeared from the AIS attendance monitoring system on 13\textsuperscript{th} February 2012 at 00:29 UTM local time while it was sailing in the direction 146.3\(^\circ\) at a speed of 13.3 kts to Kochi where it was awaited on 15\textsuperscript{th} February at 08:00 UTC (13:30 local time).

At this point it disappeared from the AIS attendance monitoring system.
It appeared again in the same area on 20th February at 05:36 UTM sailing to Arzew (Orano, Marocco, where it had to arrive on 1st December, 10 months later!). A few hours later at 19:14 UTM it changed course and sailed to Khahg Island, where it arrived on 23rd February at 23:59 local time.

We have hence the proof that the Olympic Flair spent a week off the coasts of Southern Indian without being tracked by the AIS. It is sure that it was there, for it reported a pirate attack on 15th February.

**ANALYSIS OF THE AIS DATA**

The distance, timeline and positions at the moment of the last AIS signal show that the Olympic Flair was sailing to Kochi where it was awaited at 8 on 15th February.

The simple verification of time and space indicates an average speed of 10,7 kts which is compatible with the speed of 13,3 kts indicated by the AIS system.

But if we think for a moment that the Olympic Flair left Kochi to sail to north at the moment of the pirate attack, at 16:50 UTC (22:20 local time) it sailed at a speed of 5,6 kts, while according to the AIS System when it reappeared it sailed at a speed of 15,3 kts.

But if the Olympic Flair sailed to Kochi and back at a normal speed, it has a 50 hours gap, two days, in which we do not know where it was and what its course was.

This two day time gap can mean anything. It can mean that the Olympic Flair was not in the stretch it indicated as the stretch where the pirate attack occurred or that it was attacked, boarded, kidnapped and then freed by armed men or that the Olympic Flair is the black and red vessel which opened fire on the St Anthony and so on.

We can not know exactly what happened. An inquiry would be necessary. But the Indian authorities were not interested in conducting it.

Unfortunately, these – despite the report of a pirate attack by a vessel which had disappeared from the AIS attendance monitoring system and which was not in the stretch it indicated – did not search for the Olympic Flair, they just decided that there was only one alleged culprit, the Enrica Lexie, and only one guilty party, the Italian marines.

At this point we should try to answer another question:

Was the reason for this decision of the Indian authorities negligence or malice? Did they really ignore the strange story of the Olympic Flair?

Let's have a closer look.
THE OLYMPIC FLAIR AFTER THE 15th FEBRUARY 2012

In this press release of the press agency ANSA published on 21st February (attached document 09) (6 days after the incident) the pirate attack against the Olympic Flair is mentioned as well as the ICC report.

Immediately after the incident it was known that on the same day the Olympic Flair was attacked by pirates. This was the beginning of debates and criticism against the Italian sources, which were accused of inventing the episode of the Olympic Flair with the purpose of clearing the marines of all charges indicating the Olympic Flair as the only culprit.

Even if the Indian authorities knew that

- The pirate attack against the Olympic Flair did occur (they received the ICC and IMO report);
- The position and the time of the attack indicated by the Olympic Flair were false (because Indian ships and an aircraft were in the stretch indicated by the Olympic Flair as the stretch were the attack occurred);
- The Olympic Flair disappeared from the AIS System (they did not contact it by radio and it appeared only on 22nd February when it sailed to north, far away from India).
They declared nothing about the Greek vessel. They did nothing against the media campaign against the Italian marines. Even if they were informed about the pirate attack against the Olympic Flair, they did not confirm the information given by the Italian sources. In this way, the disdain for the Italians increased in the Indian society. Moreover, they explained how they could trick the Enrica Lexie to coming to the port of Kochi.

It seems to be clear that the intention of the Indian authorities was to make believe that there was only one alleged guilty party.

Against this background, we can conclude that also in the case of the role of the Olympic Flair the Indian authorities showed a certain degree of negligence. It seems to be clear that their only aim was to consider the Italian marines as the only guilty party without taking into account other possible alleged culprits.

As they did nothing against the media campaign against the Italian marines and did not explain the circumstances they were quite well aware of and which cleared the Italians of the murder they are accused of, their negligence was hence intentional.

**REPEATEDLY CONCEALMENT OF CRITICAL FACTS AND DESTRUCTION OF RELEVANT EXHIBITS (SO CALLED INVESTIGATIVE ACTS THAT CANNOT BE REPEATED)**

In any judicial proceedings it is always necessary to conduct a technical analysis, which is usually carried out by an expert in the specific field.

If the investigations can probe a punishable offence and the alleged culprit is accused of a crime, the defendant has the right to let an own expert analyze the exhibits the claimant used to formulate the accusations.

The reasons for this are obvious: the technical analyses and survey of the exhibits can have probative force, but they can also be misinterpreted or interpreted in a different way.

The prosecutor has to decide about the interpretations to be followed and the conclusions also by asking for other technical surveys to be conducted by a different expert, who usually analyze all the exhibits again.

The Public Prosecutor's experts are not allowed to conceal or to damage or to destroy the exhibits (so called Investigative Acts that cannot be repeated).

Such acts can make the whole investigation as well as the dispute settlement procedure in a prosecution invalid and violate hence the right of a fair trial and process.

In the following page you can find my assignment as Assessor to the Public Prosecutor's office of Ancona (attached document 02) I got on 13th September 2005 in order to carry out a technical survey in a complicated issue in the field of aeronautics.

The document contains the clear statement that the expert conducting the survey does not have to conceal or to damage or to destroy the exhibits (Investigative Acts that cannot be repeated).

Actually, here it is not necessary to remark once again that negligence undermines the structure of any judicial proceedings and violates the right of a fair process.
The Indian authorities did lack due care in conducting the technical analysis especially on the fishing boat St Anthony.
As a matter of fact, the fishing boat after a few months after the incident was given back to the owner and this one – intentionally or not – let it sink.

Once again it is evident that the Indian authorities did lack due care in keeping the exhibits.

The fishing boat was one of the main exhibits to be analyzed in conducting a technical survey having probative force. The fishing boat has been destroyed and it can hence not be analyzed any more. All surveys conducted on the fishing boat can not be repeated, as it was damaged by sea water.

We have only some pictures of the sunk fishing boat St Anthony, but they are illuminating. Here one of the pictures showing the sinking. (attached document 10)

And in the following picture we can see the fishing boat – high and dry – left in a state of abandon (attached document 11) and it could hence be easily manipulated.
What kind of survey can be conducted on such a central exhibit like the fishing boat in such an investigation?

Let’s describe them in the following list:

- To find the bullets or traces of them;
- Technical and chemical analysis of them with the purpose of finding out the cartridge, and the bore, and to identify the manufacturer of the bullets and the batch;
- Analysis of the entrance and exit bullet holes or signs of streaking in order to find out the trajectories, the type of bore, the bore itself;
- Analysis of the traces of gunpowder and traces of the bullets around the bullet holes;
- Biological analysis in order to find blood traces with the purpose of finding out the positions of the fishermen shot dead;
- Ballistic expertise with the purpose of finding out if there were on the boat traces of different sorts of gunpowder or of other persons among the crew;
- Analysis of the structure of the fishing boat in order to verify the statement of the witnesses.

And so on.

But the Indian authorities gave the fishing boat back to its owner. They knew that the lack of due care in keeping the fishing boat would make any repetitions of the analysis impossible.

Moreover, the unilateral decision of the Indian judiciary not to admit the two officers of the Carabinieri, the ballistic experts sent by the Italian government, as experts shows the intention of not giving the defendant the possibility to have a fair process and a fair dispute settlement procedure.

Once again we have to admit that like in the case of the black and red vessel also in the case of the fishing boat St Anthony the Indian authorities showed a certain degree of negligence, intentional or not.

Such negligence prevents from protecting the fundamental rights of the defendant to let the own experts analyze the exhibits. If I had had the same conditions and premises while I was analyzing the exhibits in the Ustica case, the prosecutors had destroyed the DC9 after their own survey without waiting for a comparison.
CONCLUSIONS

In my opinion the dispute settlement procedure has to be considered to be invalid because of a high degree of negligence in conducting the investigations and the technical survey with whatever intention.

My life-long experience in conducting technical surveys leads me to the conclusion that the right of a fair process has been violated.

The destruction of the main exhibit does not allow to repeat the analysis on the same exhibit. Hence, the Special Court in India, which will try Latorre and Girone, could

- Declare the invalidity of the dispute settlement procedure and clear the two marines because of the lack of evidences and the impossibility of repeating the technical survey;

- Consider the whole dispute settlement procedure of the police of Kerala to be valid and try the marines, violating in this way their right of a fair trial

I would like to repeat once more that I used as references of my argumentation the following documents:

- The ICC and IMO release (attached document 05)
- Official reports of Indian sources (attached document 07)
- The picture of the fishing boat St Anthony released by the Indian press and to be found on the net (attached document 11 and 12)

Therefore, as

- The Indian authorities conducted the survey and investigations in a negligent manner

- The results of the investigations could lead to the marines' conviction if the investigation is considered to be valid

- The criminal offence the marines Latorre and Girone are charged with can be punished with death penalty. The execution of a judgment of death will take place in India according to a recent agreement between the Italian and the Indian government

- According to Italian law and European legislation Italy can not send citizens accused of murder to a country where there is the capital punishment and where the dispute settlement procedure is doubtful and violates the rights of the defendant to have a fair trial

I ask the Italian judiciary

To acknowledge that the Indian authorities committed a crime against Girone and Latorre by conducting the investigations in a negligent manner and violating the defendant's right of a fair trial
To prevent Girone and Latorre from going back to India (by seizing their passports for example and withdrawing the ones they have now. The Indian authorities lost their old passports when they sent them by post).

This would be necessary also if they declare to want to go back to India voluntarily, for their decision could have been influenced by the circumstances as well as by Italian diplomatic and economic interests over the last year. The friendly diplomatic relationship between Italy and India has been compromised by the behavior of the Indian authorities, which injures our national dignity and violates the defendant's rights of having a fair trial.

For all these reasons and because the two marines were performing an act of State at the moment of the incident, for they were part of a detail of six embarked on anti-pirates protection service on board of the Italian oil tanker "Enrica Lexie", they can not decide voluntarily to face trial in India and to endorse the responsibility for what happened.

The responsibility has to be endorsed by the State and hence by the Italian judiciary.

I remain at disposal of the public prosecutor's office for any further explanations. I would like to be informed if this exposé is filed.

I herewith declare that I have no financial interest in following this case.

Roma, 06/03/2013

Respectfully

Luigi Di Stefano

ATTACHED DOCUMENTS TO THIS EXPOSÉ

- 01 – CV of the undersigned
- 02 – Copy of the assignment to the prosecutor's office at Ancona (Italy)
- 03 - Report "Piracy and armed robbery against ship" released by the ICC-IMB (International Chamber of Commerce - International Maritime Bureau)
- 04 - IMO (International Maritime Organization), GISIS – Piracy and Armed Robbery . Incident details
- 05 – ICC (International Crime Services) Report attack number 054-12
- 06 – Reconstruction of the context at the moment of the pirate attack against the Olympic Flair
- 07 – Report of the National Maritime Search and Rescue Board of India, which contains the report about the Enrica Lexie and the Indian warships
- 08 – Data of the AIS system about the Olympic Flair
- 09 – Release of the press agency ANSA published on 21st February 2012
- 10 – Picture of the sunk fishing boat St. Antony
- 11 – Picture of the fishing boat St. Antony after sinking
- 12 – DVD with this exposé and the attached documents in HTML Allegato 12 – Disco DVD contenente il presente documento e gli allegati in formato HTML per una più facile consultazione.