

Enrica Lexie Judgement: Country's Court Lacks Criminal Jurisdiction to try Italian Marines

written by Priyanka Ajjannavar | July 22, 2020



Enrica Lexie, popularly known as Olympic Sky is an Italian Aframax[1] oil tanker, built in the year 2008 by Dolphin Tankers, Naples, involved in the death of two Indian fishermen on 15th February 2012 at the off Kerala Coast. "Indian Courts Lack Jurisdiction" : Enrica Lexie Judgement

The Permanent Court of Arbitration at Hague consisting H.E. Judge Vladimir Golitsyn (President), Mr.H.E. Judge Jin-Hyun Paik, H.E. Judge Patrick Robinson, Professor Francesco Francioni, Dr. Pemmaraju Sreenivasa Rao in the award dated July 2,2020, in the matter of popularly known as "*Enrica Lexie Incident*" held that "*Indian courts have no jurisdiction to try marines, further, Italy has to compensate India for loss of life.*"*The Italian Republic V. Republic Of India*[2]

Factual Matrix

On 15th February 2012, at the distance of 20.5 nautical miles off the Kerala coast, India's contiguous zone, two Italian marines of Enrica Lexie namely Massimiliano Latorre and Salvatore Girone opened the fire against fishing boat "St. Antony", which in turn, resulted in the death of two Indian fishermen namely Valentine Jalastine & Ajesh Binki. The Enrica Lexie was taken to Kochi Port by Indian Coastal Guards and an FIR was registered by Kerala local police against Massimiliano Latorre and Salvatore Girone under Section 302 r/w Section 34 of Indian Penal Code ("IPC"). Subsequently, Italy approached Supreme Court of India by filing Writ Petition questioning the proceedings against the marines at Kerala.

Supreme Court's View

The Hon'ble Court held that Article 97 of United Nations Convention of Law of Sea ("*UNCLOS*") applies only to high seas, which do not include Exclusive Economic Zone and territorial waters, whereas, the fishermen were killed at the contiguous zone, therefore, Union of India has jurisdiction over the matter. Further, the Hon'ble Supreme Court observed that as per the Maritime Zones Act, 1976, the Union Government has jurisdiction over Contiguous Zone and not State Government, therefore, the investigation has to be led by the National Investigation Agency.

In the year 2015, Italy approached International Tribunal For Law of Sea (ITLOS). ITLOS referred the matter to the Permanent Court of Arbitration, Hague.

Contentions of Parties Before UNCLOS

The Italian Republic

1. India has violated Article 33(1), 56(1), 56(2) 58(2) and 89 of United Nations Convention On Law Of Sea (UNCLOS).
 2. By taking custody of Enrica Lexie, India has violated Italy's exclusive jurisdiction over Enrica Lexie.
 3. Directing and persuading Enrica Lexie to change the course of the route towards the Indian territorial sea is an abuse of the right to seek Italy's cooperation in curbing piracy.
 4. By initiating criminal proceedings against marines, India has violated Italy's exclusive right to take criminal/ disciplinary action against marines.
 5. By detaining Enrica Lexie, India has violated Article 97(3) of UNCLOS, which specifies the prohibition against arrest or detention of a ship by a state other than flag state.
 6. By arresting marines, India has violated the immunity provided to the marines of Italian State officials while exercising official functions as per Articles 2(3), 56(2), 58(2) and 100.
 7. India's claim on jurisdiction is against the Articles of UNCLOS.
- Considering the above points, Italy requested the tribunal to pass an order to cease the criminal proceeding initiated against the marines. Further, compensation for non-material damage suffered by marines because of a lack of jurisdiction was also requested.

Republic Of India

1. By killing two fishermen, Italy has violated India's sovereign right under Article 56 of UNCLOS.
2. India's freedom and right to navigation under Article 87 and 90 of UNCLOS has been violated.
3. Infringed India's right to have its EEZ for peaceful purpose as mentioned in Article 88 of UNCLOS.

Considering the above points, India requested PAC to pass an order as to full reparation for breaches made by Italy under Article 56, 58(3), 87, 88 and 90.

Dispositif

- In relation to admissibility and Jurisdiction

The dispute between the parties, as to which country has the right to exercise jurisdiction over the incident related to the death of two Indian fishermen by Italian marines.

PAC (4:1) –As dispute involves the application and interpretation of UNCLOS, therefore, UNCLOS has jurisdiction to decide the present case.

- In relation to Submission made by Italy

1. India has not violated Article 87,92,97,100 and 300 of UNCLOS.
2. As per Article 2(f) UNCLOS, marines have immunity in relation to an act committed during the official work.
3. India has to cease to exercise its criminal jurisdiction by dropping the proceedings against the Italian marines.

- In relation to Submissions made by India

1. India's sovereign right under Article 56 is not violated.
2. Italy has not violated any right under Article 58 and 88 of the Convention.
3. Unanimously pointed out that Italy has violated Article 87 and 90 of the Convention, therefore, India is entitled to compensation for loss of life, physical harm, material damage to property and mortal harm suffered by

captain and crew members.

Observation

In furtherance to the award, it is necessary to understand, why India lacks jurisdiction over 'Enrica Lexie' case.

It is pertinent to note that as per UNCLOS India and Italy have concurrent jurisdiction to try the matter as the incident took place in contiguous zone, however, in regard to Article 96 of UNCLOS, *"ships owned/operated by state have complete immunity from the jurisdiction of any State other than the flag State"*.

Further, Vienna Convention on diplomatic relations specifies that the officials are given privileges to perform their diplomatic functions without the fear of any legal trouble or harassment from the host country.

In light of the above, Permanent Court of Arbitration passed an balanced Arbitral Award, by reassigning the Criminal trial to Italy and compensating India for loss of life.

Way Forward

The order passed by Permanent Court Of Arbitration is final and not subject to an appeal under Article 11 of UNCLOS which brings an end to the legal phase of Enrica Lexie case, however, Indian Government should actively participate and put diplomatic pressure on Italy to take the appropriate criminal action or disciplinary action against the Marines.

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- [1] vessel is an oil tanker with a deadweight between 80,000 and 120,000 metric tonnes.

- [2] PCA Case No. 2015-28

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