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## Case Comment: Sovereign Immunity v Territorial Jurisdiction: A Critical Analysis of the Enrica Lexie Incident (Italian Republic v Republic of India)

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### INTRODUCTION

The Enrica Lexie case has become one of the most controversial marine disputes between India and Italy, where the jurisdiction's limit under international law and the sovereign immunity principles were put to the test. The conflict started with an incident involving the seizure of a small Indian fishing boat, St. Antony, by two Italian soldiers in 2012, and during this, the shooting of two Indian fishermen was also a consequence of the firing.<sup>1</sup> The location of the incident was about 20.5 nautical miles from the Indian coastline, which was considered to be a part of India's Contiguous Zone; hence, the questions of India's criminal jurisdiction and the applicability of international maritime conventions were raised.<sup>2</sup> India's argument for jurisdiction was based on its Maritime Zones Act, 1976, and the United Nations Convention on the Law of the Sea (UNCLOS) claiming the right to investigate and prosecute crimes in its Contiguous Zone,<sup>3</sup> on the other hand, Italy argued that the marines, being

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<sup>1</sup> *Republic of Italy Thr Ambassador & Ors v Union of India & Ors* (2013) 4 SCC 721

<sup>2</sup> Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act 1976

<sup>3</sup> United Nations Convention on the Law of the Sea 1994

members of the Italian Navy and performing official duties, were entitled to sovereign functional immunity, and hence Italy as the flag state had exclusive jurisdiction under UNCLOS.<sup>4</sup> Thus, the case brought to the forefront the critical issues of functional immunity, flag state jurisdiction, and interpretation of UNCLOS Articles 92 and 97. Eventually, the case was filed with the Permanent Court of Arbitration (PCA) under Annex VII of UNCLOS, which resulted in a significant arbitral award in 2020.

## FACTS OF THE CASE

On 15 February 2012, the oil tanker MV Enrica Lexie, which was flying the Italian flag, was on its way from Singapore to Djibouti when it met the Indian fishing vessel St. Antony at a distance of about 20.5 nautical miles from the Kerala coast, inside India's contiguous zone. Two Italian marines, Massimiliano Latorre and Salvatore Girone, who were part of an Italian Navy Vessel Protection Detachment (VPD) assigned to secure the ship against pirate attacks, were on board. The marines mistook the fishing vessel for a pirate ship and thus opened fire on it, resulting in the death of the two Indian fishermen, Valentine Jelestine and Ajesh Binki.

The incident triggered the Maritime Rescue Coordination Centre (MRCC), Mumbai, to order the tanker to go back to the Port of Kochi for investigation. After reaching, the Indian police filed a First Information Report (FIR) and took the marines into custody, charging them with murder under Section 302 of the Indian Penal Code<sup>5</sup>. Italy protested, arguing that the marines, performing state functions, were entitled to sovereign functional immunity, and that the case was not under India's jurisdiction because the event took place outside its territorial waters.

The conflict was already at the diplomatic level, culminating eventually in arbitration under Annex VII of UNCLOS before the Permanent Court of Arbitration (PCA). The tribunal in May 2020 acknowledged Italy's exclusive jurisdiction over the trial of the marines, while at the same time ordering Italy to pay compensation to India for loss of life and violation of its sovereign rights.

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<sup>4</sup> *The Enrica Lexie Incident (Italy v India) (2020) Award*, PCA Case No 2015-28

<sup>5</sup> Indian Penal Code 1860, s 302

## LEGAL ISSUES

1. Was India right to apply its criminal laws to foreigners for offences done beyond its boundaries but still in the Contiguous Zone?
2. Did the Italian marines, as government representatives, receive sovereign immunity for their actions while working for the government?
3. Did the UNCLOS Article 92 flag state jurisdiction principle bar India from exercising its power to prosecute?
4. Did Italy breach India's sovereign rights by taking the matter to international courts without first going through and exhausting the domestic legal processes?

These were hard questions that needed to be answered regarding the conflict between national criminal jurisdiction, exclusive flag state authority, and the international law protection of agents of states.

## COURT'S DECISION

In the beginning, the Supreme Court of India ruled in *Republic of Italy v Union of India* (2013) that the shooting had taken place within India's Contiguous Zone, thus it had jurisdiction over the marines, and the Union of India was the prosecuting authority, not Kerala State.<sup>6</sup> However, Italy's appeal led to the establishment of an arbitral tribunal under Annex VII of UNCLOS. In May 2020, the Permanent Court of Arbitration (PCA) delivered its decision stating that the incident was under India's jurisdiction, but Italy triumphed with exclusive jurisdiction to prosecute the marines since they were Italian forces performing sanctioned functions.<sup>7</sup> The Tribunal further ruled that Italy was to pay the victims' families, as a gesture of recognition of India's loss of life and sovereign interests.

## LEGAL REASONING

Primarily, the PCA's reasoning was based on the recognition of the principle of exclusive flag state jurisdiction for events taking place on the high seas in Articles 92 and 97 of UNCLOS<sup>7</sup>. Italy's marines were qualified to be the Italian state, and the Tribunal granted

<sup>6</sup> *Republic of Italy Thr Ambassador & Ors v Union of India & Ors* (2013) 4 SCC 721

<sup>7</sup> *The Enrica Lexie Incident (Italy v India)* (2020) Award, PCA Case No 2015-28

them functional immunity, which keeps them safe from prosecution in India. The Tribunal turned down the Indian claim that the event fell under the category of 'collision' or 'incident of navigation' as per Article 97 and thus justified the insistence on the broader parameters of sovereign equality and the functional immunity of state agents<sup>8</sup>. It counterbalanced this by acknowledging India's entitlement to compensation for the infringement of its freedom of navigation and the damage done to its citizens.

## **IMPACT OF THE CASE**

The ruling positively asserted the functional immunity doctrine for state agents doing official work outside their countries and made clear the limits of flag state authority according to UNCLOS. Additionally, it helped develop a legal doctrine that governs the resolution of conflicts between claims of sovereignty and jurisdiction in relation to armed individuals on the sea. From a political point of view, the case was a difficult situation for India-Italy relations, but, in the end, it affirmed the recourse to peaceful means of dispute resolution under international law.

## **DETAILED ANALYSIS**

The decision of the PCA is a meticulous reconciliation of the principles of international law and the humanitarian considerations. While the acknowledgement of Italy's exclusive jurisdiction was legally valid under UNCLOS, it still posed the issue of accountability and access to justice for the victims' families. India's argument based on the S.S. Lotus case (1927) was unfounded and hence could not be used anymore since the international maritime law has already developed far beyond that stage. Yet on the other hand, the ruling's insistence on compensation recognised India's sovereign interest as well as the necessity of deterring the reckless use of force. The ruling has, thus, brought to light a blind spot in international law about the issue of using lethal force by military personnel in the case of commercial vessels—this issue still needs broader legal clarity. In such a scenario, the alternative result, which allows the joint prosecution or hybrid jurisdiction, would have undoubtedly led to state sovereignty and victim justice being more equitable.

## CONCLUSION

The *Enrica Lexie* incident remains a watershed moment in international maritime law, serving as a critical case study on the friction between a coastal state's territorial sovereignty and the sovereign immunity of state agents. The primary legal significance of the 2020 PCA Award lies in its definitive affirmation of the doctrine of functional immunity for state officials acting in an official capacity, even when such actions occur within the contiguous zone of another nation. By recognising Italy's exclusive jurisdiction to prosecute the marines, the Tribunal prioritised the long-standing international principle of sovereign equality over India's claims of domestic criminal jurisdiction based on the effects of the crime.

The ruling is not a total dismissal of coastal state rights. The Tribunal's insistence that Italy must compensate India for the loss of life and the physical damage to St. Antony establishes a necessary counterbalance. This effectively acknowledges that while state agents may be immune from foreign prosecution, the state itself remains liable for the internationally wrongful acts of its organs that violate the sovereign rights and freedom of navigation of other nations. This "immunity-with-compensation" model attempts to reconcile the need for state accountability with the protection of military personnel engaged in global security operations.

Ultimately, the case highlights a persisting "blind spot" in the United Nations Convention on the Law of the Sea (UNCLOS) regarding the use of lethal force by military vessel protection detachments on commercial ships. While the dispute was resolved through peaceful arbitration, reinforcing the supremacy of international legal frameworks, it underscores the urgent need for clearer global standards to prevent such tragic escalations in the future. The *Enrica Lexie* legacy thus serves as a reminder that maritime security must not come at the cost of human life or the erosion of humanitarian considerations in international law.