
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**MARITIME SECURITY AND TERRITORIAL SOVEREIGNTY:
INTERLINKAGE ANALYSIS**- Jyotsna Baghel¹**ABSTRACT**

The maritime security paradigm is ever-changing with emerging new threats. These not only include traditional and non-traditional security threats but also dangerous precedents arising out of international judgments which becomes a legal threat for posterity. This paper examines the interpretation from one such judgment in the *Enrica Lexie* case between India and Italy in the Permanent Arbitration Court. The tribunal's award has necessitated a re-look at the concept of sovereignty by the exercise of criminal jurisdiction. This paper provides a focus on the elements of the case that involve the status of sovereign immunity and the application of local laws. Finally, a critical assessment highlights the implications arising from the judgment and forces to implore the idea of the current international law of the sea convention vis-à-vis India's domestic laws.

Keywords: Enrica Lexie, Sovereignty, Jurisdiction, State Immunity

INTRODUCTION

India's vast coastline of 7517 km makes it vulnerable to a host of sea-based security threats. Therefore, it becomes important to assert its position in the oceans to protect the idea of sovereignty in the maritime domain. Since the security of a country helps in preserving sovereignty and territorial integrity², its responsibility as a state is tested especially in maritime

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² Dantas De Wellington, and Chiozzo Victor. South Atlantic security community: a regional security ... R. Esc Guerra Naval Rio De Janeiro V.23, n1,2017, p94,

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disputes. These disputes become a source of tension between countries. One such case is the 'Enrica Lexie' incident (Italy vs. India).

The Enrica Lexie case was concerned with the killing of two Indian fishermen on a fishing boat by two Italian Marines on the Italian Oil tanker vessel, Enrica Lexie. The incident occurred in the contiguous zone along the coast of the Indian State of Kerala in 2012. Upon arrest and custody of two Italian marines, the question of Indian jurisdiction, in this case, became the exclusive point of debate. The case was referred to ITLOS which was further referred to the Permanent Court of Arbitration (PCA). In July 2020, the arbitration court pronounced its final award. The basis of the judgment was the state immunities enjoyed by the marines as state officials prevented jurisdiction of the Indian courts and hence preclude them to try the marines in the said case.³

The award has met with criticisms from the Indian as well as the international community on the implications of this judgment and its effects on domestic laws concerning the international maritime laws. The topic is important to understand the confluence of legal challenges in existing International frameworks. Not only does this case illustrate legal and diplomatic complications, but the paper is also an attempt to explore jurisdiction as the new vocabulary for state sovereignty. By critical analysis of the basic elements of the judgment, this paper focuses on the fundamental issues of

- The scope of Indian jurisdiction at par with the case.
- Justifications on the right to state immunity on part of the marines.

The paper has been divided into three parts. The first section is a factual background of the case followed by a discussion on jurisdiction and state immunity. In this section, the aim is to illustrate the complexities of domestic laws and their application with international laws. The last section will provide consequences arising out of the judgment with concluding remarks. A section of annexure is provided at the end, readers can refer to it for a better view of concepts.

³ "MEA: Statements: Press Releases." Ministry of External Affairs, Government of India, 2020

METHODOLOGY

Even though Maritime sovereignty is an emerging subject in the areas of research in India, the literature available is handful. The judgment rendered by PCA in the Enrica Lexie case has been used as an analysis with concepts of sovereignty. The paper is an exploratory analysis in nature which is based on the review of the literature and used the Enrica Lexie incident as a case study. The summarized findings are gathered by primary information using virtual ethnography as a methodology research tool. The methodology is justified which aims to critically analyze the questions arising of the judgments in point.

FACTUAL BACKGROUND

M/V Enrica Lexie was an Italian commercial oil tanker vessel with Military Protection Detachment on board. According to the International Maritime Organization, waters alongside Kerala have been declared High Risk to piracy⁴. The ship was heading to Djibouti, on 15 February 2012, it came across St. Antony, an Indian fishing vessel at about 20.5 Nautical Miles from the Indian coast⁵. Two Italian marines on Enrica Lexie ‘allegedly’ mistook it to be a pirate vessel and shot two fishermen on Indian fishing vessel. The Italian ship was asked to return to the Cochin port in India for an inquiry about the incident. An FIR was filed by the Kerala Coastal Police against the two Italian marines on charges of homicide under the Indian Penal Code⁶.

As legal proceedings began in the Kerala High court, Italy filed a writ petition for quashing the FIR because Italy had exclusive jurisdiction in the matter and the officials (Latorre & Gironne) will be charged according to the Italian criminal jurisdiction⁷. Italy also invoked Article 97⁸ of the UNCLOS and argued that India could not exercise jurisdiction as the event occurred in international waters. The Kerala High court dismissed the position by stating that Indian courts

⁴ International Maritime Organization, ‘Reports on Acts of Piracy and Armed Robbery Against Ships’, January 2012.

⁵ Republic of Italy & Ors. Ambassador ... vs Union of India (2013) 4 SCC 721, (Supreme Court of India), Para 2

⁶ Ibid

⁷ Ibid., 7

⁸ UNCLOS Article 97 “Penal jurisdiction in matters of collision or any other incident of navigation” pg57

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were entitled to exercise jurisdiction under the Notification SO 67/E dated 27th August 1981 that Indian Penal Code would be extended to EEZ.⁹

In another writ petition filed by Italy in the Supreme Court (Italy vs. India) it was held that Kerala High court as a federal unit did not have jurisdiction in international disputes. Hence, the Supreme Court of India took cognizance and the court went ahead to prosecute the marines by instituting a special court to try the matter.

In July 2015 Italy submitted the dispute to the International Tribunal of Law of the Sea (ITLOS) for pursuant under Annex VII of the UNCLOS. The ITLOS ordered Italy and India to suspend all court proceedings and refrain from initiating new ones regarding the dispute. The case was referred by the ITLOS to the Permanent Court of Arbitration in Hague, Netherlands. The tribunal in July 2020 gave its final award judgment regarding the case and held that Italian military officers breached India's freedom of navigation under UNCLOS Article 87(1)(a) and Article 90¹⁰. On Italy's liability, it was held that India is entitled to payment and compensation in connection with loss of life, physical harm, material damage to property, and moral harm suffered by the captain and crew of St. Antony, the Indian vessel¹¹. The Tribunal observed that India and Italy had concurrent jurisdiction over the incident but because the marines belonged to Italian armed forces they were covered under the state immunity of Italy and hence the Indian Jurisdiction in the case cannot be exercised.

DISCUSSION

As a matter, in this case, it was recognized that the incident occurred within the Contiguous Zones at 20.5NM of India. According to the United Nations Convention on Law Of Sea (UNCLOS) in Article 33¹² expressly lays that the coastal state can exercise necessary control in terms of customs, fiscal, immigration, or sanitary laws in its contiguous zone. It can be imputed that UNCLOS recognizes that contiguous zone has limited state control and only enforcement

⁹ Republic of Italy & Ors. Ambassador ... vs Union of India (2013) 4 SCC 721, (Supreme Court of India), Para 9

¹⁰“PCA Case No. 2015-28 IN THE MATTER OF AN ARBITRATION ...” Extracts for Advance Publication, Pg. 5-6 ,2 July 2020,

¹¹ Ibid

¹² UNCLOS Article 33“Contiguous zone 1) the coastal State may exercise the control necessary to:(a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea;Pg. 35

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exercise is available to the state¹³. India's domestic legislation in the Maritime Zones Act 1976 and notification by the Ministry of Home affairs in 1981 has made an extension of India's criminal jurisdiction up to its EEZ i.e. 200NM.¹⁴

Although there is no liability for India the award has its implications as the award does not mention any punishment to the marines for the killing of Indian fishermen. In this paper, it is found that there is a definite clash of opinions in the misplaced perception of the Immunity of the Italian marines that eventually led to overriding of India's claim of jurisdiction. The two dissenters, Judge Robinson and Judge P.S Rao have based their varied opinions on the issue of alleged functional immunity of the marines which will be examined in further sections.

A. JURISDICTION

According to Prof. Ryngaert, "Jurisdiction is an aspect of a state's sovereignty and forms an important component of statehood"¹⁵. This maritime territorialisation¹⁶ is the process that empowers states to exercise enforcement jurisdiction which is derived from the concept of sovereignty.

According to international customs and conventions, states usually can't enforce their laws outside their territory like Article 27¹⁷ of UNCLOS. On the other hand, certain principles arising out of international precedents are still relevant principles of jurisdiction. One such jurisdiction principle arose out of the *Lotus Case*¹⁸ which was used by India to invoke the effects of doctrine that refers to extraterritorial application of national laws where an action by a person with no national connection affects that state. This doctrine is an extension of the territoriality principle

¹³Fabris, Daniele. "Crimes Committed at Sea and Criminal Jurisdiction: Current Issues of International Law of the Sea Awaiting the 'Enrica Lexie' Decision." *Amsterdam Law Forum*, vol. 9, no. 2, Pg. 16, 2017,

¹⁴ Republic of Italy & Ors. vs Union of India (2013)4 SCC 721, (Supreme Court of India), Para 9

¹⁵ C. RYNGAERT, 'The Concept of Jurisdiction in International Law', p. 1, at: Oxford University Press, 2015 quoted in Fabris, Daniele. "Crimes Committed at Sea and Criminal Jurisdiction: Current Issues of International Law of the Sea Awaiting the 'Enrica Lexie' Decision." *Amsterdam Law Forum*, vol. 9, no. 2, Pg. 8 2017,

¹⁶ Roszko, Edyta. "Maritime Territorialisation as Performance of Sovereignty and Nationhood in the South China Sea." *Wiley Online Library*, John Wiley & Sons, Ltd, 24 Mar. 2015

¹⁷ UNCLOS Article 27 1) The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea save only in the following cases:(a) if the consequences of the crime extend to the coastal State; (b) if the crime is of a kind to disturb the peace of the country, pg34

¹⁸ France vs. Turkey [1927] P.C.I.J. (Ser A) No. 10...(Annexure 1)

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by which India invoked Art 245(2)¹⁹ of the constitution of India that permits the extraterritorial application of laws. The Supreme Court upheld the application of section 7(7) of the maritime zones act²⁰ 1976 in *Massimiliano Latorre vs. Union of India*²¹ by treating the contiguous zone as part of Indian Territory. India claims prescriptive jurisdiction in this case because the offense was directed towards Indian nationals (passive personality principle) and threatened India's security²² (protective personality). Former Chief Justice of India Altamas Kabir, in Supreme court judgment, highlighted that sovereignty amounts to exercising its penal jurisdiction under its criminal laws and in any conflict between other laws, the laws of the sovereign country will prevail²³. Justice Chemeswar, in the same judgment, answered the question of validity of India's sovereign territory. His honor asserted that India exercises its authority not only within Article 1 of India but also over maritime territory under Article 297²⁴. The sovereign has the power to make laws which are vested in the Parliament of India that can authorize the limits of its territories²⁵ by notification in the official gazette of India. The extension of the Criminal Procedure Code and Indian Penal Code to the contiguous and EEZ by the home ministry in its Notification S0 671(E) of 27-08-1981 attests to the authority of the government of India²⁶. Besides, this extraterritorial application is not peculiar to India alone but is seen across countries like Australia²⁷ and the USA²⁸

However, as contended by Italy in its submissions, India's domestic laws are inconsistent with the UNCLOS. To this, several provisions reflect this dichotomy alike. Section 5(4)²⁹ of the Maritime Zones act includes "Security interest" as the basis of the exercise of center's power in

¹⁹Article 245(2) in The Constitution of India 1949. "No law made by Parliament shall be deemed to be invalid on the ground that it would have extra territorial operation", pg. 111

²⁰Maritime Zones Act India, 1976 Section 7(7) "The Central Government may, by notification in the official Gazette, —(a) extend, with such restrictions and modifications as it thinks fit, any enactment for the time being in force in India or any part thereof to the exclusive economic zone or any part thereof; and..." pg. 3

²¹ *Massimiliano Latorre vs Union of India* (2012) 252 K. LL 794 (High Court Kerala) on 20 February, 2012.

²² Fabris, Daniele. "Crimes Committed at Sea and Criminal Jurisdiction: Current Issues of International Law of the Sea Awaiting the 'Enrica Lexie' Decision." *Amsterdam Law Forum*, vol. 9, no. 2, 2017, p. 5... (Annexure 2).

²³ *Republic of Italy Thr. Ambassador ... vs Union of India* (2013) 4 SCC 721, (Supreme Court of India), Para 96

²⁴*Ibid*, Para 7-14

²⁵*Ibid*

²⁶*Ibid*

²⁷ Mani, V. S. "It's Our Boat, Our Courts." *The Hindu*, The Hindu, 12 Sept. 2016... (Annexure 3)

²⁸ Shaw, Malcolm N. *International Law*. Cambridge Univ. Press, pg. 665, 2011... (Annexure 4)

²⁹ Maritime Zones Act India, 1976 Section 5(4) The Central Government may exercise such powers and take such measures in or in relation to the contiguous zone as it may consider necessary with respect to, — (a) the security of India, and (b) immigration, sanitation, customs and other fiscal matters. Pg. 2

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its contiguous zone. The inclusion of this provision in its domestic law is an addition to Article 33 of the UNCLOS which has only four sub-areas for a coastal state exercise of control. The PCA did not address to clarify the alleged position of India's domestic vis-a-vis the international law, also ignoring the issue of India exercising criminal jurisdiction in the matter affected the credibility of its domestic laws on the international stage. Since jurisdiction is linked to state sovereignty³⁰, the award of PCA has set aside multiple observations by its Supreme Court on India's claim of maritime sovereignty.³¹

Even though it is widely believed that Supreme Court had lapsed by³² lack of addressing the question of marine's immunity, the PCA took upon itself the "gray area" to be considered by it. This is where the criticisms from dissenting judges arise that became a crucial point of discussion in the judgment.

B. SOVEREIGN IMMUNITY

State officials that perform acts in their official capacity are known as functional immunity and international law confers this immunity to such officials. There has been a debate as to how far these immunities are saved when it comes to international crimes. Italy has argued that marines were entitled to functional immunity as they were members of the Italian navy and were acting in their official capacity as Privately Contracted Armed Security Guard (PCASG). Also, they were part of the Vessel Protection Detachment (VPD) vessel which was functioning as per government directives (Law No 130/2011) to protect the vessel from piracy³³. From Italian perspectives, the VPD carried public function and their conduct was relevant according to Italian Article nr. 107/2011, rules of piracy in the UNCLOS convention 1982 and the UNSC resolutions on the piracy on the Horn of Africa³⁴. This claim of immunity on type of vessel has been dissected by Dr. P.S Rao by asserting in his dissent that immunity is reserved for vessels used in

³⁰ Echle, Regula. "The Passive Personality Principle and the General Principle of Ne Bis in Idem." *Utrecht Law Review*, vol. 9, no. 4, 2013, p. 60

³¹ Kumar, Adv. VM Shyam. "India's Gains and Losses in the Enrica Lexie Case." *Delhi Post*, 4 July 2020,

³² Venkatesan, V. "Enrica Lexie: Did India Lose Case Against Italy Because of Lapses by Its Own Supreme Court?" *The Wire*, 5 July 2020

³³ Farnelli, Gian Maria. "Vessel Protection Detachments and Maritime Security: An Evaluation of Four Years of Italian Practice." *Academia.edu*, pg. 20

³⁴ *Republic of Italy & Ors. vs Union of India* (2013) 4 SCC 721, (Supreme Court of India), Para 44

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Government non-commercial service under Article 96³⁵ of the UNCLOS and not for commercial cargo vessel of private ownership³⁶.

Another contention arose from the fact that excessive force used on St. Antony is disproportionate and reckless³⁷. Firstly, the notification issued by the Directorate General of Shipping, Govt. of India requires prior disclosure of an armed vessel within the EEZ which was not complied by Enrica Lexie³⁸. Secondly, while using lethal force, armed personnel on a VPD should use force as per the internationally recognized norm in the UN Basic Principles on Use of Force and Firearms by law enforcement officers³⁹. It is also opined that officials on the vessel can use firearms only when the question of imminent danger of serious injury or death arises to the vessel and its crew⁴⁰. It is found that the crew of St Antony were unarmed and sleeping⁴¹ at the time of the shooting and therefore proved no danger to Enrica Lexie. Besides, this apprehension of pirates is contrary to the UNCLOS Article 105 that specifically mentions for a state to “seize and arrest of a pirate ship” and not fire at the alleged vessel. By firing at the fishing vessel, Enrica Lexie not only breached this provision of the convention but firing in a contiguous zone of a country puts their fisherman community at high risks who are merely exercising their right to catch fish.

The last contention is that of the immunity of marines when charged with international crime. To this Judge Robinson in his dissent called for identification of the nature of the action in Act Jure Imperi (imperial public acts of Government of State) and Act Jure Gestiones (commercial activities of the state)⁴² and stated,

³⁵UNCLOS Article 96” Ships owned or operated by a State and used only on government non-commercial service shall, on the high seas, have complete immunity from the jurisdiction of any State other than the flag State”pg. 57

³⁶ Venkatesan, V. “Enrica Lexie: Did India Lose Case Against Italy Because of Lapses by Its Own Supreme Court?” The Wire, 5 July 2020

³⁷ Tirkey, Aarshi. “Choppy Waters: On the Italian Marines Decision.” ORF, 13 July 2020

³⁸ CPPR Webinar “Enrica Lexie Award: The Takeaways for India ... 20 July 2020

³⁹ ‘UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials’ (7 September 1990) CONF.144/Rev.1 quoted in Farnelli, Gian Maria. “Vessel Protection Detachments and Maritime Security: An Evaluation of Four Years of Italian Practice.” Academia.edu

⁴⁰ Ibid

⁴¹ Krishnakumar, R. “Hazards on the High Seas.” Frontline, Frontline, 17 May 2012,

⁴²Venkatesan, V. “Enrica Lexie: Did India Lose Case Against Italy Because of Lapses by Its Own Supreme Court?” The Wire, 5 July 2020...(Annexure 5)

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“acting in an official capacity cannot by itself endow a state official with immunity if its state is not entitled to immunity in respect of his actions. The acts of the Italian state based on which the marines performed their function amount to a commercial transaction, leaving Italy bereft of immunity for that conduct; therefore, the marines chosen by that country to implement the commercial transaction cannot be protected by immunity that the Italian state itself does not have”⁴³

Additionally, there is no such treaty or custom between these two countries that extends immunity to its officials. This arbitrary and unjustified importance to such kind of immunity only downplays India’s right to sovereignty in the matter at hand.

WAY FORWARD

Since this incident, Italy and India have had soured relations at diplomatic levels. With European Union backing with the Italians view of state immunity, India had to react carefully as it could have affected India’s bilateral and multilateral engagement with Italy and Europe. In my opinion, the order by the central government to drop the death penalty of the marines under the Suppression of Unlawful Act (SUA) was done to avoid any controversial tarnish of relations with Europe.

The tribunal award has no liability for India as against claims put by Italy. The award recognized that India has the right to navigation under Article 87 and 90 but by upholding the status of immunity of the marines, it sets a dangerous precedent⁴⁴. It will give countries immunity to military personnel by giving them the status of state officials and by placing them on commercial private vessels like the VPD and the activities of such personnel would incite incidents of violence⁴⁵. This will not only put other fishing vessels like St. Antony in danger that exercise their fishing rights but also puts a bar on the country’s right to extraterritorial jurisdiction which is overridden by the ‘so-called’ functional immunity. It is, therefore, important to assert

⁴³ Ibid

⁴⁴ Katju, Vivek. “India Must Not Cast Anchor in 'Enrica Lexie'.” The Hindu, The Hindu, 6 July 2020,

⁴⁵ “Vessel Protection Detachments.” Ocean Beyond Piracy, 27 Dec. 2018

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extraterritorial by reviewing such circumstances⁴⁶ in which they can exercise such jurisdiction and make a treaty-based custom between countries that extends immunity to its officials.

As Ivan Shear observes” The problems of defining and regulating the exercise of jurisdiction is becoming greater and urgent” there is an immediate need for the international community to amend the UNCLOS convention⁴⁷. In the current UNCLOS framework, there is no mention if a country can exercise its jurisdiction beyond territorial waters. For such incidents, a coastal country should be able to exercise its jurisdiction and assert sovereignty within its rights for reasons apart from those mentioned in UNCLOS which was drafted in 1982. After this incident, India had lost its status of sovereignty in the eyes of the international community only since UNCLOS provisions were not made keeping in mind the prospective nature of law of the sea in 21st century. Hence, the age-old notion that areas beyond territorial waters cannot be subject to jurisdiction needs to be modified⁴⁸.

REFERENCES

Amorim, Wellington Dantas De, and Victor Chiozzo. *SOUTH ATLANTIC SECURITY COMMUNITY: A REGIONAL SECURITY ...*R. Esc Guerra Naval Rio De Janeiro V.23, n1, p92-121, 2017, revista.egn.mar.mil.br/index.php/revistadaegn/article/download/555/pdf.

The Case of the S.S. Lotus, France v. Turkey, Judgment, 7 September 1927, Permanent Court of International Justice (PCIJ), 1927,
www.worldcourts.com/pcij/eng/decisions/1927.09.07_lotus.htm.

CPPR Webinar “Enrica Lexie Award: The Takeaways for India ... 20 July 2020,
www.youtube.com/watch?v=ESb44z81AW0.

“Default Piracy Incident Reports.” *Piracy Incident Reports*, International Maritime Organization,
www.imo.org/en/OurWork/Security/PiracyArmedRobbery/Reports/Pages/Default.aspx.

⁴⁶ Ireland-Piper, Danielle. “Extraterritorial Criminal Jurisdiction: Does the Long Arm of the Law Undermine the Rule of Law?” Bond University Research Portal, 1 May 2012, pg. 3

⁴⁷ Shearer I.A, “Problems of Jurisdiction and Law Enforcement against Delinquent vessels”, ICLQ, vol. 35, no. 2 (1986), pp. 320-343 at pp. 321-322, quoted in Gandhi Manimuthu, “THE ENRICA LEXIE INCIDENT: SEEING BEYOND THE GREY AREAS OF INTERNATIONAL LAW.” Academia.edu

⁴⁸Roszkó, Edyta. “Maritime Territorialisation as Performance of Sovereignty and Nationhood in the South China Sea.” Wiley Online Library, John Wiley & Sons, Ltd, 24 Mar. 2015, pg. 234

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

Echle, Regula. "The Passive Personality Principle and the General Principle of Ne Bis in Idem." *Utrecht Law Review*, vol. 9, no. 4, 2013, p. 56., doi:10.18352/ulr.242.

"Enrica Lexie Award: Takeaways for India." Center for Policy Research, 20 July 2020, www.youtube.com/watch?v=ESb44z81AW0&feature=emb_title.

Fabris, Daniele. "Crimes Committed at Sea and Criminal Jurisdiction: Current Issues of International Law of the Sea Awaiting the 'Enrica Lexie' Decision." *Amsterdam Law Forum*, vol. 9, no. 2, 2017, p. 5., doi:10.37974/alf.292.

Farnelli, Gian Maria. "Vessel Protection Detachments and Maritime Security: An Evaluation of Four Years of Italian Practice." *Academia.edu*, www.academia.edu/15396099/Vessel_Protection_Detachments_and_Maritime_Security_An_Evaluation_of_Four_Years_of_Italian_Practice.

Ireland-Piper, Danielle. "Extraterritorial Criminal Jurisdiction: Does the Long Arm of the Law Undermine the Rule of Law?" *Bond University Research Portal*, 1 May 2012, research.bond.edu.au/en/publications/extraterritorial-criminal-jurisdiction-does-the-long-arm-of-the-l.

ISSUE *PAPER* *VESSEL* *PROTECTION* *DETACHMENTS.*
oceansbeyondpiracy.org/sites/default/files/attachments/Vessel_Protection_Detachments_IssuePaper.pdf.

Katju, Vivek. "India Must Not Cast Anchor in 'Enrica Lexie'." *The Hindu*, The Hindu, 6 July 2020, www.thehindu.com/opinion/lead/india-must-not-cast-anchor-in-enrica-lexie/article31996616.ece.

Krishnakumar, R. "Hazards on the High Seas." *Frontline*, Frontline, 17 May 2012, frontline.thehindu.com/the-nation/article30165702.ece.

Kumar, Adv. VM Shyam. "India's Gains and Losses in the Enrica Lexie case." *Delhi Post*, 4 July 2020, delhipostnews.com/indias-gains-and-losses-in-the-enrica-lexie-case/.

Mani, V. S. "It's Our Boat, Our Courts." *The Hindu*, The Hindu, 12 Sept. 2016, www.thehindu.com/opinion/lead/its-our-boat-our-courts/article4538854.ece.

Manimuthu, Gandhi. "THE ENRICA LEXIE INCIDENT: SEEING BEYOND THE GREY AREAS OF INTERNATIONAL LAW." *Academia.edu*,

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

www.academia.edu/5952716/THE_ENRICA_LEXIE_INCIDENT_SEEING_BEYOND_THE_GREY_AREAS_OF_INTERNATIONAL_LAW.

Massimilano Latorre vs Union of India on 20 February 2012.
indiankanoon.org/doc/191738505/.

“MEA: Statements: Press Releases.” *Ministry of External Affairs, Government of India*,
www.mea.gov.in/press-releases.htm?dtl/32807/Arbitral_Tribunal_award_on_the_request_of_Italy_in_respect_of_a_dispute_concerning_the_incident_of_15_February_2012_involving_Italian_tanker_quotEnrica

The Constitution of India 1949.

indiankanoon.org/doc/882254/.

“PCA Case No. 2015-28 IN THE MATTER OF AN ARBITRATION ...” *Extracts for Advance Publication*, 2 July 2020, pcacases.com/web/sendAttach/1558.

The Republic of Italy Thr. Ambassador ... vs Union of India ... indiankanoon.org/doc/78409161/.

Roszko, Edyta. “Maritime Territorialisation as Performance of Sovereignty and Nationhood in the South China Sea.” *Wiley Online Library*, John Wiley & Sons, Ltd, 24 Mar. 2015, onlinelibrary.wiley.com/doi/pdf/10.1111/nana.12094.

Shaw, Malcolm N. *International Law*. Cambridge Univ. Press, 2011.

“Territorial Waters, Continental Shelf, Exclusive Economic Zone, and Other Maritime Zones Act, 1976.” *India Code*, 1 Jan. 1976,
www.indiacode.nic.in/handle/123456789/1484?sam_handle=123456789/1362

Tirkey, Aarshi. “Choppy Waters: On the Italian Marines Decision.” *ORF*,
www.orfonline.org/expert-speak/choppy-waters-italian-marines-decision/.

Venkatesan, V. “Enrica Lexie: Did India Lose Case Against Italy Because of Lapses by Its Own Supreme Court?” *The Wire*, 5 July 2020, thewire.in/law/Enrica-lexie-India-case-arbitral-tribunal-dissents-supreme-court.

“Vessel Protection Detachments.” *Ocean Beyond Piracy*, 27 Dec. 2018,
oceansbeyondpiracy.org/publications/vessel-protection-detachments.

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United Nations Convention on the Law of the Sea.
www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

ANNEXURES

ANNEXURE 1

The lotus case of 192 occurred in high seas by collision of Turkish vessel with the French Vessel called the Lotus. This collision led to death of Turkish crew on board. Turkey government charged the French crew with manslaughter according to Turkish domestic laws. The matter was held by Permanent Court of International Justice and it was held that both France and Turkey has concurrent jurisdiction in the case. The contention was whether turkey violated international law by exercising criminal jurisdiction committed outside of turkey on French nationals. “It was held that turkey did not violate and laid three principles-

- 1) The first principle of the Lotus Case: A State cannot exercise its jurisdiction outside its territory unless an international treaty or customary law permits it to do so. This is what we called the first principle of the Lotus Case.
- 2) The second principle of the Lotus Case is that within its territory, a State may exercise its jurisdiction, in any matter, even if there is no specific rule of international law permitting it to do so. In these instances, States have a wide measure of discretion, which is only limited by the prohibitive rules of international law”

[<https://ruwanthikagunaratne.wordpress.com/2012/07/27/lotus-case-summary/>]

ANNEXURE 2

Protective principle allows a sovereign state to criminalize an action that occurred outside its borders that affects its own country

Passive personality principle means that states can try foreign nationals that have committed a crime on its nationals abroad.

ANNEXURE 3

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“The Australian Criminal Code Act 1995 (after the 2002 amendment) applies passive personality principle quite bluntly in favor of Australian victims of crime, regardless of the place of commission of the crime outside Australia. This reflected the Australian response to the Bali bombing in which several Australians were victims”

[<https://www.thehindu.com/opinion/lead/its-our-boat-our-courts/article4538854.ece>]



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