

**The Incident that Soured the Relationship between India and Italy –
Enrica Lexie Incident**

By *Palak Gupta*

Name of the Case	Enrica Lexie Case – Italy v. India
Citation	ITLOS Case No 24, ICGJ 499 (ITLOS 2015), 24 th August 2015
Year of the Case	2015
Appellant	The Italian Republic (State)
Respondent	The Republic of India (State)
Bench	<ol style="list-style-type: none"> 1) H.E. Judge Vladimir Golitsyn (President) 2) H.E. Judge Jin-Hyun Paik 3) H.E. Judge Patrick L. Robinson 4) Professor Francesco Francioni 5) H.E. Judge P. Chandrasekhara Rao (until 11 October 2018) 6) Dr Pemmaraju Sreenivasa Rao (as of 26 November 2018)
Acts Involved	<ol style="list-style-type: none"> 1) Indian Penal Code, 1860. 2) Code of Criminal Procedure, 1973.
Important Sections	<ol style="list-style-type: none"> 1) Section 3 of the Indian Penal Code, 1860. 2) Section 4 of the Indian Penal Code, 1860. 3) Section 300 of the Indian Penal Code, 1860. 4) Section 425 of the Indian Penal Code, 1860. 5) Section 188 of the Code of Criminal Procedure, 1973.

Abstract

The Enrica Lexie Case – Italy v. India is an International controversy concerning a shooting incident that took place at 20.5 nautical miles off the Indian coast. This incident happened on 15 February in the year 2012. Two persons were killed around the coast of Kerala, situated in India. Both of them were fishermen. They were sailing on St. Antony which was the Indian ship. India stated that these fishermen were killed by Italian Marines who were sailing on the Enrica Lexie (Italian Ship). India also stated that the Italian Marines killed the fishermen with the help of an oil tanker which was loaded on the Italian Ship Enrica Lexie.

Keywords

- 1) Exclusive Economic Zones
- 2) United Nations Convention on the Law of the Sea
- 3) International Tribunal for the Law of the Sea
- 4) Jurisdiction
- 5) Nautical Miles

Introduction

There have been many incidents in the past when civics has become a catastrophe of audacity. When principle and pride are invoked, people tend to forget that disdain is the basis of negotiation. An example of this is the landmark judgement of the Enrica Lexie case.

The arbitral tribunal constituted under Annex-VII of the United Nations Convention on the Law of the Sea (UNCLOS) passed the verdict on the Enrica Lexie Case and finally ended it.¹

This case was related to the exercise of criminal jurisdiction on two Italian Marines who were charged with the manslaughter of two fishermen. It was filed eight years back between Rome and Delhi.

The names of the Italian Marines were Sgt. Salvatore Girone and Sgt. Massimiliano Latorre. On 15 February 2012, these marines opened an oil tanker (MV Enrica Lexie) which was loaded on Enrica Lexie (Italian Ship). They were flying the Italian Flag from Singapore to Egypt. When

¹ The Wire “Is it the End of the Road for India in the Enrica Lexie Incident?” (Accessed on 2nd October at 7:10 pm) <https://thewire.in/world/the-enrica-lexie-incident-end-of-the-road>

they were around 20.5 nautical miles away from the Indian Coast, they started shooting and killed two fishermen who were sailing on St. Antony, which was the Indian ship.

Only a few moments after the incident took place, the guard of the Indian Coast, ambushed the Enrica Lexie and indicated the ship to the shore.

Indian government arrested those Italian Marines who killed the fishermen and charged them with murder. When the Italian government came to know about this, it alleged that India is exercising criminal jurisdiction in the case of those marines. The Italian government further stated that these marines were being used officially so, they had autonomous immunity.

This case harmed the relationship between India and Italy.

Background

On 15 February 2012, two Italian Marines mistook two fishermen as pirates. Those marines opened fire and killed the fishermen. This incident happened at around 20.5 nautical miles off Kerala Coast. As soon as the incident took place, the Indian government arrested those marines and charged them with murder. The Italian government challenged the arrest of the marines in the Kerala High Court. They alleged that the Indian government has no jurisdiction to arrest those marines. They also incensed Article 97 of the United Nations Convention on the Law of the Sea.

Afterward, this matter was taken up to the apex court of India, i.e. the Supreme Court. The Supreme Court stated that India had jurisdiction over the 200-mile Exclusive Economic Zone, according to the Indian Government notification which was issued per the Convention on the Law of the Sea. So, this case can be tried in India.²

It further stated that the state government could not exercise jurisdiction; only the Indian government can do this.

The Italian government was not satisfied with the decision of the Supreme Court of India. So, they tried the case in an arbitral tribunal known as “International Tribunal for the Law of the Sea”. They filed an arbitration case under Annex-VII of the United Nations Convention on the Law of the Sea.

² “Is it the End of the Road for India in the Enrica Lexie Incident?” (Accessed on 25th September at 3:12 pm)
<https://thewire.in/world/the-enrica-lexie-incident-end-of-the-road>

The International Tribunal for the Law of the Sea asked India and Italy to suspend all prosecutions which were in the case in 2015. It also returned those Italian Marines to Italy in 2014 and 2016 respectively.³

Facts

On 15 February 2012, this incident happened. Two Italian Marines named as Sgt. Salvatore Gironi and Sgt. Massimiliano Latorre started shooting and killed two fishermen. They said that they mistook the fishermen as pirates. The fishermen were sailing on St. Antony (Indian ship). The Indian ship was coming back to the harbour from a fishing cruise, and the Enrica Lexie (Italian ship) was on the way from Singapore to Egypt.

The Italian marines opened fire when the Indian ship was 20.5 nautical miles off Kerala Coast. This area comes in the 200-mile Exclusive Economic Zone, according to the Indian Government notification which was issued per the Convention on the Law of the Sea. The Italian ship and the marines were arrested around the Lakshadweep Islands.⁴

The names of the Italian marines who were arrested were Sgt. Salvatore Gironi and Sgt. Massimiliano Latorre. They were made liable for mischief and murder under section 300 and 425 of the Indian Penal Code, 1860. India alleged that keeping aside the piracy provisions, Sgt. Salvatore Gironi and Sgt. Massimiliano Latorre violated several provisions of the United Nations Convention on the Law of the Sea.

The Italian government challenged the arrest of the marines in the Kerala High Court. They alleged that the Indian government had no jurisdiction to arrest those marines stating that India does not have the jurisdiction for trying the case. Because this incident did not happen in the water body of India, instead, it happened in the High Sea.

To support this allegation, Italy invoked Article 97 of the United Nations Convention on the Law of the Sea. This article states that “In the event of a collision or the other incident of navigation

³ “Is it the End of the Road for India in the Enrica Lexie Incident?” (Accessed on 25th September at 4:07 pm) <https://thewire.in/world/the-enrica-lexie-incident-end-of-the-road>

⁴ “Enrica Lexie incident” (Accessed on 26th September at 4:56 pm) https://military.wikia.org/wiki/Enrica_Lexie_incident

concerning a ship on the high seas”, only the flag state of that particular ship can instigate penal proceedings”.⁵

Article 217 of the United Nations Convention on the Law of the Sea states that flag states hold complete jurisdiction over maritime vessels on the high sea.⁶ India has been given jurisdictional claims under Section 188 of the Code of Criminal Procedure and section 3 § 4 of the Indian Penal Code, 1860.

Afterward, this matter was taken up to the Supreme Court. The Supreme Court stated that India has jurisdiction over the 200-mile Exclusive Economic Zone, according to the Indian Government notification which was issued per the Convention on the Law of the Sea. Italy tried this case in an arbitral tribunal known as “International Tribunal for the Law of the Sea”. They filed an arbitration case under Annex-VII of the United Nations Convention on the Law of the Sea. In the end, the matter was transferred to the Permanent Court of Arbitration. The Italian Marines returned to Italy in 2014 and 2016 respectively.⁷

Issues

- 1) Does India have the jurisdiction to try the case?
- 2) Did India violate any of the provisions of the United Nations Convention on the Law of the Sea?
- 3) Should India receive compensation?
- 4) Do the Italian Marines have any immunity?

Related Provisions

- 1) Section 3 of the Indian Penal Code, 1860.
- 2) Section 4 of the Indian Penal Code, 1860.

⁵ “United Nations Convention on the Law of the Sea” (Accessed on 26th September at 6:10 pm)
https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

⁶ “United Nations Convention on the Law of the Sea” (Accessed on 27th September at 6:10 pm)
https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

⁷ “Enrica Lexie incident” (Accessed on 27th September at 9:23 pm)
https://military.wikia.org/wiki/Enrica_Lexie_incident

- 3) Section 300 of the Indian Penal Code, 1860.
- 4) Section 425 of the Indian Penal Code, 1860.
- 5) Section 188 of the Code of Criminal Procedure, 1973.
- 6) Article 1 of the United Nations Convention on the Law of the Sea, 1982.
- 7) Article 87 of the United Nations Convention on the Law of the Sea, 1982.
- 8) Article 90 of the United Nations Convention on the Law of the Sea, 1982.
- 9) Article 92 of the United Nations Convention on the Law of the Sea, 1982.
- 10) Article 97 of the United Nations Convention on the Law of the Sea, 1982.
- 11) Article 217 of the United Nations Convention on the Law of the Sea, 1982.
- 12) Article 290 (Paragraph 1) of the United Nations Convention on the Law of the Sea, 1982.
- 13) Article 6 of Rules of Procedure, 1964.
- 14) Article 23 (Paragraph 3) of Rules of Procedure, 1964.

Judgement

The Supreme Court stated that India has jurisdiction over the 200-mile Exclusive Economic Zone, according to the Indian Government notification which was issued as per the Convention on the Law of the Sea. So, this case can be tried in India. It further stated that the state government (Kerala government) could not exercise jurisdiction; only the Indian government can do this.

Afterward, the Permanent Court of Arbitration stated that by confining the Italian ship, India didn't violate any of the provisions of the United Nations Convention on the Law of the Sea. The tribunal by the majority of 3:2 held that the Italian marines namely, Sgt. Salvatore Girone and Sgt. Massimiliano Latorre was immune by their status as military officers.⁸

The arbitral stated that Italy violated none of India's rights to sovereignty. Instead, it was noted that this incident was a violation of the rights of India regarding the freedom to navigate. This is stated under Articles 87 and 90 of the United Nations Convention on the Law of the Sea, 1982. In addition to this, it was held by the tribunal that India is entitled to compensation for damage to

⁸ "Enrica Lexie incident" (Accessed on 28th September at 11:58 pm)
https://military.wikia.org/wiki/Enrica_Lexie_incident

property (St. Antony), the life loss of two Indians, the crew of the Indian ship, and harm caused to the captain.

The Kerala government gave 5 lakh rupees to the victims. Afterward, the government of Tamil Nadu also gave the same amount to the families of the victims. Keeping aside the fact of this compensation, the Kerala government also gave employment to the wife of the deceased. Italy's government gave compensation of 1 crore to the victim's family.⁹



⁹ Anubhav Pandey “Enrica Lexie Case – Italy v. India before the International Tribunal for The Law of The Sea” (Accessed on 28th September 12:35 am)
<https://blog.ipleaders.in/enrica-lexie/>