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Jurisdiction Over High Seas: An Analysis of Enrica Lexie Case

NANDINI AGRAWAL¹

ABSTRACT

The case of Enrica Lexie (Republic of Italy v. Union of India), which is a landmark case regarding the ramifications on the Law of the Seas, is discussed in the article. This is a contentious dispute involving the country's legal system since it involves the Killing of two Kerala fisherman on board the Enrica Lexie by two Italian marines in February 2012 which was almost ten years ago. This occurrence occurred around 20.5 nautical miles away from the shore of the Indian territorial limit, where the oil ship Enrica Lexie was stationed. The crime had been perpetrated in the water while flying the Italian flag. After this incident, the two mariners according to the Indian Penal Code were arrested on a variety of offences. The Republic of Italy claimed that India lacked jurisdiction over this issue and that it was also in violation of the United Nations Convention on the Law of the Sea, which both countries had accepted and so made them a party to the convention. The argument has sparked intense debate between the Italian Republic and the Republic of India as well as the entire international community.

Therefore, the case offers the occasion for critical reflections on a hotly debated issue of international law. The conundrum of state jurisdiction for crimes committed at sea also encompasses led to a dangerous disagreement between the nations, which in turn caused a diplomatic crisis among the nations. The legal ramifications of this issue would be covered in the subsequent document, and the opposing viewpoints continued to exist between the two countries, and some of the Problematic disagreements about the rule's application were based on Law of the sea convention, usually referred to as the United Nations Convention on the Law of the Sea (UNCLOS).

This paper deals with the analysis of the case and jurisdiction over the high seas and different maritime zones and how this case created diplomatic disputes between the two countries and the social and legal impact of the case.

I. INTRODUCTION

The Enrica lexia case is one of the most debatable cases regarding the jurisdiction over the high seas. In this case, 2 Indian fishermen were killed by 2 Italian marines. The Indian fishermen

¹ Author is a student at Amity Law School, Noida, India.

were on board Indian fishing vessel named St. Antony were fired upon by Italian marines on board the Italian flagged oil tanker Mv named Enrica Lexie. The said incident happened about 20.5 nautical miles off India's coast from a place called Ambalapuzha. The incident happened in the contiguous zone of India which means it was within the boundaries of India's Exclusive Economic zone. The incident was communicated through mercury chat and following the event, the ship was made to return to the coast of Kochi.² Further the 2 Italian marines namely, Massimiliano Latorre and Salvatore Girone were taken into the judicial custody and were charged under section 302 of the Indian Penal code which is for murder and section 34 which states that there was a common intention behind the crime. The Fir was filed under section 154 of the Indian criminal procedure code.

As per the defence of the Italian marines, they mistook the Indian ship for a Somali pirate ship as they had previously sounded an alarm as a warning for the Indian ship to move away, but there was no reaction. The arrest of the Italian marines by the Indian authorities led to tension between the 2 countries as it was believed by the Italian authorities that India had no jurisdiction to prosecute the case.

II. MARITIME ZONES DEFINED BY THE UNITED NATIONS CONVENTION ON THE LAW OF SEA

1. **INTERNAL WATERS-** These water body consists of the area between the coast and the baseline which includes the ports, internal seas, and the havens. The aerial space above and the subsoil below those areas belong to these internal waters. The state in which these internal waters belong has the full sovereignty over them.
2. **TERRITORIAL WATERS-** These water bodies are adjoining the internal waters and extends up to 12 nautical miles which is approximately 22kms of the baseline. In these waters, the neighbouring state is sovereign and are allowed to use the resources. These states can also set certain laws on navigation, fishing, mining, public safety, customs and protection of the environment. Foreign vessels also have a right to pass through these territorial waters that is if they don't carry out any criminal activities or disrupt the peace of these waters.

The neighbouring state can set laws in 4 fields which are customs, taxations, pollution, and immigration beyond 12 miles from the territorial waters if the infringement started within their

² Eboli, Valeria & Pierini, Jean Paul. (2012). The "Enrica Lexie case" and the limits of the extraterritorial jurisdiction of India.

territory.

3. **EXCLUSIVE ECONOMIC ZONE-** This goes beyond the territorial waters, which is 200 nautical miles from the baseline. The convention has given the states right to use resources from the exclusive economic zones, and have sovereign rights for the exploitation, exploration, and management of the living and non-living resources.
4. **HIGH SEAS-** The water bodies which are beyond the exclusive economic zone are referred to as the high seas. It is beyond any national jurisdiction and is considered as a common heritage of all mankind. States are given permission to carry out activities in the high seas till the time they are for peaceful purposes like transit, marine science.

III. EXCLUSIVE FLAG STATE JURISDICTION

Since no one has the jurisdiction over the high seas, then what would happen if a crime is committed in the high seas which leads to the exclusive flag state jurisdiction principle which states that-

Any crime that is committed or any illegal activity committed on a ship comes under the jurisdiction of the country where the ship has been registered in. A merchant vessel must only be registered in 1 jurisdiction.

As stated in the United Nations convention on the law of sea, every state shall exercise jurisdiction over the ships flying its flag.

Any refugee in a ship is under the laws of the country in which the ship is registered.

International law also in general allows a country to exercise jurisdiction outside of its territory when-

- The wrongdoer is a citizen of the prosecuting state
- The sufferer is a citizen of the prosecuting state
- The crime is done in one country, but it has effects on some other country.
- The crime acts as a threat to the prosecuting country.
- The said crime is universally convicted. For example, slavery, human trafficking

IV. TERRITORIAL JURISDICTION OF THE STATE REGARDING SEAS

When discussing the state's standing in relation to the seas, there are several categories into which it can be divided. The first is the opinion of the legislative body, which is the body that approves state laws and regulations, followed by the judiciary body, which is the body that

adjudicates disputes and functions by punishing violators of this law's rule and regulation when they do not abide by them by given either a judicial order or a government decision. The State can use this matter to exercise its jurisdiction if anything occurs within its borders. If it goes beyond this, it would be viewed as improper and unlawful. When a crime occurs physically inside the territorial boundary of the state or the territorial border of it, it is deemed incorrect if it crosses this line of exercising power. On the other hand, when it comes to a crime, it is regarded unlawful under this subject when the crime is committed outside of the state but has an impact on that state then the state can exercise territorial jurisdictions. It is often seen that the country invokes its territorial jurisdiction when its inside the territory of India, However, in some circumstances, it can be applied to extraterritorial jurisdiction³, and this has gained acceptance both under customary international law and international law.

To invoke this principle, you must meet specific requirements.

1. a citizen's offence committed in a foreign country.
2. A foreigner who violates state interests by harming its citizens is also called as the principle of the passive personality.⁴

The last rule is extraterritorial, which is the general rule that governs when a state can exert its sovereignty When there is no relation to the crime at all, but this may only be done if the international crime and jus cogens principles, but when it comes to the water bodies it is a different story. This issue has generated controversy in the past and now as well when we discuss the sea, there are a variety of commercial uses and other activities done in the sea thus it is to be kept free.

V. GENEVA CONVENTION AND THE LAW OF THE SEA

Prior to this, the principle underlying the United Nations Convention on the Law of the Sea (UNCLOS), commonly known as the Law of the Sea Convention, was developed in a case known as the Lotus case⁵. whereby the PICJ said that when a dispute develops on the high seas, it must be viewed as a disagreement between two states, in the ruling it was also stated that a criminal offence done on the open seas when a ship carrying the national flag should be regarded a disagreement between the two countries, but no international law regulation imposes that territorial jurisdiction is inapplicable

³ 5 C. RYNGAERT, 'The Concept of Jurisdiction in International Law', p. 1, at: <https://unijuris.sites.uu.nl/wpcontent/uploads/sites/9/2014/12/The-Concept-of-Jurisdiction-in-InternationalLaw.pdf>

⁴ G. R. WATSON, 'The Passive Personality Principle', *Texas International Law Journal*, 28, 1993.

⁵ The Lotus Case (Turkey v. France), Judgment, 1927, Series A. - No. 10.

The Geneva Convention on the High Seas was established in 1958 as a treaty that gave new rules and regulations to international law this gave states the right to prosecute criminals who commit crimes within their borders or on their territory, but after World War II there was a need for a treaty regarding this. According to a fresh viewpoint on this idea, no state may force its authority on the high seas, the convention also disapproved of the PICJ's lotus case concept.

According to Article 11 of the treaty, the person competent to apply criminal provisions, other than the judicial authority⁶, is present whenever an accident or other event involving navigation takes place on a ship on the high seas either by the flag state or the state of which he is a citizen.

By ratifying the contiguous zone, which states that the treaty's scope as the state's authority expands to include international waters, and by applying the rule above it can be concluded that the state has sovereignty only to the limited area that is within the coat of the territory and not beyond that.

The territorial sea and the contiguous zone come first, followed by the exclusive economic zone (EEZ), then the high seas and exclusive flag state jurisdiction. It has been noted that the sea is separated into distinct jurisdictions.

(A) Facts of the Enrica Lexie Case

On February 15, 2012, an Indian fishing boat known as "The St. Antony" (or boat) containing 11 men was fishing in the Exclusive Economic Zone of India, precisely 20.5 nautical miles off the coast of Kerala. On the Enrica Lexie, an Italian oil tanker ship, there were two Italian men. These two men were on board their tanker as it made its way from Egypt to Sri Lanka. As piracy was common in that region, it had a Vessel Protection Detachment, an Italian force to guard the ship from sea pirates.

The Italian marines saw the Indian fishing ship and mistook them as pirates and put off their alarm, but as there was no reaction from the Indian ship, they fired by the vessel protection detachment that led to the killing of the 2 fishermen. The open fire also led to damage to the ship and endangered the lives of the other 9 fishermen on the ship.

The local guard contacted the Indian Coast Guard and Indian Navy about this, who then checked into the situation and discovered the Enrica Lexie ship. When questioned, they admitted that the ship was responsible for the shooting, and the Indian Coast Guard then requested that they return to the Indian coast so that the death could be investigated as per protocol. The ship's captain consented to the probe and sailed the vessel to Kochi Port.

⁶ 1958 Geneva Convention on the High Seas, Article 11.

Italy further claimed that the Indian military used coercion and deceit to stop the Enrica Lexie's⁷ progress and bring her to the coast by employing aviation and Coast Guard units. Although India has denied any such action on their side and asserts that this was only part of their responsibility to uphold the nation's maritime security, this is still a matter of merit that has not yet been resolved.

When the ship arrived at the coast, the crew was questioned and a comprehensive investigation of the occurrence with the recording of evidence was conducted. The leader of the VPD, Sergeant Massimiliano Latorre, and another VPD member, Sergeant Salvatore Girone, were requested to leave the ship when it was determined by the Kerala Police that they were engaged in the shooting. They were both marines serving in their official capacity as members of the Italian armed forces.

Both were charged on February 19 with several offences under the Indian Penal Code, 1860, including murder and attempted murder, and they were both taken into custody. For both marines, the possibility of the death sentence existed.

When Italian government was made aware of the said incidents, they took actions to investigate the matter on their own and a criminal investigation had begun in Rome, an officer of the Italian Navy was sent to India to deal with the accident and to complete their investigation regarding the matter.

VI. DISPUTE BETWEEN THE INDIAN AND ITALIAN COUNSELS

Various allegations made by the Italian republic towards India were as follows-

1. The very first question raised by the counsel of the Italian marines was on the jurisdiction of the matter, which as per the Italian counsels lies exclusively with the republic of Italy as the firing took place in the contiguous zone, which is 12 nautical miles beyond the territorial waters and comes within the exclusive economic zone of India.

As per section 4 of the Indian Penal code, Indian courts only have jurisdiction till the territorial waters of India and thus even the police had no such jurisdiction to file the FIR.

For cases extending beyond the territorial waters of India, only citizens of India can be prosecuted and not foreigners.

2. It was also argued that India has ratified the UNCLOS and hence as per the convention,

⁷ <https://www.livelaw.in/columns/italian-marines-enrica-lexie-case-deciphering-pca-award-in-the-italian-republic-v-the-republic-of-india-159397>

India cannot initiate criminal proceedings on this incident as it took place on the high seas and because the Italian courts have already started the proceedings of the case back in Rome.

3. It was also alleged that Indian authorities conspired by asking the Italian ship, *Enrica Lexie* to change their route and come back to Kochi.
4. Section 87 1(a) of the United Nations convention on the law of sea states that every country has the freedom to navigate on high seas without any interference of any sovereign bodies. It was also held that these Italian marines were on their official duty and were trying to protect and secure their country's interest being on a very dangerous part of the sea in which activities like piracy are very common and hence as given in the UNCLOS, they are eligible to immunity.

They prayed the court to grant a petition which would declare the charges null and void.

Various allegations made by the Indian counsels towards Italy were as follows-

1. The counsels of India stated that there was no question on India's jurisdiction in this case as the incident had occurred in the contiguous zone of India as it happened 20.5 nautical miles of the baseline of Indian coast. And as per the article 27 of the United Nations convention on the law of sea, criminal jurisdiction is given to the coastal state on the foreign ship if the crime is committed on the ship, but the outcome of the crime extends to the said state. Like in the above case, the peace and the good order of the country was disturbed by the murder of 2 innocent Indians.
2. It was further stated that the Indian boat namely *St. Anthony* was almost at 100 metres from the Italian ship (*Enrica Lexie*) and thus was of no threat to the Oil tanker.

It was contended that Article 32 which states the **Immunities of warships and other government ships operated for non-commercial purposes**⁸ and Article 56 which states the **Rights, jurisdiction, and duties of the coastal State in the exclusive economic zone** Of UNCLOS were applicable as both these laws are concerned with the maintaining of law and order in the exclusive economic zone of a country. And hence it gives India the jurisdiction to arrest and investigate the accused Italian marines.

3. It was also to be noticed that the Oil tanker *Enrica Lexie* was a private Oil tanker and was only considered as a private security team and thus not a public ship, hence it does not get any benefit by immunity from the India legal system.

4. It was stated that Kerala coast didn't have any piracy and thus the fishermen were killed with malice
5. It was also argued that since the incident happened in the daylight hour, then flashing the flashlight as an alarm was not useful and is it wasn't visible.

VII. KERALA HIGH COURT- MASSIMILIANO LATORRE AND OTHERS VS, UNION OF INDIA⁹

The High Court of Kerala ruled the petitioner (The Marines) guilty in "Massimiliano Latorre & Ors. v. Union of India" and affirmed the Indian courts' territorial and criminal authority to hear the matter. The Kerala High Court's ruling was overturned by the petitioners' appeal to the Supreme Court of India.

The case was a writ petition which involved three petitioners -

- Sergeant Salvatore Girone
- Chief master Sergeant Massimiliano Latorre
- The republic of Italy which was represented by counsel General Giampolo Cutillio

And the respondents were-

- Government of India
- State of Kerala

The question in the case remained whether the Italian marine should be tried for the murder of the Indian fishermen under India's jurisdiction or under Italy's jurisdiction and whether the Italian marines should be given the immunity.

(A) Judgement by the kerala high court

The court ruled that regarding the first problem, the Italian marines may be tried under Indian law and be subject to the jurisdiction of Indian courts.

The event occurred within India's Exclusive Economic Zone (EEZ), which in this case is the coastline zone, and as such, under the law of the sea, it has the power to uphold law and order within the coastal territory. It has the right to intervene in its legal affairs if any person of their nationality is impacted.

They argued against the petitioner's claims by claiming that the freedom of navigation was not unrestricted and that since the fishermen were killed by Italian marines, their rights had been

⁹ WP(C). No. 4542 of 2012 (P)

violated. In any event, the independence should not entail that India must observe the entire situation as a silent bystander.

The court ruled that the Italian marines would not be granted sovereign immunity regarding the second problem.

The court provided the reasons listed below-

- First off, because they were hired to guard a private individual's yacht, the Italian marines weren't performing any official duties for their nation. This ship was operating commercially and had nothing to do with any obligations imposed by the Republic of Italy.
- Second, even though Sovereign Immunity is recognised under Indian law, the necessary conditions are not present in this case. They did not adhere to any rules or conventions that would apply in the event of piracy, making this a case of violent murder that cannot be excused as an act of sovereign duty.

The petitioners were hence asked to give a sum of Rs. 1,00,000 to both the respondents.

(B) Judgement by the supreme court of india

An appeal was made to the supreme court by the petitioners and the supreme firstly overruled the judgement given by the Kerala high court on the basis that it didn't have the jurisdiction to deal with this matter and investigate it. The supreme court also further asked for a special court to proceed with this matter.

The arguments made throughout the hearings proved that the event took place 20.5 nautical miles from India's baseline, outside of Kerala's territorial seas. This suggests that neither Kerala's police department nor its courts should have any authority over the matter.

The Respondents countered that because the event took place within India's contiguous zone, Section 188A of the IPC¹⁰ and the 1973 Code of Criminal Procedure may extend Kerala Police's and the courts' authority to the exclusive economic zone and the contiguous zone.

This was further overruled by stating that the sections under the Indian penal code and the code of criminal procedure gave the jurisdiction to the Union of India to try the offence instead of Kerala. And the right to investigate also remained in the hands of Union of India.¹¹

Additionally, it was mentioned that the two accused were marines who served in the Royal

¹⁰ Section 188A of the India Penal code

¹¹ 3 PCA Case No. 2015-18

Italian Navy; as a result, the Republic of Italy is worried about a dispute involving their actions. As it was noted, Italy had begun its own inquiries and legal actions over this crime, which might have resulted in a sentence of 21 years to life in jail. This indicates that there are two nations involved in the dispute, and as Kerala is an Indian province, it lacks legal authority in this circumstance.

The Respondents also maintained that Section 2 of the IPC stated that all criminals inside the State of India would be subject to the IPC. This would indicate that the Indian laws would take precedence over the UNCLOS rules because the offence occurred on Indian soil.

The petitioners refuted this by claiming that the UNCLOS Act was not established until considerably later than the Indian Penal Code, which was passed in 1860. As a UNCLOS signatory, India is likewise bound by its requirements and must ensure that all its maritime policies are in line with the UNCLOS. It was also added that before the UNCLOS, the law of the sea was governed by the Maritime zones act, 1976 and the laws in this act was like the ones in UNCLOS.

Finally, it was argued that by reading Articles 97 and 100 of UNCLOS, it could be determined that Kerala did not have jurisdiction because the UNCLOS provision prohibited coastal states from interfering in incidents involving foreign navigation, including these, even about the investigation. Only the flag country, or the nation whose flag was flying over the ship, had the authority to undertake an investigation.

To combat piracy in the region, Article 100 also calls for collaboration between the signatories. The facts as stated would be covered by this article, and the Union of India may move forward with its inquiry.

Thus, the Union of India established a special court to go forward with this case according to the India provision but giving more importance to the UNCLOS 1982.

In January 2014, India charged the Italian marines under the Suppression of Unlawful Charges (SUA) following this ruling. Due to a few health issues, Sergeant Latorre was also returned to Italy. The Supreme Court then ordered the parties to resolve the SUA charges controversy. For a long time, there were discussions over this, and Italy was extremely opposed to it since they had committed acts of terrorism when their sole goal was to defend their ship from pirates. The Indian Ministries of External Affairs and Law and Justice also announced that the SUA fees would not be relevant, and that these fees would thus not be assessed and hence these charges were dropped against the marine.

(C) Judgement by international tribunal for the law of sea

Italy not please with the decision made by the supreme court of India, pleaded to the International Tribunal for the Law of the sea (ITLOS). They pleaded to the tribunal that-

1. India should be not allowed to try the case and halt its jurisdiction over the Enrica Lexia case and must also be not allowed to take any further action against the 2 marines.
2. India shouldn't put any restrictions on the movement of the marines and allow Sergeant Girono to go back to Italy and Sergeant Latorre to be present in India for the proceedings.

India further prayed to the tribunal to dismiss the pleadings by Italy.

The decision made by ITLOS was that India and Italy should discard all its ongoing proceedings and not start with any new trial which would affect the decision by the arbitral.

VIII. ARTICLE 97 AND ITS IMPLEMENTATION IN THE ENRICA LEXIE CASE

The Italian Republic benefits from the adoption of this clause because it specifies that only the flag state has the authority to detain the ship and conduct on-the-sea arrests and investigations. It is a case of inadvertent navigation, according to Italy which takes place in the high seas.

It also claims that the contiguous zone and the exclusive economic zone should be regarded as high seas for the purposes of implementing Article 97¹², it further declared that India is not allowed to exercise criminal jurisdiction because of the Lotus Doctrine.

India, in response, stated that article 97 wouldn't apply since this involved a murder, which isn't permitted to be included in the concept of incidental navigation. According to interpretation, the incident must be unplanned and unexpected, but firing on, this cannot be justified by the fact that there were 200 metres of unarmed fishermen on board.

The Republic of India pointed out that, contrary to the Exclusive economic zone and Contiguous Zone's definition of the high seas in article 86 of UNCLOS, article 97 only applies to the high seas. Considering all the evidence, the Supreme Court determined that India has 200-mile Exclusive economic zone which claimed ownership but noted that only an Indian court could hear the case. The Indian government, not the Kerala government in this instance, can exercise this jurisdiction.

(A) Permanent court of arbitration

As per the international Tribunal for the law of sea, the case of Enrica Lexie should be referred to the permanent court of arbitration, and thus a tribunal was formed to start with the

¹² https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

investigation on the matter. The name of the case under the tribunal was ‘The Italian Republic vs Republic of India’¹³. The pleadings made by both the countries were as follows-

Italy’s pleading-

- Italy pleaded for India to no longer have any jurisdiction over this matter and the complete jurisdiction should lie with the permanent court of arbitration and to reject India’s pleading claiming any jurisdiction over the matter.
- It was also stated that the acts which were used in the earlier proceedings violated the following articles of United Nation convention on the law of sea-
 1. Article 33: India didn’t have the jurisdiction over the contiguous zone to imprison and fine the Italian marines.
 2. Article 56: By handling the procedures for the Italian marines, India violated Italy's rights in the Exclusive Economic Zone and went above and beyond what was within its legal purview.
 3. Article 58: India's activities have violated all nations' rights to the international, authorised use of the Exclusive Economic Zone for shipping.
 4. Article 87: All governments shall be permitted to move their ships freely in international waters, and this movement must be in accordance with the UNCLOS treaties.
 5. Article 89: India violated the UNCLOS requirements by invoking its sovereignty through its processes and inquiry.
 6. Article 92 of the UNCLOS was broken since Italy, the flag state, should have had authority over any incidents involving the *Enrica Lexie*.
 7. Article 100 was violated by India by asking the Italian ship to change its path which it didn’t have any right or jurisdiction over and by not respecting the Italian marines acts to deal with piracy
 8. Article 97 was violated by investigation of the events and detaining the ship.
 9. India has violated the sections of UNCLOS by arresting the Italian marines as it has extended its jurisdiction on another country.

¹³ Kulkarni, R.M. (2020) *The Permanent Court of Arbitration delivers its award on the ‘enrica lexie incident’ between India and Italy, Koinos*. Available at: <https://indianarbitrationlaw.com/2020/08/03/the-permanent-court-of-arbitration-delivers-its-award-on-the-enrica-lexie-incident-between-india-and-italy/> (Accessed: 11 July 2023).

- Italy also requested the tribunal to proclaim that-
 1. India should halt with all the court proceedings and investigations which contravene the provisions of UNCLOS.
 2. India must make changes regarding the freedom and movement of the Italian marines detained.
 3. India should also compensate the Italian marines for the trouble caused to them.

India's pleading-

- The tribunal has no sovereignty on this matter and claims by Italy.
- India's arguments to be help valid.
- Set aside the arguments by Italy.
- Open fire by the Italian marines violated the following provisions of UNCLOS-
 1. Article 56: Italy's conduct in the seas exceeded its rights by firing, infringing on India's sovereign rights.
 2. India's rights as a coastal state in the Exclusive Economic Zone were disregarded under Article 58.
 3. Articles 87, 88, and 90—Violation of India's right to utilise its Exclusive Economic Zone and freedom of passage.

Finally, India asked the tribunal to require Italy to pay damages for any infringement of the UNCLOS's rules.

(B) Award by the permanent court of arbitration

- Given that both India and Italy signed the UNCLOS 1982, the tribunal claimed that it had jurisdiction over this case.
- The tribunal determined that Italy had violated a UNCLOS clause by shooting on and limiting the movement of St. Antony, therefore violating India's right to freedom of passage in the waters.
- Italy was responsible for the deaths of the two fishermen, for putting the lives of the other fishermen aboard the boat in jeopardy, and for causing damage to the fishing boat.
- Article 87, Article 92, or Article 100 of the UNCLOS 1982 were not broken by India.
- India had not overstepped its UNCLOS-granted authority.

- The panel ruled that India must halt all legal actions and that it lacks jurisdiction over the issues at hand.
- For the crimes they committed, the Italian marines must be granted impunity.
- The panel concluded that Italy had not violated Articles 56, 58, or 88.

The supreme court of India after the decision by the permanent court of arbitration ended all the on going proceedings regarding the Enrica lexie case. The Enrica lexie case would now be handled by the Italian courts. Italian republic was also asked to pay the victims an amount of rs. 10 crores.

(C) Outcome of enrica lexie case study

The Italian Republic was caught off guard and had no other option but to bring the situation to the international tribunal for the law of the sea (ITLOS). Even in this situation, they argued that India lacked jurisdiction. There is a political crisis between due to this problem between

The 2 nation and a diplomatic disagreement involving them. Finally, on July 2, 2020, the Permanent the Court of Arbitration issued its final decision and found that India had not infringed article 87, article 92, article 97, and article 100 as the opposition had argued. India is unable to use its authority over the Marines "and must stop doing so as a means of sufficient remedy. Additionally, it claimed that the Italian Republic had violated UNCLOS Articles 87 and 90. After the tribunal ruled that India had a right to sue for compensation for the captain and crew member's bodily, mental, and moral suffering, the Italian republic awarded the victim's family 1 crore rupees in restitution.

(D) Other cases regarding the jurisdiction over high seas

a. S.S. Lotus: France v/s Turkey¹⁴

i. Facts of the case-

- A French ship called the "Lotus" was sailing to Constantinople on August 2, 1926, and Lieutenant Deman was the ship's officer. The Turkish ship "Boz-Kourt," whose captain was Hassan Bey, was sailing across the open seas on the same day.
- On August 2, 1926, the Turkish steamer Boz-Kourt and the French ship S. S. Lotus collided violently. This incident took place in Greece's Mytilene. Boz-Kourt was the ship that collided, was damaged, and finally sunk. The Turkish ship and its passengers were saved by the S. S. Lotus with great difficulty. While just 10 of the passengers

¹⁴ 1927 P.C.I.J. (ser. A) No. 10 (Sept. 7)

aboard the Boz-Kourt ship may have been saved by Lotus, 8 people on that ship still died.

- When the ship arrived in Constantinople on August 3, 1926, Turkish officials questioned Lt. Demons, a French national, and asked him to present evidence of the incident.
- Both Turkish and French lieutenants who were on duty on August 5th, 1926, were detained by Turkish authorities without their knowledge.
- Hasaan Bey and Lt. Demons were both charged with manslaughtering, which is the term used to describe unintended killing.
- The French government opposed this case since they had no previous knowledge that its captain had been detained and charged with unintended homicide.
- Lt. Demons contended that the Turkish government lacked authority to bring a prosecution against him when the case was considered by a Turkish court on August 28. He argued that because the incident occurred on the high seas, which are those parts of the oceans that are not under national sovereignty, France, whose flag was flying over the ship, had ultimate control over it. This defence was rejected by the Turkish court.
- Deman was charged with murdering the passengers on board and received a sentence of 80 days in prison and a fine of 22 pounds, but Hassan Bey received a harsher punishment. The French captain and his representative claim that this Turkish Court ruling violated international law on jurisdiction because it was made in a biased manner. However, the French ship made it possible for those passengers to survive the disaster. Therefore, Turkey lacks the authority to file any claims against France.
- France made the decision to file a case with the International Court. They believed that the situation in Turkey was unjustified.
- Afterward, the Permanent Court of International Justice (PCIJ), which is based in The Hague and Geneva, was chosen to hear this issue on the basis of mutual acceptance by both Turkey and France.
- The administration of France and Turkish representatives signed a special agreement on October 12, 1926, stipulating that the Permanent Court of International Justice will apply international law to all future proceedings in the case. According to Article 40 of the statute of limitations and Article 35 of the court's regulations, the judgements had to be given.

- France wanted to exonerate Lt. Demons from this case and drop all accusations against the accused, which caused a disagreement between the two nations. However, Turkey was saying that Lt. Demons was responsible for the loss and should be sent in jail in addition to paying the fines. Finally, they made the decision to resolve the disagreement over the running of the Permanent Court of International Justice.

ii. Questions Raised

The fundamental question raised in this dispute involving France and Turkey about Lotus and Boz-Kourt. Were-

- When Turkish courts exerted jurisdiction over a crime committed by a French national outside of Turkey, did Turkey breach international law?
- What economic and financial reparation should be given to Mr. Demons in accordance with international law if Turkey is determined to have violated these standards if the answer is yes?

The court had to determine if the allegations provided by Turkey were legitimate or whether France was correct and should be exonerated of all accusations against Mr. Demons.

iii. Judgement

- The Permanent Court of International Justice's 12th session was when this case was decided (PCIJ). Basdevant, a professor at the Parisian Faculty of Law, represented France in this matter, and His Excellency Mahmout Essat Bey, the Turkish Minister of Justice, represented Turkey. Huber served as president, Mr. Weiss as vice president, and former president Loder. Lord Finlay, Nyholm, Moore, De Bustamante, Altamira, Oda, Anzilotti, and Pessoa were the judges selected for this case.
- The Permanent Court of International Justice (PCIJ) in Geneva issued its ruling on the two principal issues on September 7, 1927. First, the Permanent Court of International Justice (PCIJ) determined that Turkey had no legal authority to prosecute Lt. Demons, a citizen of France, because both nations shared concurrent jurisdiction over the collision that had place in international waters. However, the Permanent Court of International Justice (PCIJ) eventually found that, despite France having the jurisdiction since their flag was flying on the ship, international law did not fully grant France the jurisdiction and authority. When Turkey sued France in this instance, they did so in accordance with their legal obligations and did not violate international law or violate Article 15 as required by the French authority.

- Given that France's first argument was invalid and rejected, as well as the Permanent Court of International Justice's rejection of its second argument, which concerned the amount of compensation owed and payable to Mr. Demons,
- The International Court came to the decision that there is no International Law provision that forbids a State, whose ship is impacted by a collision of ships, from bringing criminal charges against a violator. In such a case, the Turkish Court has the authority to hear the case and ruled that there has been no violation of international law. Since there was no international law that could compel Turkish dialogue as their ship was destroyed, France's position about their flag on the ship in international waters did not apply here either.

iv. Legal impact

- **Lotus principle**

The lotus concept was established thanks to the Lotus Case. Regarding the collision, local claim, etc., there are a few specific regulations that have been released in respect to the Lotus case.

The first Lotus Principle dealt with a state or nation's territorial sovereignty. Without an international agreement or passed legislation granting it the authority to do so, a state or country has no right to exercise its power outside of its borders. The first lotus principle is this. It is mentioned in Paragraph 45 that unless a specific law is passed by an international tribunal to be implemented, one country cannot function without its jurisdiction.

The second tenet of the Lotus case was that a state or nation has the right to exercise its authority on its soil. The state has the right to use its power in whatever circumstances that it sees fit. Even if there is no international law that grants the state exclusive rights to do so, the state should have the right to exercise its jurisdiction within the limits of its own authority. In such situations, the nation or state must request a wider extension of the jurisdiction that is safeguarded by the fundamental principles of international law. In both paragraphs 46 and 47, this is indicated.

The lotus concept made it clear why a nation or state should be granted freedoms inside its borders. The application of international law was unrestricted. Boz-vessel Kourt's was regarded as Turkish territory in this case. Turkey was now free to pursue any legal action against France and Mr. Demons.

v. Social impact

High seas crashes and territorial disputes now fall under a new area of international law

according to the Lotus case between France and Turkey. In this instance, it was determined that Turkey had the right to file a claim against the two connected parties even if the incident occurred outside of their respective jurisdictions because Lotus caused harm to the Turkish ship. The judgement in this case would be applied in all subsequent instances involving or relating to it, it was determined at the time. Since then, the Lotus case has been cited in both civil and criminal proceedings. The choice of what the area or state would occupy was crucial.

France has long maintained that as most nations only prosecute matters before the State Flag, legal arguments in collision cases are typically addressed in criminal prosecutions. Following the Lotus case, the High Seas Convention was ratified in Geneva in 1958, and it made clear that Article 11 of that agreement should govern collisions on the high seas. The PCIJ decision would have been different if this conference had been held prior to the Lotus crash. L.t Demons could not be charged as a crime in Turkey due to Article 11's prohibition on such action.

IX. A MENACING PRECEDENT

After the Permanent Court of Arbitration rendered its decision, the Central government made its stance clear, advising the Supreme Court of its determination to uphold the Permanent Court of Arbitration's judgement and put the matter to rest. As a result, the Supreme Court issued an order mandating the closure of the existing proceeding in this matter. The question remains that while the case has been solved, but has it set a bad precedent.

It was clear right away that this was an instance of arbitrary and unjustified shooting at helpless fisherman who were trying to come home after a long day of work. An oil tanker was in no danger from the little fishing boat, which never approached it at a risky distance. There were no reports of pirate activity in the Laccadive Sea, making it one of the safest areas of the larger Indian Ocean. The zone was kept extremely safe by the Indian Naval authority's constant strong presence and patrols in the region.

A bunch of gun-happy people took advantage of an opportunity to shoot at defenceless men while pretending to be pirates. Even though these guys were shot and killed within India's legal and sovereign territory, India gave up the ability to prosecute them before a foreign jury in a foreign court that has traditionally held a European-centric viewpoint. International agreements and foreign treaties have once again weakened India's sovereign powers.

Additionally, similar incidents involving Indian fisherman have occurred before. A report provided by the Tamil Nadu government before the Madurai bench of the Madras High Court states that between 1991 and 2011, the Sri Lankan Navy murdered 85 fishermen in Indian seas and wounded 180 more. The Pakistan Maritime Security Agency (PMSA) detained five trawlers

carrying thirty Indian fishermen; this is not an unusual occurrence. 54 Indians have been held by Pakistani authorities on the grounds that they violated Pakistani territorial waters.

These attacks on Indians, even within our own borders, have grown all too common in recent years. In these circumstances, it sets a bad precedent for India to accept a foreign tribunal's decision. Once again, India's objectives are harmed by its readiness to compromise on its own sovereign rights and sovereignty to follow foreign conventions and courts, and this may create a dangerous precedent.

In the first-ever case of an international dispute, the Corfu Channel case between the United Kingdom and Albania, the International Court of Justice defined sovereignty as a set of rights and qualities possessed by a state in its territory excluding any other state, as well as in its relations with other states. Regarding a certain region of the world, sovereignty was described as "the right to fulfil his tasks inside the state, excluding any other State."

The "Enrica Lexie case" judgement was made in accordance with international accords and regulations that also had the power to guarantee that a nation's sovereign rights and sovereignty were not infringed upon. The International Court of Justice's 1986 decision in the landmark international case "Nicaragua v. United States of America serves as the best illustration of this. In the present case, the United States of America committed acts of military aggression against the Republic of Nicaragua under the pretext of "collective self-defence." The United States believed that the Republic of Nicaragua was actively supporting rebel groups and creating instability in the area, and as a result, it was required to conduct military operations inside Nicaragua's territory.

The United States' acts, according to the International Court of Justice, clearly violated the Republic of Nicaragua's sovereignty and sovereign rights, as well as core tenets of international law and treaties, as well as the terms of the United Nations Charter.

Even if the specifics of this case and the Enrica Lexie case are different, both stand up for the same fundamental principle: international law forbids the use of any kind of violence by a foreign state against another state's citizens while they are within that state's borders.

There were legal ways to prevent it from happening under the same international rules and treaties that were utilised to render this judgement, which appears to have violated India's sovereignty. All they had to do was take a closer look.

The Enrica Lexie case victims may have prevailed since they would each receive a payment of 4 crore rupees, a number that is far more than what the victims would have ever made in their

whole lives. But is it worth it? It cannot make up for the life lost in a senseless act of violence. Even if it did so at the expense of its own sovereign rights and sovereignty, India may have complied with foreign agreements, courts, and international laws. Does it merit it? These queries are still open.

X. CONCLUSION

The *Enrica Lexie* case has certain unresolved issues, thus by analysing and interpreting the pertinent international law, we can see that there is a significant conflict of jurisdiction at play in this situation. The jurisdictional division or demarcation, it must be more exact and precise. The law of the sea is not governed by a single law or legislation, but rather is connected to other legal documents and criminal laws. However, the *prima facie* case primarily concerns the UNCLOS and the execution of those laws which states that Criminal jurisdiction may not extend beyond the sea's territorial limit or may not be applied to a foreign vessel, although in some circumstances where there is a good reason for it, there have been several problems with this statute, notably with the EEZ zone jurisdiction which has not yet been removed. The UNCLOS eliminated the Lotus Doctrine when it took office, and the question of whether it is still legitimate in this case—where it was introduced by the Indian Republic—can only be resolved by an international tribunal.

India received justice or did it lose? Most people may concur that India received justice, but I disagree because this was a case of cold-blooded murder, and because the occurrence occurred in India's EEZ zone, they could have given it criminal jurisdiction instead of the PCA decision. But the permanent court of Arbitration did not enable India to exclude its jurisdiction in this instance as it did not accuse Italy of violating Article 56 of the United Nations convention on the law of sea, which addresses the authority and obligations of the coastal State in the Exclusive economic zone that was rejected as it was infringing on India's right to self-determination.

The Italian Republic's payment does not, in any way, bring justice to the family of the fisherman who perished that day; paying off can never bring justice.

For me, the judgement given by the permanent court of arbitration has set a very precedent for future whenever there is a question of jurisdiction over the high seas as the punishment was not given as per the laws of India.
