

## **Report of National Webinar on “The Enrica Lexie Case: The Indian and International Law Implications”**

A Webinar on “The Enrica Lexie Case: The Indian and International Law Implications” was organized on 28<sup>th</sup> October 2020 at 11-00 am. Our college Principal Prof. Deepu.P delivered welcome speech.



Resource Person of this webinar **Dr. David Ambrose, Rtd. Professor, Dept. of Studies in Law, University of Madras** delivering his speech said that, the problem of relationship between the rules of International Law and Municipal Law is one of the most controversial questions of legal theory and at present determination of their relationship has acquired practical significance as well. Originally the connection between the 2 laws was a matter of theoretical importance i.e., whether Law of Nations and Municipal law are parts of a universal legal order or they form two distinct systems of law. The foremost question which appears before International tribunal is whether International Law takes primacy over municipal law, or vice versa. The question of relationship of the two systems has acquired importance in modern International law also because a very large part of it is directly concerned with the activities of individuals who come under the jurisdiction of municipal courts. Thus, it is in the municipal courts an increasing part of International Law is enforced.

He said the government of India also filed a special leave petition before the Supreme Court on 3<sup>rd</sup> July 2012 seeking disposal of all criminal proceedings against the two Italian marines in the eight-year-old Enrica Lexie case in which a fishing boat was fired at off the shores of Kerala on February 2012, resulting in the death of two Indian fishermen. The Supreme Court of India firstly, set aside the Kerala High Court judgement saying that it did not have any jurisdiction to deal with the issues of the Italian marines even regarding the investigation of the incident. The court further directed for a special court to be formed to conduct the proceedings of this case

Highlighting on Arbitral proceedings he said, on 11<sup>th</sup> December 2015, Italy filed a “Request for the Prescription of Provisional Measures pursuant to Article 290, paragraph 1 of the United Nations Convention on the Law of the Sea”. On 26<sup>th</sup> February 2016, India submitted the “Written Observations of the Republic of India on the Request of the Italian Republic for the Prescription of Provisional Measures under Article 290, paragraph 1, of the United Nations Convention on the Law of the Sea”. Following a public hearing held in the Peace Palace, on 29<sup>th</sup> April 2016, the Arbitral Tribunal adopted an Order in respect of Italy’s Request.

On 14<sup>th</sup> April 2017, India submitted its Counter-Memorial, in which it, in addition to responding to Italy’s Memorial, raised objections to the jurisdiction of the Arbitral Tribunal and the admissibility of Italy’s claims, and presented counter-claims. On 11<sup>th</sup> August 2017, Italy filed its “Reply on the Merits – Counter-Memorial on Jurisdiction – Counter-Memorial on India’s Counter-Claims”. On 15<sup>th</sup> December 2017, India submitted its “Rejoinder on the Merits – Reply on Jurisdiction – Reply to Italy’s Counter on India’s Counter-Claims”. On 9 March 2018, Italy filed its “Rejoinder on Jurisdiction and on India’s Counter-Claims”.

On 26<sup>th</sup> November 2018, the Republic of India appointed Dr. Pemmaraju Sreenivasa Rao as arbitrator. Dr. Pemmaraju Sreenivasa Rao succeeds Judge Patibandla Chandrasekhara Rao, who had passed away on 11 October 2018, on the Arbitral Tribunal. In the event of the passing of a member of the Arbitral Tribunal, Article 6 of the Rules of Procedure provides that “the proceedings shall resume at the stage where the arbitrator who was replaced ceased to perform his or her functions, unless the Arbitral Tribunal decides otherwise.”

Due to the illness of Judge Rao, the hearing, originally scheduled to take place in the autumn of 2018, was postponed. On 19 December 2018, the Tribunal announced that the hearing would instead be held from 8 July to 20 July 2019. From 8 July to 20 July 2019, the hearing was held at the seat of the Permanent Court of Arbitration (“PCA”) at the Peace Palace, The Hague, the Netherlands. The hearing addressed the jurisdiction of the Arbitral Tribunal as well as the merits of Italy’s claims and India’s counter-claims.

At the start of the hearing, on 8<sup>th</sup> July 2019, the Agent of the Italian Republic and the Agent of the Republic of India each made a brief opening statement, which was webcast live on the Internet. A video recording of the Agents’ opening statements is available below, under the

rubric “Video”, the transcript is available under the rubric Minutes, and photographs of the hearing are available for download under the rubric “Image”. Pursuant to Article 23, paragraph 3, of the Rules of Procedure, as amended by Procedural Order No. 7 dated 16 May 2019, the remaining parts of the hearing were confidential and not webcast.

On 2<sup>nd</sup> July 2020, having issued its Award to the Parties, the Arbitral Tribunal published the operative part of the Award on the PCA Case Repository. In accordance with the Rules of Procedure, as amended by Procedural Order No. 7, the Parties were provided with the opportunity to consider whether any parts of the Award should be designated as containing “confidential information”. On 10 August 2020, the Award, with certain redactions made at the request of the Parties, was published on the PCA Case Repository. The government said that it had “decided to accept and abide” by the order passed by the Arbitral Tribunal constituted under the United Nations Convention on the Law of the Sea, which held on July 2, 2020 that “India is precluded from exercising its jurisdiction over the marines and entitled to claim compensation from Italy”. India moved to the Supreme Court to file for an application to end all proceedings that were initiated regarding the Enrica Lexie case, with compliance to the decision of the Permanent Court of Arbitration. All matters regarding the merits of the case and punishment of the marines would now be handled by the Italian Courts.

Concluding his observation on the case he said, we can see how India has finally lost its jurisdiction of this 8-year old case but has not completely lost on the merits of the case as Italy is still liable to pay compensation to India for the damage caused by the firing of the two fishermen. Although the decision regarding the compensation is final, there is still a judgement left regarding the penalty for the Italian marines by their local jurisdiction. The programme concluded with the vote of thanks proposed by the coordinator Sri S.B Boregowda.