



Asylum Seekers and International Maritime Law

Giorgia Meloni, the Prime Minister of Italy's newly-formed far-right government, had always been known for her stance against the country's immigration policy. Even before her rise to power, Meloni's stance vis-a-vis Italy's immigration policy was that it was far too lenient and she reportedly said that this could risk turning the country into the "refugee camp of Europe".

The new government under her leadership and their immigration policy was recently put to its first test when the country stopped 35 asylum seekers from disembarking on its shores. Again, a similar move by the Meloni government sparked a diplomatic row with France when an NGO boat carrying around 230 migrants had to reroute towards France after it had been denied access to an Italian port. The decision by the

Italian government was not surprising as it was in line with Meloni's long-standing and uncompromising stance on charity rescue boats which she accuses of acting as de facto taxi service for migrants.

Following these instances, Italy has been accused of violating international maritime law as it had denied safe refuge to ships with survivors onboard, found lost and in distress at sea. According to several NGOs operating these rescue boats, this alone qualified the people onboard these ships to a safe port under international law.

As per Article 98 of the United Nations Convention on the Law of Seas (UNCLOS), every state shall require a ship flying its flag "to render assistance to any person found at sea in danger of being lost". Further, the article states: "Every coastal State shall promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the

News at a Glance

- For the first time since Xi Jinping's rise to power, protests have erupted in China over COVID restrictions, resulting in the tightening of security.
- Ukraine still struggles with power supply, as Russian strikes on the grid cripple the country.
- Anwar Ibrahim became the newest prime minister of Malaysia based on a campaign against the rampant corruption the country has faced over the previous decade.



sea and, where circumstances so require, by way of mutual regional arrangements cooperate with neighbouring States for this purpose". Along these lines, the International Convention on Maritime Search and Rescue (SAR) requires signatory States to set up SAR areas even beyond their territorial waters.

Relying on these very provisions, Italy has argued that it is the flag states of these NGO rescue ships that are legally obligated and responsible for the migrants who had been rescued at sea. Applying a singular interpretation of the EU Dublin Regulation under which asylum seekers have to remain in the first European country they enter, Italy has said that when these people set foot on the rescue boats carrying a European country's flag, they actually set foot in that country and hence the said State was responsible for the asylum seekers.

The Enrica Lexie-Italian Mariners Case (Italy v. India).

It is essential to understand that every state has several maritime zones. To understand more, just refer to our previous newsletter [here](#). In India, the Territorial waters, Continental shelf, Exclusive economic zone, and other Maritime Zones Act, 1976 define these zones in case of a dispute.

On February 15, 2012, two Indian fishermen on board a fishing vessel (the "St Antony") were killed in the Arabian Sea by shots allegedly fired by two Italian marines on board the Italian oil tanker, the Enrica Lexie. When the incident occurred, the St Antony was approximately 20.5 nautical miles off the coast of Kerala, India. After the incident, the Italian ship continued sailing for nearly three hours. The Indian Coast Guard intercepted the Italian ship about 59 nautical miles away and directed it to the nearby Indian port of Kochi.

The Italian marines were arrested and charged with murder in accordance with Section 302 of the Indian Penal Code.

News at a Glance

- Protesters and police fought in Kerala over the opening of a new Adani port, resulting in 80 [injured](#).
- A massive earthquake in the West Java province of Indonesia has resulted in the death of over 160 people and damaged [infrastructure](#).
- An [explosion](#) in Istanbul, Turkey killed 6 and wounded 81 over reports of it being a possible terrorist attack.
- The background of the Ukraine conflict has resulted in an exponential increase in the European arms industry unmatched since the cold The background of the Ukraine conflict has resulted in an exponential increase in the European arms industry unmatched since the cold [war](#).



The conflict between Italy and India was that according to Italy, the Parties' dispute stems from an incident involving wherein the *Enrica Lexie*, on the said date, 15 February 2012 was approximately 20.5 nautical miles off the coast of India, and India's subsequent exercise of criminal jurisdiction over the incident and two Italian marines from the Italian Navy. The incident in question, according to India, involves the killing of two Indian fishermen on board an Indian vessel called the "St. Antony," as well as India's subsequent exercise of jurisdiction. The fishermen are said to have been killed by two Italian marines aboard the *Enrica Lexie*.

While the High Court of Kerala held that the Italian Mariners were indeed liable for the murder of the Indian fishermen, the Supreme Court of India held that even in terms of the investigation of the incident, the Republic of India lacked jurisdiction to deal with the issues raised by the Italian marines. The court also ordered the formation of a special court

to oversee the proceedings in this case, and set aside the order of the High Court of Kerala.

Italy initiated proceedings against India in the international arbitration tribunal in June 2015 and notified India in writing. It requested the tribunal's assistance in preventing India from holding any trial or taking any judicial action against the two Italian mariners. It also claimed to have returned both mariners to Italy. India, on the other hand, claimed that in order to allow the mariners to leave, Italy must exhaust all the remedies specified in the ITLOS. However, ITLOS proposed that both countries immediately suspend any criminal proceedings and prohibit any future convictions that would aggravate the situation. Even though the case had already been decided, the arbitration tribunal denied Italy's request to release the mariners. The PCA asserted its claim to jurisdiction because both India and Italy were signatories to the UN Convention on the Law of the Sea. According to the tribunal, Italy violated India's right to navigation by firing on the fish vessel *St. Antony*. It also stated that Italy is liable for compensation for the deaths of Indian fishermen and that India did not violate UNCLOS Articles 97, 87, or

Upcoming Activities

1. Call for Papers: American University of Paris.

The American University of Paris is hosting this conference from 21 – 23 June 2023. They welcome contributions in all fields, including law, criminology and communications, as well as approaches promoting creative responses to the theme of the conference. For more information, see [here](#).

2. Call for Papers: European Yearbook on Human Rights.

The 2023 edition of the European Yearbook is looking for submissions that relate to identifying new human rights challenges and innovative ways and processes to advocate and improve human rights protection for all. Authors will be invited to submit full contributions based on an abstract (max 500 words) that should be sent by 18 December 2022. Abstracts should be submitted with a short bio to lisa.heschl@unigraz.at.



100. Even though the court ordered India to stop any further proceedings against Italy, the mariners were granted immunity.

Recent Developments in International Maritime Law

The International Tribunal for the Law of the Sea has the jurisdiction to adjudicate upon the dispute concerning the delimitation of the maritime boundaries between parties, decided by the Judgement of 28 January 2021. On 24 October 2022, the dispute concerning the delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean concluded with final submissions from both sides. During colonial times, the UK laid claim over the Chagos Archipelago, which it continues to do so now, which has led Mauritius to build up a series of favourable legal judgements in an effort to regain the islands'

sovereignty (UNCLOS Arbitral Tribunal in 2015 and the ICJ's 2019 Advisory Opinion). However, since the archipelago is included in the maritime boundaries of both Mauritius and Maldives, there has been an ongoing dispute between the two parties, especially questioning the validity of the ICJ's 2019 Advisory Opinion.

COP27 wrapped up with the EU agreeing to the Effort Sharing Regulation (ESR) which set national targets for the reduction in emissions in domestic maritime transport, heating of buildings, agriculture, road transport, small industrial installations and waste management. The ESR is designed to ensure that all EU members contribute to the goal in a fair way; the target for richer countries like Denmark, Finland, Germany, Luxembourg and Sweden is 50% while others like Bulgaria have a target of 10%. The law is part of the overall EU plan to cut net emissions by 55% by 2030 from 1990 levels and to achieve climate neutrality by 2050. The latest goals agreed upon see an approximate 10% increase from the original goals that had been set before the conference.

Upcoming Activities

3. 40th anniversary of the 1982 UN Convention on the Law of the Sea Conference.

The Hellenic Branch of the International Law Association is organizing a two-day international conference on 30 November – 1 December 2022 on the occasion of the 40th anniversary of the 1982 UN Convention on the Law of the Sea (UNCLOS). The event will be held in hybrid form, with the possibility of physical or online attendance via zoom. Register [here](#).

4. South Asian University Conference on International Law and the SAARC Region in Times of Crisis.

South Asian University is hosting a conference on International Law and the SAARC Region in Times of Crisis amidst international law issues and challenges by the developments in the SAARC region and beyond. The conference will be held at the South Asian University, New Delhi (hybrid). Abstracts that engage with the conference theme are invited, including but not limited to its sub-themes/areas/topics. Abstract submission deadline: 12 December 2022. Conference date: 1 March 2023. For more information, see [here](#).

Write to us at centreforinternationallaw@ilslaw.in for requests and suggestions on sessions that can be organised in the future