



Italian Marines Case

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Why in News

Recently, the **Permanent Court of Arbitration (PCA)** has published an extract of the final award of the **ad-hoc tribunal** constituted to settle disputes related to the **United Nations Convention for the Law of the Sea (UNCLOS)** regarding **Italian marine Case between India and Italy**.

It has **rejected India's contention** that the soldiers, who were accused of killing Indian fishermen, could be **tried in Indian courts** and **ordered India to cease all criminal proceedings**.

Background

- In 2012, Indian police had detained two Italian marines posted on oil tanker Enrica Lexie who had shot at two Indian fishermen on an Indian vessel, **apparently mistaking them for pirates** operating near the Kerala Coast.
- After three years, Italy moved the **International Tribunal for Law of the Sea (ITLOS)** seeking for **two Italian marines to stay in their own country during the trial process** and also **to stop India from going ahead with its criminal prosecution**.
- At that time, India had set up a **specially designated court, as ordered by Indian Supreme Court**, to determine the applicability of jurisdiction. India's **National Investigation Agency** had already slapped charges against the two Italians under sections of the Indian Penal Code, related to murder, attempt to murder, mischief and common intent.
- The **ITLOS judgement of 2015** called on **Italy and India to suspend all domestic prosecutions arising from the Enrica Lexie Case**. It had also ordered **not to initiate** any steps that might jeopardize or prejudice the carrying out of any decision which the arbitral tribunal may provide.

- The matter led to a **long freeze in diplomatic relations between India and Italy**, which were **reset only in 2016**.

Key Points

- **Judgements in Favour of India:**
 - The tribunal held that the actions of the Italian military officers **breached India's freedom of navigation** under **UNCLOS Article 87(1)(a) and 90**.
 - The tribunal also held that **India is entitled for payment of compensation** in connection with loss of life, physical harm, material damage to property and moral harm suffered by captain and crew of 'St Antony', the Indian vessel.
- **Judgements in Favour of Italy:**
 - India had called on the Permanent Court of Arbitration (PCA) UNCLOS tribunal to adjudge and declare that PCA has no jurisdiction with respect to the case submitted to it by Italy. However, a majority of the court's five- member bench ruled 4-1 that **it had jurisdiction in the matter**.
 - Italian position that the marines, being members of the Italian armed forces in the **official exercise cannot be tried by Indian courts**, was held and **immunity was granted** to Italian marine officials.
- **Basis of the Judgement:**
 - The tribunal observed that **India and Italy had concurrent jurisdiction** over the incident and a valid legal basis to institute criminal proceedings against the marines.
 - However, it also observed that the immunities enjoyed by the marines as State officials operate as an **exception to the jurisdiction of the Indian courts** and, hence, preclude them to judge the marines.

Permanent Court of Arbitration

- The Permanent Court of Arbitration (PCA) was established in **1899** and headquartered at the **Hague in Netherlands**.
- It is an **intergovernmental organization** dedicated to serve the international community in the field of **dispute resolution** and to facilitate arbitration and other forms of dispute resolution between States.
- It has a **Financial Assistance Fund** which aims at helping developing countries meet part of the costs involved in international arbitration or other means of dispute settlement offered by the PCA.

Way Forward

- India has taken note of the Award and will be following with relevant entities on the matter and regulatory framework established by the Government.
- Further, increasing awareness about the incident and treating it as a lesson for Indian diplomacy would help India to handle future challenges better.

Source:TH