IT-17

JUDGMENT OF THE HIGH COURT OF KERALA, 29 MAY 2012

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE. P.S.GOPINATHAN

TUESDAY, THE 29TH DAY OF MAY 2012/8TH JYAISHTA 1934

WP(C).No. 4542 of 2012 (P)

PETITIONERS:

1. MASSIMILANO LATORRE,
   HOLDER OF ITALIAN PASSPORT NUMBER AA 1465972,
   (CHIEF MASTER SERGEANT SAN MARCO REGIMENT,
   ITALY)

2. SALVATORE GIRONE,
   HOLDER OF ITALIAN PASSPORT NUMBER S 111982
   (SERGEANT SAN MARCO REGIMENT, ITALY)

3. REPUBLIC OF ITALY
   THROUGH ITS COUNSUL GENERAL MR. GIAMPAOLO CUTILLIO.

BY SRI. SUHAIL DUTT SENIOR ADVOCATE,
ADVS.SRI.B.RAMAN PILLAI,
SRI.ABHIXIT SINGH,
SRI. V.B. SUJITH MENON.

RESPONDENTS:

1. UNION OF INDIA,
   THROUGH SECRETARY,
   MINISTRY OF HOME AFFAIRS,
   NEW DELHI- 110 001.

2. STATE OF KERALA,
   THROUGH CHIEF SECRETARY, GOVERNMENT OF KERALA,
   TRIVANDRUM - 695 001.

3. CIRCLE INSPECTOR OF POLICE,
   NEENDAKARA COASTAL POLICE STATION, KOLLAM DISTRICT,
   KERALA- 691 001.

W.P.(C).NO.4542/2012-P:

*ADDL. R4 IMPLEADED:

4. DORAMMA, AGED 39 YEARS,
W/O. VALENTINE (LATE) DERRICK VILLA,
MOOTHAKKARA, KOLLAM.

*IMPLEADED AS ADDL. R4 AS PER ORDER DTD. 06/03/12 IN I.A. NO. 2936/12.

**ADDL. R5 & R6 IMPLEADED:

5. ABHINAYA XAVIER (MINOR),
REPRESENTED BY HER NEXT FRIEND S. JANETMARY,
85A (NEW NO.17/237), SOUTH ERAYUMANTHURAI,
KOVILVILAGAM, THUTHOOR (P),
POOTHURAI, KANYAKUMARI DIST.,
TAMIL NADU - 629 176.

6. AGUNA XAVIER (MINOR),
REPRESENTED BY HER NEXT FRIEND S. JANETMARY,
85A, (NEW NO.17/237) SOUTH ERAYUMANTHURAI,
KOVILVILAGAM, THUTHOOR (P),
POOTHURAI, KANYAKUMARI DIST.,
TAMILNADU - 629 176.

**IMPLEADED AS ADDL. R5 AND R6 AS PER ORDER DTD. 06/03/12 IN I.A. NO.3177/12.

R1 BY SRI.P.PARAMESWARAN NAIR,A.S.G OF INDIA,
R2 & R3 BY ADVOCATE GENERALSRI. K.P. DANDAPANI,
GOVT. PLEADER SRI. ROSHEN D. ALEXANDER,
ADDL.R4 BY ADVS. SRI.C.UNNIKRISHNAN (KOLLAM),
SRI.L.LINTON,
SRI.S.HARIKRISHNAN,
SRI.V.VENUGOPALAN NAIR,
SMT. NIDHI BALACHANDRAN,
ADDL. R5 & R6 BY ADVS. SRI.V.M.SYAM KUMAR,
SRI.YASH THOMAS MANNULLY,
SRI.V.N.HARIDAS.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02-04-2012, THE COURT ON 29/05/2012 DELIVERED THE FOLLOWING:

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'CR'

P.S.GOPINATHAN, J.

W.P.(C).No.4542 of 2012

Dated this the 29th day of May, 2012

JUDGMENT

At about 4.30 P.M. on 15.2.2012, a fishing boat "St. Antony", registered in India, while fishing off the coast of Kerala, was fired at, from a passing ship. As a result of this, of the 11 fishermen who were onboard the boat, two of them, namely Valantine @ Jelestine aged 44 years and Ajeesh Pink, aged 20 years were killed instantaneously. Immediately, the boat returned to Neendakara and the owner of the boat gave First Information Statement before the third respondent, the Circle Inspector of Police, Neendakara, who recorded the same and registered a case as Crime No. 2 of 2012, copy of which is marked as Ext.P2 for murder punishable under Section 302 of the Indian Penal Code (hereinafter referred to as the IPC). In Ext.P2 , it was alleged that while fishing at 33 Nautical Miles (NM) away from the police station, without any warning or alarm, there suddenly occurred repeated firing for about two minutes from a ship painted black and red. Since the assailants were not identified, the case was registered against some officers in the above ship. Alerted by the third respondent, the Coast Guard and the Indian Navy made a thorough search and detected that the firing was from a ship by name MT ENRICA LEXIE (hereinafter also referred to as the vessel). The Captain was asked to take the vessel

to the Cochin Port, which was complied with. Maritime Rescue Co-ordination Centre (MRCC) conveyed the message to the third respondent who rushed to the vessel. The vessel was registered in Italy (Maritime MMSI No.247232700 and IMO No.9489297) and was reportedly sailing from Singapore to Egypt. After an initial reluctance to cooperate with the investigation of the case, the Captain and others in the vessel cooperated with it. During the investigation it was revealed that, in addition to the crew, there were six marines in the vessel, engaged for security duty. Of them, two Italian marines - Massimilano Latorre and Salvatore Girone - petitioners 1 and 2, were identified as the ones who fired at the fishing boat. They were apprehended by the third respondent and produced before the Chief Judicial Magistrate, Kollam, along with Ext.P3 remand report. They were first remanded to police custody and later to judicial custody. The third petitioner is the Republic of Italy, represented by its Consul General. The third petitioner has come forward in support of petitioners 1 and 2.

Pleadings of the petitioners:

2. Petitioners denied the involvement of petitioners 1 and 2 in the alleged incident and contended that the said petitioners are the Chief Master Sergeant and Sergeant in the Italian Military Navy in active duty and that they were deployed in the ship as trained Navy personnel to protect and safeguard Italian maritime interests against piracy. It was contended that on 15.2.2012, while the vessel was proceeding from Singapore to Djibouti, there was an attempted piracy attack on the vessel. In accordance with the international

procedures, the Master of the vessel set into motion the alarm, flashlights and horns. The Master also activated the Ship Alert Security System (SASS) which sent out signals to the Italian Maritime Rescue and Coordination Centre (MRCC); and also reported it to the Mercury Chart which links together and transfers information to the community including several Navies across the world fighting piracy, including to the Indian Navy Head Quarters. It was further stated that the vessel, which was on an average speed of 13 Knots per hour, increased the speed to avert the piracy attack and after it covered 38 NM, information over phone was received from the MRCC, Mumbai directing the vessel to come to the Cochin Port to assist and identify the suspected pirates who had been apprehended. Accordingly, the Vessel turned its course and anchored at Cochin Port at midnight on 16.2.2012.

3. Petitioners further contended that though in Ext.P2 it was stated that the incident took place 33 NM from the Coast of Kerala, in Ext.P3, it was alleged that it occurred 22.5 NM from the Kerala coast off Thrikunnam. According to the petitioners, the incident happened beyond the territorial waters of India, in the Contiguous Zone/Exclusive Economic Zone. In the light of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976, (hereinafter referred to as 'Territorial Waters Act'), the sovereignty of India extends only up to 12 NM from the nearest point of the baseline and since the incident occurred beyond that, the courts in India have no jurisdiction over the incident. It was pleaded that the Apex court in various decisions on

Section 4 IPC has held that the jurisdiction of the courts in India in relation to criminal offences is limited to the territory of India, and any extra-territorial jurisdiction relates only to Indian citizens. Since the petitioners 1 and 2 are Italian citizens and the incident occurred beyond the territorial waters, the 3rd respondent has no authority to register a case against petitioners 1 and 2 or to conduct any investigation or to arrest them. Hence all procedures in pursuance to Ext.P2, including the arrest, are without jurisdiction, contrary to law, and hence null and void. Even by Article 97 read with Article 58 of the United Nations Convention on the Law of the Sea, (hereinafter referred to as the UNCLOS), the third respondent has no authority to register a case or to arrest the Italian marines. Since the alleged incident occurred at High Seas, as per the UNCLOS to which India is already a signatory, the case is to be registered in Italy. It was further stated that, on getting information, a case has already been registered and investigation launched in Rome, Italy by the Ordinary and Military Prosecution Office. Therefore, on principles of international law and comity of Nations, petitioners 1 and 2 are liable to be tried and prosecuted only before the Italian Courts.

4. It was also contended that since the petitioners 1 and 2, having been deployed by the Italian Defence Ministry for the purpose of protection of the vessel from piracy, were acting in their official capacity and under the principles of international law, they are subject to the jurisdiction of only the flag state of the vessel or their own state. It was contended that they are therefore entitled to functional immunity from prosecution except before the courts or

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military tribunals of Italy.

5. With these pleadings, the petitioners have sought the issuance of an appropriate writ, order or direction for declaration of the registration of Ext.P2, the arrest and detention of petitioners 1 and 2, and all further proceedings in pursuance to Ext.P2, as null and void; and for quashing Ext.P2.

Pleadings of the respondents:

6. The 1st respondent is the Union of India and the 2nd respondent is the State of Kerala. The Assistant Solicitor General of India, on behalf of the Coast Guard, filed a statement contending that the Ministry of Defence, Coast Guard, Mercantile Marine Department, Director General of Shipping, Customs Department etc. are necessary parties; but only the Ministry of Home Affairs is impleaded and therefore, the writ petition is to be dismissed *in limine* for nonjoinder of necessary parties. It was further contended that the Coast Guard was alerted about the incident by the third respondent at 17.40 hours on 15.2.2012. Accordingly, the Coast Guard passed urgent messages to three Coast Guard Ships - ICGS Samar, CGAE, Kochi and ICGS Lakshmibai, which identified MT ENRICA LEXIE as the suspected ship. Annexure-A was produced as the Board Officer's report of the Indian Coast Guard.

7. It was further stated that after the incident, the vessel traversed almost 3 hours and made good a distance of 39 NM from the original position, and only after interception by the Indian Coast Guard the vessel sent an e-mail to her owner at about 19.17 hours on 15.2.2012 reporting the incident; and therefore it was evident

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that the master had no intention of promptly reporting the incident to either the coastal state or the flag state, nor had he made any attempt to report the incident to the coastal authorities. The vessel sent out message regarding the incident, only after being forced by the Coast Guard to proceed and anchor at Kochi. It was also stated that the vessel had not reported the incident to the IMB piracy reporting centre, which is also a mandatory procedure. Further, the detachment commander during investigations confessed to have fired 12 rounds of 5.56 MM (Nato Bore) together with 8 rounds fired by his colleague who was on duty with him. He stated that before firing, the fishing boat was warned by flashing search light (Aldis Lamp). It was contended by the Additional Solicitor General that since the incident happened during broad daylight hours, search light would not have been visible to the persons on the boat. It was also contended that, the vessel without undertaking any SOP (Standard Operating Procedures)/best management practices to dissuade suspected pirates, (like making water wall around the ship, undertaking evasive maneuvering and such other tactics) resorted to indiscriminate firing. In any case, such firing should have been the last option, to be exercised only in extreme situations of self defence. Unfortunately, the 'trigger-happy marines' did not adhere to well settled regulations and advisories on anti-piracy measures.

8. It was further stated that IMO Regulations on Carrying Armed Guards (Vide Circular No.MSC.1/Circ.1405/Rev.1 dated 16.9.2011) mentions the rules for use of force and guidelines which are in brief as follows:

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(a) The primary function of Armed Security Personnel embarked Onboard Merchant Vessels is to prevent boarding using minimal force. Vessel embarking armed security personnel need to have a response plan against piracy and the response plan should cater for graduated use of force.

(b) Armed Security Personnel are required to undertake reasonable steps to avoid use of force. In no case, use of force to exceed the necessity and has to be proportionate to threat.

(c) Armed Security Personnel are not to use firearms against persons except in self defence or defence of others against imminent threat of death or serious injury or to prevent the perpetration of a serious crime involving grave threat to live.

It was contended that preliminary investigations and documentary evidence clearly bring out that the vessel did not have any response plan against piracy and failed to resort to graduated use of force. The use of force by MT ENRICA LEXIE was illegal since the boat St. Antony was 100 meters away from the vessel, and never made any attempt to board the vessel, and there was no threat to life on board MT ENRICA LEXIE so as to shoot down the fishermen.

9. Respondents 2 and 3 in their joint statement contended that the writ petition is not maintainable on law and facts, and that the courts in India have absolute jurisdiction over the offence committed by petitioners 1 and 2 on two Indian Citizens on board a

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boat registered in India. It was contended that Article 97 of UNCLOS has no application. Article 27 specifically lays down that coastal state can exercise of criminal jurisdiction on a foreign ship when the consequences of a crime perpetrated from the ship extend to the Coastal State. Hence IPC would apply to the offence committed by the Italian marines and therefore, Exts.P2 First Information Report registered is in accordance with law and is not liable to be declared as illegal or unenforceable. In this case, two Indian citizens were intentionally murdered and nine others attempted to be murdered in Indian territorial waters. Therefore, when the factum of murder was conveyed to the third respondent, he was duty-bound to register a case and commence investigation irrespective of the nationality of the offenders. Hence, the contentions that the petitioners 1 and 2 are not amenable to Indian jurisdiction and that their detention are without justification are absolutely incorrect. Further, there was no attempted piracy attack on the Italian ship. The Kerala coast is free from piracy and a large number of fishing boats ply in the region. The poor fishermen were mercilessly attacked in broad daylight, without any prior warning or adherence to any procedure prescribed in that regard. The petitioners 1 and 2 also did not alert the nearest coast guard or any other authority as is mandated by the relevant treaties, conventions, customs and usages of maritime law, in cases of piracy attacks.

10. It was also submitted that the place of occurrence as stated in Ext.P2 is the approximate distance from the police station. Actually, the incident occurred approximately 20.5 NM from the

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baseline and hence the offence was committed within Indian territorial waters and not in the high seas. Therefore, Article 97 of UNCLOS has no application. Petitioners 1 and 2 are not entitled to any claim of immunity for the alleged acts, since they were not discharging any official function in exercise of sovereign powers. They were deputed for remuneration to assist the commercial activities of a private shipping company; and hence, at no stretch of imagination it could be presumed that they were discharging sovereign functions so as to claim immunity. Therefore, they are subject to Indian jurisdiction and prayed for dismissal of the writ petition.

Third party claims for impleading:

11. The President of the Kerala Malsiya Thozhilaly Aikya Veedi filed a petition as I.A.No.2928 of 2012, seeking an order for getting himself impleaded as the additional 4th respondent, with a plea that he is highly aggrieved and affected by the incident and therefore, naturally highly interested in the outcome of the writ petition.

12. Widow of one of the victims, late Valentine, filed a petition as I.A.2936 of 2012 seeking an order for impleading herself as necessary and interested party in the writ petition.

13. Two minor sisters of the 2nd victim, late Ajeesh Pink, represented by a next friend, filed I.A.No.3177 of 2012 seeking an order to implead themselves as additional respondents.

14. The following persons also filed petitions for impleading themselves as additional respondents in the case: [1] An Advocate of High Court Bar (I.A.No.3017/2012); [2] A member of the Kerala

fishermen Welfare Board (I.A.3178 of 2012); and [3] A member of the Catholic Diocese of Kerala (I.A.3186 of 2012).

15. Though I was not inclined to allow the impleading petitions, as Respondents 1 to 3 were strongly defending the writ petition, persuaded by the argument supported by the learned Advocate General, in the light of the ruling of the Apex Court in *Musurudheen Munshi Vs. Muhammed Siraj & others* 2008 KHC 6380=(2008) 8 SCC 434, the petitions I.A.No.2936/2012 and I.A.No.3177/2012 were allowed by order dated 6/3/2012. The other petitions were adjourned along with the writ petition to allow the parties to address the court in the event it was found necessary during the hearing. The petitioners in I.A.No.2936/2012 and I.A.No.3177/2012 were allowed to be impleaded as 4th, 5th and 6th respondents, respectively. They filed counter statements. Learned counsel for both set of petitioners argued at length and the case was reserved for judgment. Thereafter, the 4th respondent filed an affidavit, along with I.A.No.6004/2012, wherein it was affirmed that all contentions and issues in opposition to the writ petition were not pressed. The respondents 5 and 6 also filed affidavit along with petition I.A. No. 5998/2012 withdrawing all the contentions raised by them. It was submitted that the respondents 4 to 6 filed writ petition seeking compensation and it was settled out of court. However, no settlement was produced. Though, at the time of the impleading petitions, they were reminded that the prosecution of the Italian marines and the claim for compensation are independent and distinct, they were very keen in getting impleaded, on the

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ground that should this court allow the writ petition they would be highly affected and prejudiced. The subsequent conduct is indicative of the fact that the petitions for impleading were filed without bonafides, but was merely a pressure tactics, wasting the valuable time of this court. The settlement of claim for compensation reached out of court would no way affect the prosecution initiated by the 3rd respondent against petitioners 1 and 2. In the above circumstance, I am not referring to the pleadings or arguments of respondents 4 to 6.

Issues:

16. In the light of the pleadings of the petitioners and respondents 1 to 3, the issues that arise for consideration are:

(i) Whether the Italian Marines on board the vessel who shot down two Indian fishermen, onboard a boat registered in India, in the territorial sea / contiguous zone / Exclusive Economic Zone of India are liable to be prosecuted for murder in accordance with the IPC and other domestic laws of India.

(ii) Whether the Italian Marines are entitled to sovereign immunity against the prosecution in India.

17. Though the first respondent has a case that the petition is bad for non-joinder of parties like the Ministry of Defence, Coast Guard, Mercantile Marine Department, Director General of Shipping, Customs Department etc., that dispute is left open as I find that, in

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fact, no relief is sought against any action taken by the first respondent and therefore, the first respondent itself is not a necessary party, but arrayed only as a proper party, probably for diplomatic reasons.

Issue No. 1

Applicability of Municipal law:

18. From the pleadings, it is clear that in addition to the dispute regarding the exercise of jurisdiction over the petitioners 1 and 2, there is some dispute regarding the place of incident as well. As per Exhibit P2, the place of incident is 33 NM from the police station and as per Exhibit P3, it is 22.5 NM from the nearest baseline. During the course of the arguments, it was argued that the exact distance to the place of occurrence from the nearest baseline is only 20.5 NM. The explanation given by the learned Advocate General is that the police station is situated south east of the spot of occurrence, and the distance referred in Exhibit P2 is an approximate measurement from the police station and therefore, the distance from the spot of occurrence towards east to the nearest baseline is different from the one mentioned in Exhibit P2; and that the approximate distance towards east to the nearest baseline at Thrikkunnapuzha now estimated is 20.5 NM. Regarding the submission made by the learned Advocate General, the petitioners could not point out any reason to reject the argument. Having due regard to the facts and circumstances, I find merit in the submission made by the learned Advocate General and I am persuaded to conclude that the distance shown in Exhibit P2 from the spot of

occurrence is to the police station and not to the nearest baseline. Therefore, the distance shown in Exhibit P2 has no relevance in deciding the issue. The relevant distance to decide as to whether the incident occurred is within the territorial waters or Contiguous Zone or Exclusive Economic Zone or beyond that, is the distance from the nearest baseline to the spot of incident. In Exhibit P3 the distance shown is 22.5 NM. In the pleadings of respondents 2 and 3, the distance mentioned is 20.5 NM. In either case, for the reasons stated hereinafter, the difference in Exhibit P3 and the pleadings of the respondents regarding the distance is insignificant, and the place of occurrence would be within the Contiguous Zone of India (hereinafter referred to as CZ) which overlaps with the Exclusive Economic Zone (hereinafter referred to as EEZ).

19. According to the learned Advocate General the spot of occurrence is within the Contiguous Zone of India as defined under the Territorial Waters Act and the UNCLOS, 1982. Section 3 of the Territorial Waters Act stipulates that the sovereignty of India extends to the territorial waters, the limit of which is 12 NM. For a correct appreciation of the case, I find that reading of Section 3 would be relevant.

> *3. Sovereignty over, and limits of, territorial waters.-- (1) The sovereignty of India extends and has always extended to the territorial waters of India (hereinafter referred to as the territorial waters) and to the seabed and subsoil underlying, and the air space over such waters.*

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(2) The limit of the territorial waters is the line every point of which is at a distance of twelve nautical miles from the nearest point of the appropriate baseline.

(3) Notwithstanding anything contained in sub-section (2), the Central Government may whenever it considers necessary so to do having regard to International Law and State practice, alter, by notification in the Official Gazette, the limit of the territorial waters.

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Section 5 of the Territorial Waters Act defines the CZ as an area beyond and adjacent to territorial waters to a distance of 24 NM from the nearest point of the baseline referred to in Sub Section (2) of Section 3. That section also specifies the powers of the Coastal State over the zone. A reading of Section 5 is also relevant for the correct appreciation of the case.

5. Contiguous zone of India.--(1) The contiguous zone of India (hereinafter referred to as the contiguous zone) is an area beyond and adjacent to the territorial waters and the limit of the contiguous zone is the line every point of which is at a distance of twenty-four nautical miles from the nearest point of the baseline referred to in sub-section (2) of section 3.

(2) Notwithstanding anything contained in sub-section (1) the Central Government may whenever considers necessary so to do having regard to International Law and State practice, alter, by notification in the Official Gazette, the limit of the contiguous zone.

(3) No notification shall be issued under sub-section (2) unless resolutions approving the issue of such notification are passed by both Houses of Parliament.

(4)The Central Government may exercise such powers and take such measures in or in relation to the contiguous zone as it may consider necessary with respect to,--

(a) the security of India, and

(b) immigration, sanitation, customs and other fiscal matters.

(5) The Central Government may by notification in the Official Gazette,--

(a) extend with such restrictions and modifications as it thinks fit, any enactment, relating to any matter referred to in clause (a) or clause (b) of sub-section (4), for the time being in force in India or any part thereof to the contiguous zone, and

(b) make such provisions as it may consider necessary in such notification for facilitating the enforcement of such enactment;

and any enactment so extended shall have effect as if the contiguous zone is a part of the territory of India.

20. Section 7 of the Territorial Waters Act 1976 defines the EEZ of India as an area beyond and adjacent to territorial waters up to a limit of 200 NM from the baseline referred to in Sub Section (2) of Section 3. Section 7 also details the powers of the coastal state over the zone. A reading of Section 7 is relevant here:

7. Exclusive economic zone.-- (1) The exclusive economic zone of India (hereinafter referred to as the exclusive economic zone) is an area beyond and adjacent to the territorial waters, and the limit of such zone is two hundred nautical miles from the baseline referred to in sub-section (2) of section 3.

(2) Notwithstanding anything contained in sub-section (1), the Central Government may, whenever it considers necessary so to do having regard to International Law and State practice, alter, by notification in the official Gazette, the limit of the exclusive economic zone.

(3) No notification shall be issued under sub-section (2) unless resolutions approving the issue of such notification are passed by both Houses of Parliament.

(4) In the exclusive economic zone, the Union has,--

(a) sovereign rights for the purpose of exploration, exploitation, conservation and management of the natural resources, both living and non-living as well as for producing energy from tides, winds and currents;

(b) exclusive rights and jurisdiction for the construction, maintenance or operation of artificial islands, off-shore terminals, installations and other structures and devices necessary for the exploration and exploitation of the resources of the zone or for

the convenience of shipping or for any other purpose;

(c) exclusive jurisdiction to authorise, regulate and control scientific research;

(d) exclusive jurisdiction of preserve and protect the marine environment and to prevent and control marine pollution; and

(e) such other rights as are recognised by International Law.

(5) No person (including a foreign Government) shall, except under, and in accordance with, the terms of any agreement with the Central Government or of a licence or a letter of authority granted by the Central Government, explore or exploit any resources of the exclusive economic zone or carry out any search or excavation or conduct any research within the exclusive economic zone or drill therein or construct, maintain or operate any artificial island, off-shore terminal, installation or other structure or device therein for any purpose whatsoever:

Provided that nothing in this sub-section shall apply in relation to fishing by a citizen of India.

(6) The Central Government may, by notification in the Official Gazette,--

(a) declare any area of the exclusive economic zone to be designated area; and

(b) make such provisions as it may deem necessary with respect to,--

(i)the exploration, exploitation and protection

of the resources of such designated area; or

(ii) other activities for the economic exploitation and exploration of such designated area such as the production of energy from tides, winds and currents; or

(iii) the safety and protection of artificial island, off-shore terminals, installations and other structures and devices in such designated area; or

(iv)the protection of marine environment of such designated area; or

(v)customs and other fiscal matters in relation to such designated area.

***Explanation.**-- A notification issued under this sub-section may provide for the regulation of entry into and passage through the designated area of foreign ships by the establishment of fairways, sealanes, traffic separation schemes or any other mode of ensuring freedom of navigation which is not prejudicial to the interests of India.*

(7) The Central Government may by notification in the Official Gazette,--

(a) extend, with such restrictions and modifications as it thinks fit, any enactment for the time being in force in India or any part thereof in the exclusive economic zone or any part thereof; and

(b) make such provisions as it may consider necessary for facilitating the enforcement of such

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enactment,

and any enactment so extended shall have effect as if the exclusive economic zone or the part thereof to which it has been extended is a part of the territory of India.

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The definition of the Territorial waters, CZ and EEZ as per Sections 3, 5 and 7 of the Territorial Waters Act is in tune with the definition of Territorial Waters, CZ and EEZ as per Article 3, Article 33 and Article 57 of the UNCLOS. In the light of the above definitions, I find that, the spot of occurrence, irrespective of the contradictions in Exhibit P3 and the pleadings of the respondents, is within the CZ, which also overlaps with the EEZ. This position is not disputed by the petitioners. Therefore, it can be safely concluded that the incident alleged in Ext.P2 is within the CZ/EEZ. Then the question is whether IPC and Code of Criminal Procedure,1973 (hereinafter referred to the as the 'CrPC') are applicable to the incident that occurred in CZ/EEZ.

21. Section 2 of the IPC deals with the punishment of the offences committed within India. It reads as follows:

2. Punishment of offences committed within India.-- Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which

he shall be guilty within India.

Section 18 of the IPC defines India as the territory of India excluding the state of Jammu and Kashmir. Section 3 deals with the punishment of offences committed beyond, but which may, by law may be tried within, India. It reads as follows.

> *3. Punishment of offences committed beyond, but which by law may be tried within, India.--Any person liable, by any [7][Indian law] to be tried for an offence committed beyond [1][India] shall be dealt with according to the provisions of this Code for any act committed beyond [1][Indian] in the same manner as if such act had been committed within India.*

Section 4 of the IPC deals with extension of IPC to extra territorial offences. The learned Advocate General did concede that Section 4 has no application to the case on hand. Therefore, I am not referring to Section 4. According to him, Sections 2 and 3 of the IPC are relevant and apply to the case. Though Section 3 of Territorial Waters Act 1976 limits sovereignty of India up to the territorial waters, Sub Clause (7) of Section 7 empowers the Central Government to issue notification regarding the application of Indian Law to the EEZ or to the part thereof; and in exercise of this power, the Government of India had issued a notification dated 27/8/1981 published in the extraordinary gazette of India. A copy of the notification was made available. The notification reads as follows:

MINISTRY OF HOME AFFAIRS

NOTIFICAION

New Delhi, the 27th August, 1981

S.O. 671 (E).--In exercise of the powers conferred by sub section (7) of Section 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 (80 of 1976), the Central Government hereby extends to the exclusive economic zone, referred to therein, the Acts specified in the Schedule hereto annexed subject to the modifications (if any) and the provisions for facilitating the enforcement of such Acts specified in the said schedule.

SCHEDULE

Part I—List of Acts

Year	*No.*	*Short title*	*Modifications*
1	*2*	*3*	*4*
1860	*45*	*The Indian Penal Code, 1860*	

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1974	*2*	*The Code of Criminal Procedure, 1973*	*After Section 188 of the Code of Criminal Procedure, 1973, the following section shall be inserted; namely :-- "188A. Offence committed in exclusive economic Zone : When an offence is committed by any person in the exclusive economic zone described insub-section (1) of section 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 (80 of 1976) or as altered by notification, if any, issued under sub-section (2) thereof, such person may be dealt with in respect of such offence as if it had been committed in anyplace in which he may be found or in such other place as the Central Government may direct under Section 13 of the Said Act."*

Part II -Provisions for facilitating the enforcement of the Acts

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1. For the purpose of facilitating the application of relation to the aforementioned exclusive economic zone, of any Act mentioned in Part I, any court or other authority , may construe it in such manner, not affecting the substance, as may be necessary or proper to adapt it to the matter before the court or other authority.

2. (1) If any difficulty arises in giving effect, in relation to the aforementioned exclusive economic zone; to the provisions of any Act specified in Part I, the Central Government may, by order published in the Official Gazette, make such provisions or give such directions as appear to it to be necessary for the removal of the difficulty.

(2) In particular and without prejudice to the generality of the provisions of sub-paragraph (1) of this paragraph, any order made under sub-paragraph (1) may make provisions with regard to construction of references to any functionary specified in such Act.

[No.2/2/81-Judl.Cell]
S.V. SHARAN, Jt. Secy.

In the light of the above notification, I find that IPC and CrPC have been made applicable to the EEZ. And, by reading Section 2 of the IPC, along with Sections 3 and 7 of the Territorial Waters Act, and the above notification, I find that the provisions of IPC are extended to the CZ/EEZ of India. In other words, Section 2 of the IPC is extended by the above notification to the CZ/EEZ. The attack made against the above notification in the argument, without the support

of the pleadings, is that the above notification also provides for inserting Section 188A to CrPC and that there is no any such enactment made by the Parliament and Section 188 A has not been brought into CrPC. Therefore, according to the learned senior counsel for the petitioners, it has to be deemed as if the above notification has not come into effect at all. It is not in dispute that an addition of a section cannot be introduced to the CrPC by a notification in the Gazette issued under Sub Clause (7) of Section 7 of the Territorial Waters Act. For that, an amendment of the CrPC is required. Admittedly there is no such amendment. But going by the wordings of the notification, I find that the omission to make amendment to the CrPC adding Section 188A, would in no manner affect the validity of the entire notification, because on a careful reading of the notification, it can be seen that the intention of the notification is to make applicable the provisions of IPC and CrPC, subject to the modification (if any). Such modification is not mandatory, but optional. Therefore, the non-addition of Section 188 A would not affect the applicability of the IPC and CrPC to the EEZ. Therefore, I am to conclude that in the light of Section 2 of the IPC, Sections 3, 5 and 7 of the Territorial Waters Act, along with the aforementioned notification, in relation to an incident that occurs in the CZ/EEZ of India, the provisions of IPC and CrPC would be applicable, as if it occurred within the territory of India.

22. The further argument that was advanced by the learned Advocate General is that giving effect to the International Maritime Organisation Convention for Suppression of Unlawful Acts against

the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts, the parliament had enacted the Suppression of Unlawful Acts against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002 (hereinafter referred to as the 'SUA Act'), and that, the incident alleged would also amount to an offence punishable under Section 3 of the SUA Act and therefore, in the light of Section 3 of IPC r/w Section 3 of the SUA Act, the Italian Marines are liable to be prosecuted and convicted in India, in pursuance to the case registered against them. The facts narrated earlier would show that they were on board the vessel, which is a commercial ship. The victims, who are Indian citizens, were on a fishing boat. Under Section 2 (h) of SUA Act, ship is defined as follows:

> *2 (h) "ship" means a vessel of any type whatsoever not permanently attached to the seabed and includes dynamically supported craft, submersibles, or any other floating craft.*

Going by the above definition, I find that the vessel as well as the fishing boat would come within the definition of 'ship' under the SUA Act. The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 2005 (1678 UNTS 222), which in fact revised the 1988 Convention of the same name, also defines 'ship' in similar terms. SUA Act extends to the whole of India including the territorial waters, the continental shelf, the EEZ or any other maritime zone of India within the meaning of Section 2 of the Territorial Waters Act 1976. Section 3 of the SUA Act relates to the offences against the ship, and it reads as follows:

> *3. Offences against ship, fixed platform, cargo of*

a ship, maritime navigational facilities, etc.-- (1) Whoever unlawfully and intentionally--

(a) commits an act of violence against a person on board a fixed platform or a ship which is likely to endanger the safety of the fixed platform or, as the case may be, safe navigation of the ship shall be punished with imprisonment for a term which may extend to ten years and shall also be liable to fine;

(b) destroys a fixed platform or a ship or causes damage to a fixed platform or a ship or cargo of the ship in such manner which is likely to endanger the safety of such platform or safe navigation of such ship shall be punished with imprisonment for life;

(c)seizes or exercises control over a fixed platform or a ship by force or threatens or in any other form intimidates shall be punished with imprisonment for life;

(d) places or causes to be placed on a fixed platform or a ship, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or that ship or cause damage to that fixed platform or that ship or its cargo which endangers or is likely to endanger that fixed platform or the safe navigation of that ship shall be punished with imprisonment for a term which may extend to fourteen years;

(e) destroys or damages maritime navigational facilities or interferes with their operation if such act is likely to endanger the safe navigation of a ship shall be punished with imprisonment for a term which may extend

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to fourteen years;

(f) communicates information which he knows to be false thereby endangering the safe navigation of a ship shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine;

(g) in the course of commission of or in attempt to commit, any of the offences specified in clauses (a) to (d) in connection with a fixed platform or clauses (a) to (f) in connection with a ship--

(i)causes death to any person shall be punished with death;

(ii)causes grievous hurt to any person shall be punished with imprisonment for a term which may extend to fourteen years;

(iii)causes injury to any person shall be punished with imprisonment for a term which may extend to ten years;

(iv)seizes or threatens a person shall be punished with imprisonment for a term which may extend to ten years; and

(v)threatens to endanger a ship or a fixed platform shall be punished with imprisonment for a term which may extend to two years.

(2) Whoever attempts to commit, or abets the commission of, an offence punishable under sub-section (1) shall be deemed to have committed such offence and shall be punished with the punishment provided for such

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offence.

(3) Whoever unlawfully or intentionally threatens a person to compel that person to do or refrain from doing any act or to commit any offence specified in clause (a), clause (b) or clause (c) of sub-section (1), if such threat is likely to endanger the safe navigation of a ship or safety of a fixed platform shall be punished with the punishment provided for such offence.

(4) Where any act referred to in sub-section (1) is committed,

(a) against or on board--

(i) an Indian ship at the time of commission of the offence; or

(ii) any ship in the territory of India including its territorial waters;

(b) by a stateless person,

such act shall be deemed to be an offence committed by such person for the purposes of this Act.

Explanation.-- In this sub-section, the expression "stateless person" means a person whose habitual residence is in India but he does not have nationality of any country.

(5) Where an offence under sub-section (1) is committed and the person accused of or suspected of the commission of such offence is present in the territory of India and is not extradited to any Convention State or Protocol State, as the case may be, such person shall be dealt with in India in accordance with the provisions of

this Act.

(6) On being satisfied that the circumstances so warrant, the Central Government or any other authority designated by it shall take the person referred to in sub-section (5) and present in the territory of India into custody or take measures, in accordance with the law for the time being in force, to ensure his presence in India for such time as is necessary to enable any criminal or extradition proceeding to be instituted:

Provided that when a person is taken into custody under this sub-section, it shall be necessary for the Central Government or any other authority designated by it to notify the Government of any Convention State or Protocol State which have also established jurisdiction over the offence committed or suspected to have been committed by the person in custody.

(7) Subject to the provisions of sub-section (8), where an offence under sub-section (1) is committed outside India, the person committing such offence may be dealt with in respect thereof as if such offence had been committed at any place within India at which he may be found.

(8) No court shall take cognizance of an offence punishable under this section which is committed outside India unless--

(a) such offence is committed on a fixed platform or on board a ship flying the Indian flag at the time the offence is committed.

(b) Such offence is committed on board a ship which is for the time being chartered without crew to a lessee who has his principal place of business, or where he has no such place of business, his permanent residence, is in India; or

(c) the alleged offender is a citizen of India or is on a fixed platform or on board a ship in relation to which such offence is committed when it enters the territorial waters of India or is found in India.

23. Clause (i) to Sub Clause (g) of Section 3 would show that the incident alleged in this case is punishable with death. On a careful reading of Section 3 IPC r/w Section 3 of the SUA Act, I find that Petitioners 1 and 2 would come within the term 'any person liable', and the SUA Act would come within the term 'any Indian Law to be tried for an offence' as stated in Section 3 IPC. Therefore under Section 3 of the IPC, they are to be dealt with according to the provisions of the IPC for the offence committed under Section 3 of the SUA Act in the CZ/EEZ, (which is beyond India as defined in Section 18 of IPC), as if such act had been committed within India.

24. The argument that was advanced against this proposition of law by the learned Senior Counsel appearing for the petitioners, is that to register a case and to conduct investigation, the Government of India (1st respondent) has to issue notification and in this case there is no notification and therefore the 3rd respondent has no right to register the case or to investigate the same for an offence under Section 3 of SUA Act. It was also argued that because of Section 12 of SUA Act, the State Government has no authority to prosecute the Italian Marines without obtaining the previous sanction of the Central Government. In fact, no

plea regarding the applicability or non-applicability of the SUA Act has been pleaded in the writ petition. However, I find that in the light of Section 2 of the IPC read with the notification issued under Clause (7) of Section 7 of the Territorial Waters Act 1976, this argument has no application, because the CrPC (which has been made applicable to the CZ/EEZ of India) empowers a police officer appointed by the state government to register and investigate a case of murder punishable under Section 302 of the IPC for which Exhibit P2 was registered, though the very same offence may also be an offence under Clause (i) to Sub Clause (y) of Clause (1) of Section 3 of the SUA Act. It is up to the 1st respondent, the Central Government to issue notification authorising any police officer employed under the State Government (2nd respondent) or under the Central Government to register or investigate a case for offences falling under Section 3 of the SUA Act. So also, if the 3rd respondent proposes to incorporate Section 3 of the SUA Act in the charge sheet, before filing the charge sheet/final report, the sanction of the Central Government could be obtained at a later stage. Since we have not reached that stage, I find that the applicability of Section 3 of IPC cannot be disregarded at this stage. Therefore, I find that in view of Sections 2 and 3 of the IPC, the notification referred above and the SUA Act, the provisions of IPC and CrPC are applicable to the incident alleged and that is not liable to be interfered at this stage.

Applicability of International Law:

25. According to the petitioners, the alleged incident occurred when there was an attempted piracy attack beyond the territorial sea of India. Therefore, this is a case to be dealt with under Article 97 read with Article 58 (2) of the UNCLOS. In para 5 of the writ petition, it is specifically stated:

> "There was an attempted piracy attack on the Vessel following which the Master of the Vessel immediately set into a motion the Established International Procedures to be undertaken by Vessels during attempted piracy attacks including setting into motion the alarm, flash lights and horns. The Master also activated Ship Alert Security System (SASS) which send out signals to the Italian Maritime Rescue Coordination Center (MRCC). The Master also reported the incident on the mercury chart which links together and transfers information to the community including several Navies across the world fighting piracy including to the Indian Navy Head Quarters. The military report was also done. A report was also sent to MSCHOA at UK."

The plea regarding the attempted piracy attack is very vague and no particulars regarding the manner in which the alleged attack was attempted is not mentioned at all. It is pertinent to note that no record was produced to show that the marines, before shooting down the fishermen, had even intimated any piracy threat to the Captain of the ship or that the Captain had recorded the same. Also there is no document in support of the plea that the Master had activated the Ship Alert Security System or that any signal was sent to the MRCC, Mercury chart or to any of the Navies across the world. Therefore, I find that the pleadings are not sufficient enough to come to a conclusion that shooting down the fishermen on board the fishing boat was done in order to avert an attempted piracy attack. In this context, it is pertinent to peruse the

statement in Exhibit P2 that there were 11 persons in the fishing boat including the first informant. Except two, all others were sleeping when the Italian Marines opened fire at the fishing boat. They fired continually for about two minutes. One of the deceased, late Valentine, was sitting in the driving seat and the other deceased Pink was at the stern of the fishing boat when they were shot down to death. It was also stated that the fishing boat was 200 meters away from the vessel. The respondents have also submitted that all the fishermen in the boat were unarmed. There is nothing in the writ petition to suggest the contrary. For that reason itself, the story of attempted piracy attack is not a credible one. It is pertinent here to have a reading of Article 101 of UNCLOS which defines piracy in the following manner:

"Article 101

Definition of Piracy

Piracy consists of any of the following acts:

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(i)on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b)."

There is no whisper in the pleadings in the writ petition that any of the acts mentioned in Clauses (a) to (c) of Article 101 has been committed or attempted to be committed by any of the fisherman on board the fishing boat. It is also significant to note that the statement in Exhibit P2 that the vessel and the fishing boat were at a distance of 200 meters has not been denied. Therefore, there is no occassion for any of the fishermen on board the fishing boat to have done any of the acts mentioned in Clauses (a) to (c) under Article 101 of the UNCLOS so as to describe it as a case of an attempted piracy attack. In the above circumstance, on the basis of pleading, the only conclusion that can be drawn is that the shooting down to death two unarmed fishermen on board their boat is a clear case of brutal murder without any provocation or justification whatsoever. It appears that the plea of attempted piracy attack was raised as a defence against the offence of murder alleged.

26. Further, Article 97 of the UNCLOS, relating to collisions or incidents of navigation, is not applicable in this case, as there has been no collision or incident of navigation here. Article 97 of the UNCLOS reads as follows:

Article 97

Penal jurisdiction in matters of collision or any other incident of navigation

1. In the event of a collision or any other incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the master or of any other person

in the service of the ship, on penal or disciplinary proceedings may be instituted against such person except before the judicial or administrative authorities either of the flag State or of the State of which such person is a national.

2. In disciplinary matters, the State which has issued a master's certificate or a certificate of competence or licence shall alone be competent, after due legal process, to pronounce the withdrawal of such certificates, even if the holder is not a national of the State which issued them.

3. No arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag State.

The above provision would clearly show that it is applicable only in case of collision or any other 'incident of navigation' concerning a ship on the high seas and not relating to CZ/EEZ. 'Incident of navigation' is not defined anywhere in the UNCLOS or in any of the maritime laws or treaties. Incident literally means 'an event or happening, especially one causing trouble'. Generally it occurs unexpected or unanticipated. Thus speaking, an 'incident of navigation' would generally mean an event that has a bearing on the navigation. In the present case, nothing of that sort happened. By no stretch of imagination can it be said that opening fire, unilaterally, at a fishing boat, 200 metres away from the ship, containing unarmed fishermen, most of whom were sound asleep, constituted an 'incident of navigation'. This is a case of firing against fishermen. Such

action cannot be justified as an 'incident of navigation', so as to attract Article 97 read with Article 58 (2) of the UNCLOS. Therefore, this is a case which is not covered by Article 97 of UNCLOS.

27. It is admitted that the Marines were on the vessel as armed security personnel. Attention was canvassed to the revised interim guidance to ship owners, ship operators and ship masters on the use of Privately Contracted Armed Security Personnel (PCASP) on Board Ships in the High Risk Area issued by the IMO. Rule 3.5 is as follows:

> *3.5 Rules for the Use of Force*
>
> *It is essential that all PCASP have a complete understanding of the rules for the use of force as agreed between shipowner, PMSC (Private Marine Security Company) and Master and fully comply with them. PCASP should be fully aware that their primary function is the prevention of boarding using the minimal force necessary to do so. The PMSC should provide a detailed graduated response plan to a pirate attack as part of its teams' operational procedures.*
>
> *PMSC should require their personnel to take all reasonable steps to avoid the use of force. If force is used, it should be in a manner consistent with applicable law. In no case should be use of force exceed what is strictly necessary, and in all cases should be proportionate to the threat and appropriate to the situation.*
>
> *PMSC should require that their personnel not use*

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> *firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, or to prevent the perpetration of a particularly serious crime involving grave threat to life.*

It shows that PMSC should provide a detailed graduated response plan to a pirate attack as part of its teams' operational procedures. PMSC should require their personnel to take all reasonable steps to avoid the use of force, and if force is used, it should be in a manner consistent with applicable law. In no case should the use of force exceed what is strictly necessary and in all cases, it should be proportionate to the threat, and appropriate to the situation. PMC should require their personnel not to use firearms against persons except in self defence or defence of others against imminent threat of death or serious injury or to prevent the preparation of a particular serious crime involving grave threat to life. In this case, as mentioned earlier the fishing boat was 200 meters away from the vessel, and except two, all persons aboard it were sleeping. All of them were unarmed. There was no attempt to board the Vessel. The Italian marines could also closely monitor the activities of the fishermen through their telescope. There is nothing in the pleadings to suggest that the fishermen were either armed or that they made any attempt to approach/board the vessel or that they did any act intending to cause death or serious injury to any person on board the vessel so as to provoke the Italian marines to open fire at the fishing boat. It is thus clear that the firing was not done in self-

defence. In fact, it amounts to a patent violation of the revised interim guidance quoted above. The firing is nothing but a brutal killing of two defenseless fishermen on board the boat.

28. The pleadings of the 1st respondent would show that the vessel which has a speed capacity of 18-20 knots would have been able to easily get away from the boat which has a maximum speed of 10 knots. Thereby any piracy attempt could have been averted without having to resort to any force. In view of the guidelines also, this is clearly a case of illegal and unjustifiable firing.

29. Such callous murder of unarmed fishermen, without any provocation or justification is undoubtedly, a grave offence and has to be dealt with seriousness. In fact the petitioners themselves have no case that the Italian marines are not liable to be prosecuted, convicted and sentenced, if found guilty. Their very case is that the marines can be prosecuted only in Italy, under the Italian laws. But the prayer in the writ petition is to quash Exhibit P2 First Information Report and all proceedings and investigation thereunder, and to release the marines. There is no prayer for extradition of the Italian Marines so as to enable the Republic of Italy to prosecute the Italian Marines.

30. During the course of arguments the petitioners had developed a case that the act of shooting down fishermen on board the fishing boat is punishable under Article 575 of the Italian Penal Code, and that the prosecution office within the Tribunal of Rome had opened a criminal proceedings under No.946/2012. In support of the plea, Exhibit P9, the translation of which is marked as Exhibit

P9 (a) was relied upon. Exhibit P9 supports the plea. Exhibit P10 was relied upon to show that certain documents were requested from the 2nd respondent. Exhibit P14(a)is the translation of Article 575 of the Italian Penal Code, which would show that whoever causes the death of a man shall be punished with imprisonment for not less than 21 years. Neither Exhibit P9, Exhibit P10, Exhibit P14 (a) nor any of the documents produced would show that the Italian Penal Code has any application to an incident that occurred in the CZ/EEZ of India, whereby Italian Marines on board the vessel shot down to death two Indian fishermen on board a fishing boat registered in India. It is also pertinent to note that other than the request for forwarding some documents, no investigation was initiated by the Republic of Italy to prosecute the Italian Marines. There has not been any attempt to get any statement from the Captain of the ship or any such attempt to know the truth of the matter. Even if any investigation has been launched in Italy, it seems to be proceeding at a snail's pace. All these, along with the absence of a request for extradition of the Marines, shows a total lack of bonafides in the argument advanced during the hearing of the writ petition that the Italian Marines will be prosecuted in Italy, where a criminal case has been opened.

31. It is also pertinent to note that the Republic of Italy has come to this court without any bonafides. As was mentioned earlier, in para 5 of the writ petition, it was pleaded that there was an attempted piracy attack. This court can appreciate the anxiety of the Italian Marines in advancing a defence plea and making such a

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pleading in the petition. But that is not the case of Republic of Italy. Before making such a pleading and rushing to this court seeking a writ of this court to quash the case and other consequential proceedings, the Republic of Italy should have made enquiries as to what exactly happened in the case. Further, the Republic of Italy, represented by the Consul General, had not filed any affidavit in support of the writ petition affirming the correctness of the contents in the writ petition, when it was filed. The Consul General filed an affidavit for the first time in support of certain documents produced along with I.A.No.3501/2012. What is stated in the concluding portion of the affidavit is that all facts stated above are true to the best of knowledge, information and belief of the Consul General. The 3rd Petitioner should have first made a proper inquiry into the incident, to verify the truth, before coming out in blanket support of the marines. The affidavit does not state that the Consul General had made any inquiry into the incident, or that he had received any authentic information from the captain or other responsible person that there was indeed an attempted piracy attack. In other words, the affidavit does not specify at all as to exactly what knowledge or information he had received about the incident. Therefore, it is evident that the affidavit was sworn by the Consul General without checking the veracity of the pleadings in the Writ Petition, regarding the circumstances that led to the firing. It thus appears that the attempt of the 3rd Petitioner is to just save the marines from the clutches of the law and protect them from trial and conviction for murder by seeking their unconditional release, without even

addressing the question of their involvement in the incident. Therefore, the affidavit of the 3rd Petitioner regarding the veracity of the pleadings in the Writ Petition is hardly reliable. In such a circumstance, I am of the opinion that all further proceedings in pursuance to Exhibit P2 cannot be simply quashed and the 1st and 2nd Petitioners cannot be released unconditionally. On the contrary, they are liable to be prosecuted for murdering two Indians who were engaged in fishing in the CZ/EEZ of India.

32. According to respondents 1 to 3, Article 27 of the UNCLOS is applicable and therefore the 3rd respondent is justified in registering the case and prosecuting the investigation after arresting the Italian Marines. Article 27 reads:

Article 27

Criminal jurisdiction on board a foreign ship

1. The Criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed on board the ship during its passage, save only in the following cases:

(a) if the consequences of the crime extend to the coastal State;

(b) if the crime is of a kind to disturb the peace of the country or the good order of the territorial sea;

(c) if the assistance of the local authorities has been requested by the master of the ship or by a diplomatic agent or consular officer of the flag State;

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or

(d) if such measures are necessary for the suppression of illicit traffic in narcotic drugs or psychotropic substances.

2. The above provisions do not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters.

3. In the cases provided for in paragraphs 1 and 2, the coastal State shall, if the master so requests, notify a diplomatic agent or consular officer of the flag State before taking any steps, and shall facilitate contact between such agent or officer and the ship's crew. In cases of emergency this notification may be communicated while the measures are being taken.

4. In considering whether or in what manner an arrest should be made, the local authorities shall have due regard to the interests of navigation.

5. Except as provided in Part XII or with respect to violations of laws are regulations adopted in accordance with Part V, the coastal State may not take any steps on board a foreign ship passing through the territorial sea to arrest any person or to conduct any

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investigation in connection with any crime committed before the ship entered the territorial sea, if the ship, proceeding from a foreign port, is only passing through the territorial sea without entering internal waters.

Though Article 27 falls under Part II relating to Territorial sea and contiguous zone, it relates to the exercise of the criminal jurisdiction of the coastal state on board a foreign ship passing through the territorial sea and not through the CZ/EZZ. Admittedly the vessel was not passing through the territorial sea and therefore, Article 27 has no application. The question then is as to how the case is to be dealt with. In this view of the matter, I find that the right of the coastal State in the CZ/EEZ is relevant. Article 33 of the UNCLOS deals with the exercise of control over the CZ; and Article 56 relates to the right, jurisdiction and duty of the coastal states in the EEZ. They read as follows:

Article 33

Contiguous zone

1. In a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise the control necessary to:

(a) Prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea;

(b) punish infringement of the above laws and regulations committed within its territory or territorial sea.

2. The contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured.

Article 56

Rights, jurisdiction and duties of the coastal State in the exclusive economic zone

1. In the exclusive economic zone, the coastal State has:

(a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;

(b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:

(i)the establishment and use of artificial islands, installations and structures;

(ii)marine scientific research;

(iii)the protection and preservation of the marine environment;

(c) other rights and duties provided for in this Convention.

2. In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.

3. The rights set out in this article with respect to the seabed and subsoil shall be exercised in accordance with Part VI.

33. A combined reading of Articles 33 and 56 would show that in the CZ/EEZ, the coastal state has the sovereign right with regard to exploring and exploiting, conserving and managing the national resources whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, current and winds. So also, the coastal States has the right for the establishment and use of artificial islands, installations and structures, marine research, protection and preservation of the marine environment etc. Subclause 2 to Article 56 would show that in exercising the above rights and performing the duties, the coastal state shall act in a manner compatible with the provisions of the Convention. Therefore, the coastal state is entitled to enact any law which is not incompatible with the provisions of the Convention for maintaining law and order, and for exercising and protecting the rights including the lives of the persons employed/engaged in

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exercise of the above rights. To hold that a coastal state has no right whatsoever to protect its nationals exercising their legitimate rights inside the coastal state's CZ/EEZ, would be nothing but a total travesty of justice and an outrageous affront to the nation's sovereignty. Such a view would mean that any day, any passing-by ship can simply shoot and kill, at its will, fishermen engaged in earning their livelihood; and then get away with its act on the ground that it happened beyond the territorial waters of the coastal state. Such a view will not merely be a bad precedent, but a grossly unjust one, and will go against all settled principles of law. Going through the provisions of the Territorial Waters Act 1976, the notification issued under Subclause (7) of Section 7 and the SUA Act, I find that the provisions of the above two enactments and the notification are not at all incompatible with the provisions of the convention. Even the petitioners do not have any such plea. Therefore, I find that Territorial Waters Act, 1976, the notification issued under Sub Clause (7) of Section 7 and the SUA Act are compatible with the UNCLOS. The Italian Marines, who shot dead the two Indian fishermen engaged in fishing in the EEZ are therefore liable to be dealt with under the Territorial Waters Act, 1976, IPC, CrPC and the SUA Act.

Passive Nationality Principle and Objective Territorial Principle:

34. Here, in this case, as the victims are Indians, Passive Nationality Principle is applicable, and under it the Italian Marines are liable to be prosecuted in India. The justification for applying Passive Nationality Principle is that each State has a perfect right to

protect its citizens abroad and if the territorial state of the locus delicti, neglects or is unable to punish the person causing the injury, the State of which the victim is a national is entitled to do so if the persons responsible come within his power. The following are the illustration given in the Report of Sub Committee of League of Nations Committee of Experts for the Progressive Codification of International Law (1926) on Criminal Competence of States in respect of offences committed outside their Territory.

a. a man firing a gun across a frontier and killing another man in a neighbouring State.

b. a man obtaining money by false pretends by means of a letter posted in one country to another country.

Further, the Objective Territorial Principle is also applicable in cases where an act commences in one State but is consummated or completed within the territory of another State, producing gravely harmful consequences in the latter. Professor Hyde has defined the objective territorial theory as follows: *"The setting in motion outside of a state of force which produces as a direct consequence on injurious effect therein justifies the territorial sovereign in prosecuting the actor when he enters its domain."*

Applying the Objective Territorial Principle, the Permanent Court of International Justice in 1927 decided the *Lotus case (1927 PCIJ series A, No.10)*. In that case, a French mail steamer, the LOTUS collided on the high seas with a Turkish Collier. It was alleged that the collision was due to the gross negligence of the officer of the watch on board the LOTUS. As a result of the collision, the Turkish

Collier sank and 8 Turkish nationals on board perished. The Turkish Authorities instituted the proceedings against the officer of the watch, basing the claim to jurisdiction on ground that the act of negligence on board the LOTUS had produced effect on Turkish Collier and thus applying the Objective Territorial Principle the case could be tried in Turkey. By a majority decision the Permanent Court held that action of the Turkish Authorities was not inconsistent with the International Law.

35. The learned senior counsel appearing for the petitioners had contended that the LOTUS case was overruled by Article 97 of the UNCLOS. It is true that in cases of collision or incident of navigation, by virtue of Article 97 of the UNCLOS, the law declared in the LOTUS case may not be a good law. But as stated earlier, Article 97 of UNCLOS relates only to collisions or incidents of navigation, in high seas and not to a case of firing at fishermen fishing in CZ/EEZ.

36. The 'effective principle' had been the consideration in Dooth's case *(1973(1) AER 940) Director of Public Prosecution Vs. Dooth and others*. In that case, the respondents who were American citizens conspired in Belgium to import cannabis resin to England with the object of re-exporting it to the United States. No part of agreement occurred in England where the import of cannabis resin without licence was unlawful under the Dangerous Drugs Act. The respondents were convicted by the jury. Court of appeal allowed the appeal holding that there is no jurisdiction as the agreement alleged had occurred abroad. Crown preferred an appeal against

this, which was allowed by the House of Lords and conviction was sustained.

37. In this case, the victims along with the others were engaged in the lawful activity of fishing, within India's EEZ, where they had the full right to engage in such fishing. All of a sudden, they were, without any justification, shot down by Petitioners 1 and 2. There is no gainsaying the fact that the effect and consequences of such a gruesome act ensues in the territory of India. This incident has a direct bearing on the lives and livelihoods of that section of Indian population engaged in fishing. As apprehended by the petitioners in I.A 2928/2012, I.A 3017/2012, 3178/2012 and I.A 3186/2012, this incident has instilled in the fishermen community of India a sense of fear and insecurity about the safety and security of their lives at sea. Thus it is clear that the objective territoriality principle is applicable in this case.

38. In this context, Section 179 CrPC is relevant. It reads:

> "*179. Offence triable where act is done or consequence ensues.--When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.*"

The above provision stipulates that an offence is to be inquired into or tried by a court within whose locality such offence was committed <u>or such consequence has ensued</u>. In this case since the fishermen

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on board the fishing boat registered in India were murdered at the CZ/EEZ of India, Section 179 CrPC squarely applies. Section 179 CrPC in effect codifies the objective territorial and effective principle.

Other Precedents Referred:

39. The Petitioners had pleaded the applicability of the decision in *Fathimabeevi Ahammed Patel Vs. State of Gujarat and another (AIR 2008 Supreme Court 2392)*, in which case the offence alleged was committed outside India at Kuwait and the order taking cognizance was found illegal. Going through that decision, I find that in that case the applicability of Section 4 IPC alone was considered, and hence its ratio has no application to the case at hand.

40. The learned counsel for the petitioner had also relied upon the decision in *Raymund Gencianeo Vs. State of Kerala (2004 Crl.L.J. 2296)*. In that case, the allegation was an attempt to commit the murder of the Captain and the Chief Officer of a Japanese Vessel on board when it was 850 miles away from the Cochin coast. The case was registered in Cochin. At para 6, it was held as follows:

> *The territorial waters is every line every point of which is at a distance of twelve nautical miles from the nearest point on the appropriate baseline. Since the case of the prosecution is that the occurrence took place when the ship was 850 miles away from seashore, even if that 850 miles is taken as nautical miles or land miles, it is clear that the offence is alleged to have been committed by a foreign national in foreign vessel outside the territory*

protect its citizens abroad and if the territorial state of the locus delicti, neglects or is unable to punish the person causing the injury, the State of which the victim is a national is entitled to do so if the persons responsible come within his power. The following are the illustration given in the Report of Sub Committee of League of Nations Committee of Experts for the Progressive Codification of International Law (1926) on Criminal Competence of States in respect of offences committed outside their Territory.

a. a man firing a gun across a frontier and killing another man in a neighbouring State.

b. a man obtaining money by false pretends by means of a letter posted in one country to another country.

Further, the Objective Territorial Principle is also applicable in cases where an act commences in one State but is consummated or completed within the territory of another State, producing gravely harmful consequences in the latter. Professor Hyde has defined the objective territorial theory as follows: *"The setting in motion outside of a state of force which produces as a direct consequence on injurious effect therein justifies the territorial sovereign in prosecuting the actor when he enters its domain."*

Applying the Objective Territorial Principle, the Permanent Court of International Justice in 1927 decided the *Lotus case (1927 PCIJ series A, No.10)*. In that case, a French mail steamer, the LOTUS collided on the high seas with a Turkish Collier. It was alleged that the collision was due to the gross negligence of the officer of the watch on board the LOTUS. As a result of the collision, the Turkish

of India. The Indian Courts have no jurisdiction to try an offence which is alleged to have been committed by a foreign national in a foreign vessel outside the territory of India and hence the proceedings in the case are liable to be quashed.

In the present case, however, the incident occurred within the contiguous zone/exclusive economic zone of India. Hence it cannot be compared to a case in which the alleged offence occurred 850 miles away from the baseline which is far beyond the CZ/EEZ of India. Therefore, the ratio of above decision also does not apply to the case at hand.

41. The decision in *The Queen Vs. Carr And Wilson (Queen's Bench Division Vol. X. dated 25/11/1882)* was also relied upon by the petitioners. In that case, certain bonds or valuable securities were stolen from a British ocean-going merchant ship whilst she was lying afloat, in the ordinary course of her trading, in the river at Rotterdam, in Holland, moored at the quay, and were afterwards wrongfully received in England by the prisoners with a knowledge that they had been thus stolen. The place where the ship lay at the time of the theft was in the open river, sixteen or eighteen miles from the sea, but within the ebb and flow of the tide. There were no bridges between the ship and the sea, and the place where she lay was one where large vessels usually lie. It did not appear who the thief was, or under what circumstances he was on board the ship. At Page 85, it was held as follows:

The true principle is, that a person who comes on

> *board a British ship, where English law is reigning, places himself under the protection of the British flag, and as a correlative, if he thus becomes entitled to our law's protection, he becomes amenable to its jurisdiction, and liable to the punishments it inflicts upon those who there infringe its requirements. I can draw on distinction between those who form part of the crew, those who come to work in or on the ship, those who are present involuntarily, or those who come voluntarily as passengers. If no board in such case, our law protects them against outrage and wrong, and from that it follows they are liable to the obligations by it imposed. It is said that these bonds may have been stolen by a Dutch subject who came, perhaps without a right, on board for a short time, and who then went back with his plunder to Rotterdam. If so, if the ship had sailed for this country before he got ashore with the bonds thus stolen, instead of after, and brought him to this country against his will, I say he could have been tried and convicted here. The conviction must be affirmed.*

The ratio of the above decision has no application to the present case, as in that case, the alleged offence was committed in a British ship flying the British flag and the case was correctly tried and convicted in England.

42. The learned Advocate General relied upon the decision in *Mobarik Ali Ahmed Vs. The State of Bombay (AIR 1957 SC 857),*

where it was held that the exercise of criminal jurisdiction depends on the locality of the offence, and not on the nationality of the alleged offender or his corporeal presence in India (para 24 to 28 and 32).

In the decision in Lee Kun Hee, President, Samsung Corporation, South Korea and Others Vs. State of Uttar Pradesh and others (2012 (3) SCC case 132), quoting para 24 to 28 and 32 in Mobarik Ali's case (supra), at para 44 it is held as follows:

> *"44. In view of the above, we are satisfied that all components of the submissions advanced on behalf of the appellants, more particularly their foreign nationality, their residence outside India, and the fact that they were not present in India when the offence(s) was/were allegedly committed, are of no consequence, in view of the aforesaid decision rendered by this Court in Mobarik Ali Ahmed case"*

43. The decision in *Aban Loyd Chiles Offshore Ltd.* v. *Union of India* (2008 (11) SCC case 439) was also relied upon. That case dealt with the imposition of the customs duty. Referring to the various provisions, at para 98 and 99 it was held as follows:

> *98.As stated above, the area of exclusive economic zone/continental shelf, where the oil rigs are stationed (which of course is outside territorial waters) is deemed to be a part of the territory of India under the Central Government notifications*

issued pursuant to the provisions of the Maritime Zones Act, 1976. The supply of imported spares or goods or equipments of the rig by a ship will attract import duty and the ship employed for transshipment of the goods for that purpose would not be a foreign going Vessel under Section 2(21) of the Customs Act. The area of discharge or unloading/loading is within India by virtue of the deeming provisions of Sections 6 and 7 of the Maritime Zones Act, 1976. The Customs Act stands extended to the designated area by virtue of the Maritime Zones Act, 1976. The oil rigs carrying on operations in the designated area is not a foreign going vessel as the same would be deemed to be a part of Indian territory i.e., going from the territory of India to an area which also deemed to be part of the territory of India.

99. *As stated above, contiguous zone is that part of the sea which is beyond the adjacent to the territorial waters of the coastal States. The coastal States though do not exercise sovereignty over this part of the sea, however, they are entitled to exercise sovereign rights and take appropriate steps to protect its revenue and like matters. The police and revenue jurisdiction of the coastal States is extended to the contiguous zone as well.*

My earlier finding is also in tune with the above observation of the Apex Court that India has jurisdiction to try a crime committed in its contiguous zone, where, as a consequence of the crime, its citizen is murdered.

State Practice

44. State practice also indicates that in appropriate cases the coastal states have exercised its jurisdiction over the contiguous zone as well. As early as in 1891, the United States Supreme Court had pointed out that the State could exercise jurisdiction beyond the limit of territorial waters *(Manchester v. Massachussetts, (1891) 139 U.S. 240).* The exercise of jurisdiction by the US to deal with liquor smuggling and to deal with 'rum runners', during the Prohibition Era (1919-1933) is also an example of exercise of jurisdiction over the contiguous zone. The Maritime Drug Law Enforcement Act, 46 U.S.C. 70501-70507, which defines 'vessel subject to the jurisdiction of the United States' to include the vessels located in the contiguous zone. Similarly, Art 13 of the Law on the Territorial Sea and the Contiguous Zone of 25 February 1992, enacted by the People's Republic of China (PRC), provides that PRC has the authority to exercise powers in order to prevent the infringement of security laws also. Therefore, the State Practice also indicates that in appropriate cases, the coastal state can exercise jurisdiction over the vessels in contiguous zone.

Navigational Freedom

45. I may also mention that the history of the Law of the Seas has always been an attempt to balance two conflicting interests- i.e. the freedom of navigation on one hand, and the rights of the coastal states on the other. Neither of them are absolute. Freedom of navigation does not mean that the vessels have absolute rights or

freedom to navigate through the seas, unconcerned about the rights of others. The freedom of navigation, as in the case of any other rights is qualified. It was in the context of this balancing of conflicting interests that the rules relating to jurisdiction has been created in the UNCLOS. As long as the vessel is engaged in 'an innocent passage', she cannot be interdicted, but when her passage hinder the security of the State, or when it affects the public order of the coastal State, the Coastal State cannot be asked to be a mute spectator. Going by this aspect of balancing of conflicting interest also, I am inclined to accept the view that the respondents 2 and 3 have jurisdiction to try the case, and that it is not an invasion into the navigational freedom.

46. For the foregoing reasons, and in the light of the precedents quoted above, I answer the first issue in favour of respondents and against the petitioners, by finding that the Italian Marines who had shot dead two Indians on board the fishing boat, registered in India while fishing in CZ/EEZ of India are liable to the penal jurisdiction before the Indian courts; and that the 3rd respondent was right in registering a case and proceeding with the investigation, irrespective of the fact that they were on board a foreign vessel.

Issue No. 2.

47. The plea of the petitioners 1 and 2 that they are personnel employed in Italian Military Navy, discharging sovereign functions and hence entitled to immunity, has been denied by the respondents. Regarding the nature of the employment, no

document other than Exhibit P1 identity card was produced. The cards however do not give any information regarding the nature of the employment of the marines. It is not disputed that the vessel on which the Italian marines were on board, is not a vessel owned by the Republic of Italy. The vessel belongs to a private person and was engaged in commercial activities, which are in no way connected to any sovereign function of the Republic of Italy. The respondents relied on the Protocol Agreement between the Ministry of Defence - Naval Staff and the Italian Shipowners' Confederation (Confitarma). Drawing attention to Article 2 of the Addendum to the Convention attached to the Protocol Agreement signed in Rome dated 11/10/2011, it was argued that the service of military personnel was provided to the ship owner on a daily payment basis. Article 2 of the Addendum to the Convention reads:

> *"Art.2-Daily service fee*
>
> *In order to assure the performance of the activity, the requesting Owner will, on top of what is indicated in para 2.2 of the Convention, reimburse the charges connected with the use of NMP, including the accessory expenses for the personnel, the functioning and logistic management in the area, equal to a daily on board fee of £ 467,-per person."*

Article 2 would show that the Italian marines, deputed from the Navy were working on a contract basis for the protection of the private interests of the ship owner. According to the respondents, this can in no way be treated as a discharge of sovereign functions. Having due regard to the nature of the dispute regarding sovereign

immunity, I find that it is a matter of evidence and an adjudication in a writ petition on the basis of the disputed facts will not be appropriate.

48. Municipal law as well as International law recognizes sovereign immunity. But the extent of immunity depends upon the circumstances in which the forces are admitted by the territorial State, and in particular upon the absence or presence of any express agreement between the host and the sending State regulating the terms and conditions governing the entry of forces in the coastal territory. In this case there was no 'entry' by the Italian Marines to the territory of India, but a merciless attack of gunshots at fishermen, while passing through the CZ/EEZ of India, breeching all established guidelines and norms, and without any cause. It can be treated only as a case of brutal murder and can in no way be masqueraded as a discharge of the sovereign function. Where the members of military forces of a country commit wrongful acts, while engaging in non-military functions, it is quite appropriate for the aggrieved state to claim jurisdiction and subject them to the local law. International Law does not recognize any absolute waiver of jurisdiction by the aggrieved State. In the case at hand, petitioners 1 and 2 were under the control of the Captain of the ship and hence were to act only under his orders. There is nothing on record to show that the Italian marines were allowed absolute freedom to shoot and kill any person, even in cases of piracy attacks. In other words, the marines were not under the command of their immediate Superior Officer, but under the Captain of the vessel. Since, there is

nothing on record to come to a conclusion that the Captain had given them any instruction to open fire at the boat, it has to be inferred that they did so at their own whim, and not under the command of either the Captain or of their superior officer in the Navy, so as to be able to claim sovereign immunity. In the peculiar facts and circumstances of the case, I find that by no stretch of imagination can it be held that the shooting of two Indians by petitioners 1 and 2 is an act in exercise of sovereign functions. It is neither an action in defence of the State nor one in defence of the vessel, but a private, illegal and criminal act. Therefore, I answer the second issue against the petitioners and in favour of the respondents, by holding that petitioners 1 and 2 are not entitled to any sovereign immunity.

In the result, the writ petition fails. Accordingly it is dismissed with the costs of respondents 1 and 2 which is determined at Rs.1,00,000/- (One lakh) each payable by the 3rd petitioner. The 3rd petitioner shall deposit the costs within two weeks. Though the acts of respondents 4 to 6, as well as the guardian of the 5th and 6th respondents deserve to be severely dealt with for wasting the valuable time of this Court, this Court is refraining from imposing heavy costs, in view of the losses that have been suffered by them, and considering the fact that they are ladies belonging to the weaker section of the society. The 4th respondent, as well as the guardian of 5th and 6th respondents shall deposit a sum of Rs.10,000/- (Ten thousand) each to the State Legal Aid Fund of the Kerala State Legal Services Authority within two weeks. All the

pending impleading petitions would stand dismissed. The observations made in this judgment on facts are based on the documents produced, and without prejudice to the defence of petitioners 1 and 2, and are for the limited purpose of disposal of this writ petition. The trial court shall consider the contentions of petitioners 1 and 2 on merits, untrammelled by the observation on facts.

Sd/-
P.S.GOPINATHAN,
JUDGE

DSV

True Copy
P.A. To Judge

W.P.(C).NO.4542/2012-P:

APPENDIX

PETITIONERS' EXHIBITS:

EXT. P1:	THE TRUE COPY OF MILITARY IDENTITY CARD OF THE 1ST PETITIONER.
EXT. P1(A):	TRUE COPY OF MILITARY IDENTITY CARD OF THE 2ND PETITIONER.
EXT. P2:	THE TRUE COPY OF THE FIR IN CRIME NO. 2 OF 2012 OF THE COASTAL POLICE STATION, NEENDAKARA DTD. 15.02.2012
EXT. P3:	THE TRUE COPY OF THE REMAND REPORT IN CRIME NO. 2 OF 2012 OF THE COASTAL POLICE STATION//
EXT. P3(A):	THE TRUE COPY OF THE AFFIDAVIT SEEKING POLICE CUSTODY DATED 20.02.2012.
EXT. P4:	THE TRUE COPY OF THE RELEVENT PAGES OF TERRITORIAL WATERS, CONTINENTAL SHELF, EXCLUSIVE ECONOMIC ZONE AND OTHER MARITIME ZONES ACT, 1976.
EXT.P.5:	THE TRUE COPY OF THE LETTERS OF PATENT ISSUED THE PRESIDENT OF ITALY COUNTER SIGNED BY THE MINISTER OF FOREIGN AFFAIRS DTD. 19/12/2008.
EXT.P.5.A:	THE TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P.5.
EXT.P.6:	THE TRUE COPY OF THE EXEQUATUR ISSUED BY HER EXCELLENCY THE PRESIDENT OF INDIA DTD. 01/05/09.
EXT.P.7:	THE TRUE COPY OF THE COMMUNICATION ISSUED BY THE MINISTER OF EXTERNAL AFAIRS, NEW DELHI DTD. 05/01/2009.
EXT.P.8:	THE TRUE COPY OF THE COMMUNICATION NUMBER MAE005677420120301 DTD. 01/03/2012.
EXT.P.8.A:	THE TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P.8.
EXT.P.9:	TRUE COPY OF THE COMMUNICATION FROM THE PROSECUTION OFFICE WITHIN THE TRIBUNAL OF ROME CONCERNING PROCEEDINGS INITIATED AGAINST PETITIONER NO.1. AND 2.
EXT.P.9.A:	THE TRUE COPY OF THE ENGLISH TRANSLATION OF COMMUNICATION FROM THE PROSECUTION OFFICE WITHIN THE TRIBUNAL OF ROME CONCERNING PROCEEDINGS INITIATED AGAINST PETITIONER NO.1 AND 2.
EXT.P.10:	THE TRUE COPY OF THE COMMUNICATION FROM THE EMBASSY OF ITALY TO THE MINISTRY OF EXTERNAL AFFAIRS, GOVERNMENT OF INDIA.

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W.P.(C).NO.4542/2012-P:

EXT.P.11: THE TRUE COPY OF THE COMMUNICATION DTD. 06/02/2012 FROM ITALIAN NAVY GENERAL STAFF TO ITALIAN DEFENSE ATTACHES IN NEW DELHI AND MUSCAT SHOWING DEPLOYMENT OF MILITARY PROTECTION DETACHMENTS ALONG WITH OFFICIAL ENGLISH TRANSLATION CERTIFIED BY THE CONSUL GENERAL OF ITALY.

EXT.P.11.A: THE TRUE COPY OF THE ENGLISH TRANSLATION OF COMMUNICATION DTD. 06/02/2012 FROM ITALIAN NAVY GENERAL STAFF TO ITALIAN DEFENSE ATTACHES IN NEW DELHI AND MUSCAT SHOWING DEPLOYMENT OF MILITARY PROTECTION DETACHMENTS.

EXT.P.12: TRUE COPY OF THE COMMUNICATION DTD. 14/02/2012 FROM ITALIAN NAVY GENERAL STAFF TO ITALIAN DEFENSE ATTACHE IN ETHOPIA ALONG WITH OFFICIAL ENGLISH TRANSLATION CERTIFIED BY THE COUNSUL GENERAL OF ITALY.

EXT.P.12.A: THE TRUE COPY OF THE ENGLISH TRANSLATION OF COMMUNICATION DTD. 06/02/2012 FROM ITALIAN NAVY GENERAL STAFF TO ITALIAN DEFENSE ATTACHE IN ETHOPIA.

EXT.P.13: THE TRUE COPY OF THE ACT NO.107/2011 CONVERTED IN LAW BY THE ITALIAN PARLIAMENT ALONG WITH OFFICIAL ENGLISH TRANSLATION CERTIFIED BY THE CONSUL GENERAL OF ITALY.

EXT.P.13.A: THE TRUE COPY OF THE ENGLISH TRANSLATION OF ACT NO.107 OF 2011 CONVERTED IN LAW BY THE ITALIAN PARLIAMENT ALONG WITH OFFICIAL ENGLISH TRANSLATION CERTIFIED BY THE CONSUL GENERAL OF ITALY.

EXT.P.14: THE TRUE COPY OF THE ARTICLE 575 OF THE ITALIAN PENAL CODE.

EXT.P.14.A: THE TRUE COPY OF THE ENGLISH TRANSLATION OF ARTICLE 575 OF THE ITALIAN PENAL CODE.

EXT.P.15: THE TRUE COPY OF THE COMMUNICATION FROM THE PROSECUTION OFFICE WITH THE MILITARY TRIBUNAL OF ROME CONCERNING PROCEEDINGS INITIATED.

EXT.P.15.A: THE TRUE COPY OF THE ENGLISH TRANSLATION OF COMMUNICATION FROM THE PROSECUTION OFFICE WITHIN THE MILITARY TRIBUNAL OF ROME CONCERNING PROCEEDINGS INITIATED.

EXT.P.16: THE TRUE COPY OF THE COMMUNICATION DTD. 29/02/2012 FROM THE EMBASSY OF ITALY TO THE MINISTRY OF EXTERNAL AFFAIRS, GOVERNMENT OF INDIA.

EXT.P.17: TRUE COPY OF THE EMAIL RECEIVED BY THE VESSEL FROM THE MRCC MUMBAI.

EXT.P.18: THE TRUE COPY OF THE ARREST INTIMATION.

W.P.(C).NO.4543/2012-P:

RESPONDENTS' EXHIBITS:

EXT.R5.A: COPY OF THE ADMIRALTY OFFENCES (COLONIAL) ACT, 1849.

EXT.R5.B: COPY OF THE SUPPRESSION OF UNLAWFUL ACTS AGAINST SAFETY TO MARITIME NAVIGATION AND FIXED PLATFORMS ON CONTINENTAL SHELF ACT, 2002.

EXT.R5.C: COPY OF THE GUIDE LINES ISSUED BY THE DIRECTOR GENERAL OF SHIPPING, MINISTRY OF SHIPPING DTD. 29/08/2011 BEARING NO. F. NO. SR-13020/6/2009-MG (PT).

//TRUE COPY//

P.A. TO JUDGE.

Prv.

True Copy
Examiner

W.P.(C).NO.4542/2012-P:

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