



THE INTERPRETATION OF THE PHRASE “OTHER INCIDENTS OF NAVIGATION” EX ART. 97 UNCLOS IN THE 21 MAY 2020 AWARD IN THE *ENRICA LEXIE* CASE (ITALY V. INDIA)

In the *Enrica Lexie* Case Italy and India have submitted different conclusions as to the meaning of the phrase “other incidents of navigations” in art. 97 para. 1 UNCLOS and, consequently, as to the applicability of the aforesaid article to the Incident of 15 February 2012.

The Arbitral Tribunal started from the ordinary meaning (event that occurs in relation to the movement and directing or manoeuvring of a ship), clarified the object and purpose of art. 97 (to reverse the 1927 Lotus PCIJ judgment creating an exception to the otherwise prevailing rules on allocating jurisdiction), looked at the preparatory work of the aforesaid disposition (which supported the notion of an event that occurred in relation to the movement and manoeuvring of a ship which causes some form of serious damage or harm to the ships involved, their cargo or the individuals on board) thus concluding that the phrase “other incidents of navigations” in art. 97 para. 1 UNCLOS refers to an event that occurs in relation to the movement or manoeuvring of a ship and that causes some form of serious damage or harm, including to the ships involved, their cargo or the individuals on board - thus rejecting a broader notion maintained by Italy and by some authors in order to include any event with a bearing on navigation or related on navigation - and consequently excluding the applicability of art. 97 to the Incident of 15 February 2012.

The judgment made clear, we could say in a definitive way, the meaning of art. 97 UNCLOS; nevertheless, even asserting the inapplicability of art. 97 to the Incident but recognising in the meanwhile the functional immunity of the two Marines, the Tribunal Arbitral, looking at the material rules to be applied in the dispute between Italy and India, assured an acceptable result in order to obtain a substantial justice in the concrete case.