

THE CASE OF ITALIAN MARINES DETAINED IN INDIA

This thesis wants to examine the aspects regarding the case of the two Italian Marines detained in the Italian embassy in New Delhi, after the facts occurred in the 15th of February 2012. In this day's evening, Massimiliano Latorre and Salvatore Girone, were on board in *Enrica Lexie*, an Italian freighter, as defenders against the buccaneers, who are highly active in the route traversed by the above-mentioned Italian ship. The two marines, having sighted a ship in a plausible collision route with the *Enrica Lexie*, shoot the so called advertisement rifle shot – in other words, firing some shots in the sea – but the ship did not stop its stroke. The bullets fired by Marine's arms hit the ship, then recognized as a fishing boat, and the two fishermen on board have been gunshot to death.

The incident has occurred 22,5 miles far from the Indian coast, in the contiguous zone of India. After the fact, the Coast Guard asked *Enrica Lexie*'s captain to enter in the port of Kolhi, in the territorial State of Kerala, on the pretext of having information about an act of piracy happened in the area of navigation of the Italian boat. That so called “smart move” has turned out to be the beginning of the controversial case of the two Marines, arrested with charge of homicide, while the *Enrica Lexie* was held by Indian authorities.

The deceit through which Indian authorities made the *Enrica Lexie* go back to the port of Kolhi was undeniable a “smart move”, as the Indian press called it. It is still not clear who – among the Italian Minister of Defence, Foreign Affairs and the ship owner himself – gave the order to the captain of the Italian mercantile to follow the Indian request. After that, as above-mentioned, both the two Marines and the *Enrica Lexie* – this latter in a figurative way – were put

under arrest. Moreover, the fishing boat was sequestered – together with the Marine's arms – with the aim of allowing the Indian's authorities to do the ballistic appraisal. But this latter practice turned out to be impossible to be done because of the fact that the Indian fishing boat was discovered burnt a few days after the requisition.

The Italian Government than appealed to the High Court of Kerala, obtaining the release of Massimiliano Latorre and Salvatore Girone, nevertheless imposing to the two Marines the obligation of daily sign to the New Delhi central police station and the requisition of their passports. After several appeals to the Courts of Kerala, Italian authorities decided to appeal again to the New Delhi Supreme Court, which judged – on the 18th of January 2013 – the tribunals of the State of Kerala not in charge for the case. The reason is that in any kind of incident of navigation occurred in Indian Contiguous Zone and Economic Zone, its jurisdiction inhabits in the Union of India, and not in one of the component States, as Kerala is.

The two licences allowed by Indian authorities to the Italian Marines represent two great problems, throughout this affair. The affidavit given by Italian authorities to the Indian ones has been respected for the first permission used by Massimiliano Latorre and Salvatore Girone in the occasion of Christmas holidays. The second affidavit, granted to the two Marines with the aim of allowing them to vote for the Italian national elections in February 2013, has not been reverred by the return in New Delhi of the two riflemen. On the 11th of March 2013, the Italian Government communicated that Salvatore Girone and Massimiliano Latorre would have not come back in India because of the possibility to be judged by the Indian antiterrorism legislation, which foresees – in certain cases – death penalty.

The choice made by the Italian Government – headed at the time by Mario Monti – was undoubtedly a cautious one. Indeed, the 27th Article of the Constitution of the Italian Republic states the prohibition of death penalty, while in India this latter is applicable for such cases like the one for which the two Marines are charged. Conversely, the decision to send the two riflemen to New Delhi on the 21st March was clearly a slapdash one. The motivation of that choice lies in the intimidation made by the Indian authorities towards our ambassador in New Delhi, who was victim of significant restrictions, since he was obliged not to leave the Indian territory. The gravity of the choice of backtracking on the yet taken decision, according to which the second affidavit was not to be respected, was made clearer by the resignation of the Italian Foreign Affairs minister Giulio Terzi, after the parliamentary debate on this issue.

In this thesis, all the aspects concerning the convoluted case of the two officials of the Italian Navy – detained in the Italian embassy in New Delhi for almost three years – will be analysed. To reach this scope, the juridical and diplomatic aspects will be explicated in detail, and, eventually, a political analysis of the case, with a specific lens on the most recent events, will be proposed.

Juridical profiles

In the examination of the juridical aspect of the case, especially two topics will be highlighted and explained.

Firstly, the themes pertaining the jurisdiction in High Sea will be examined in depth. Namely, the VII section of the United Nations Convention in the Law of the Sea (UNCLOS) will be followed out in its articles 91 and 92, which deal with the nationality of the ships in High Sea and the status of subjectivity in the International Law. Moreover, in the 94th article the duties of the flag State will be

analysed, while the analysis of the 97th article will clarify all the aspects regarding penal jurisdiction in case of collision or of any other incidents of navigations.

In second instance, the themes concerning the functional immunity will be analysed. Here, the article of the Convention on the diplomatic relations pledged in Vienna in 1961 will be taken into exam. More precisely, the object of studying will be the Indian lean defence regarding the Italian accusation which supports the violation of the general principle of International Law, stated in the UNCLOS, in which it is clearly said that in every kind of incident of navigation, the jurisdiction of the flag State is the one that counts. On that point, the deficiency of Italian Government and diplomacy in not having insisted enough on this issue with the proper harassment will be also examined.

Diplomatic profiles

In the first place, from a diplomatic point of view of the case, the analysis of the ploy which Indian authorities staged in the aim of bringing the Enrica Lexie in territorial sea of India – namely in the port of Kholi, in the State of Kerala – will represent a fundamental issue in this thesis.

In the second place, the circumstances about the deferment of responsibility of the investigations to the Indian investigative organ on the antiterrorism, the NIA (National Investigating Agency), will be dealt with. It will be analysed, indeed, whether that choice was in conformity with the International Community norms. In the case that the antiterrorism legislation carried the case, the two Marines would have been judged to death penalty. This perspective is completely out of the Italian legal order, according to which, in the 27th article of the Constitution, the impossibility of extradition of an Italian citizen in such nation which provides the death penalty is explicitly stated. Moreover, the

circumstance of the creation of an ad hoc tribunal for the Marines' judgment will be examined too. This practice violates another Constitutional Italian norm, which states that none of the Italian citizens can be detached from its natural tribunal.

In conclusion, there will be an analysis of the most critical moment in the case history: the limitation of freedom of the Italian ambassador in New Delhi subsequent to the fact that the two Marines did not return to India after the authorization to come in Italy for the completion of their voting right, allowed by the Indian authorities on March 2013. The Italian Government should have certainly condemned that move in a more emphatic way, starting proceeding with the International Court of Justice for violation of the principles stated in the Convention on the Diplomatic Relations of Vienna.

Political profiles and conclusions

In the end, the problems born by the case in domestic and foreign politics, both in Italy and India, will be tackled. In fact, this chapter wants to give a general view on the relations between Italy and Europe and the United Nations, since the beginning of the case of the two Marines. The ways in which the UN and EU either supported or not the Italian Government, in the research of a solution for the difficult judiciary and diplomatic case of Massimiliano Latorre and Salvatore Girone, will be examined.

In this paragraph there will be much space for the treatment of an agreement between Italy and India concerning the return in homeland of the condemned in a foreign State. Actually, this is the situation in which the two Marines live since February 2012. That covenant regulates the condition of those who are condemned in a definitive way, but nothing is stated about those who are in delay of being judged. The pact could discipline a high number of cases and

the one of the two Italian riflemen could be extremely important in the definition of any other similar case.

The in-depth analysis of the motivations ahead the tardive decision made by the Italian Government, while trying to solve the case by the international arbitrate, will be essential. Indeed, the request in which Italy asks to engage the internalization way of the case, has arrived only the previous summer, during the Renzi Government and after the third change of the Foreign Affair Minister – since the Marines case has started, there has been a succession of three ministers, in chronological order Giulio Terzi, Emma Bonino and now Federica Mogherini. In particular, the article 287 of UNCLOS will be examined, while dealing with the choice of jurisdiction in case of an international controversy.

Massimiliano Latorre comes back due to an ischemia

In conclusion, it is dutiful to end this thesis with the mention of the latter event of the case. Indeed, a twist, that has nothing to do with the juridical, politic and diplomatic aspects of the case, has occurred and it has undoubtedly characterized a new phase for the two Marines.

In the end of the summer, precisely on the 31st of August 2014, a dramatic turn of events to Massimiliano Latorre occurred. He was hit by an ischemic attack, which forced him to remain more than a week in the New Delhi hospital. Carrying on this motivation, his lawyers asked and obtained the return of the soldier in Italy for a curative period of four months, at the end of which he will be brought back to the Italian embassy in New Delhi. Therefore this last chapter will be focused on this unexpected circumstance and will deeply analyse the politic debate around it.

