



ON. AVV. MARIO BORGHEZIO,
mario.borghezio@unpublished.com
EUROPEAN PARLIAMENT
B1047 BRUXELLES

FOR THE ATTENTION OF ON AVV. MARIO BORGHEZIO

*THE ISSUE OF THE TWO ITALIAN MARINES JAILED IN INDIA SINCE
FEBRUARY 2012 ACCUSED OF THE MURDER OF TWO FISHERMEN
ALLEGEDLY SHOT DEAD OFF THE COAST OF THE INDIAN STATE OF
KERALA.*



I worked on this dossier because I was convinced that I could contribute to clearing up what happened and to show that the decisions of the Indian authorities right from the beginning were biased and aimed at creating “the case” against the two Italian marines, presenting them as the only culprits. The conduct of the Indian authorities was not compatible with International best practice and violated the principles of a fair process.



As a matter of fact, as I will explain in this document, after the detrimental conduct during the first and the second day, the following investigations were conducted with the purposed of confirming the first biased conclusion by taking many and diverse decisions that violated best practice. For example, they prevented the Italian experts from taking part in the technical survey and in the ballistic analysis of the weapons seized from the Enrica Lexie together with the Indian authorities, they destroyed relevant proofs for the judicial proceeding and they omitted documents or created false proofs and so on.

When the Italian judiciary received confirmation of the fact that the Indian authorities arrested the two Italian marines they started a judicial proceedings against them considering them as the alleged culprits of a double murder.

Despite the many and diverse letters rogatory to the Indian authorities in order to get the copies of the pleadings together with the proofs or the evidences against the two Italian marines the Italian authorities got no answer. This can be considered to be a rude offense that is in contradiction with the Indian declarations of friendship and fairness towards Italy.

As the Italian judiciary got the two marines' pleas of innocence only, and as after two years and a half the Indian authorities did not send to the Italian judiciary any evidence proving the guilt of the two marines a couple of weeks ago (on 10/8/2014) the attorney general Giancarlo Capaldo declared to have the intention to dismiss the Italian criminal proceeding against the two marines.

In India things do not look better: in January 2013 the Supreme Court of Delhi declared the State of Kerala as "not in charge" and the investigations as "not valid" asking the National Investigation Agency – NIA to conduct new surveys and investigations. The NIA tried to apply the anti-terrorism legislation "SUA Act" to the case, according to which death penalty can be applied and which considers the reversal of the proof against the accused (same rules applied during the Inquisition in the witch trials) and which allowed the Indian authorities to begin a trial without having any evidence of guilt. Fortunately, India was prevented by the European Parliament from applying the SUA Act. India did not want to harm its commercial interests in Europe.

After two years and a half the Indian authorities have not charged the two marines with any crime. This case is likely the longest remand of two marines belonging to a European member state without any accusation that has never occurred after World War II. The two marines were part of an anti-piracy protection team working according to the ONU resolution against piracy.



As we will see, the accusations against the two Italian marines were formulated from the beginning by the political and judicial Indian authorities. The Italian authorities had to consider them as “official” till the Indian procedural documents do not allow to determine the culpability and the real responsibility.

But the Indian authorities refuse to give the procedural documents to the Italian judiciary and to the defence attorney and they do not make the accusations official before their court. It is clear that in this way the parties can not contest anything because nothing is official and the issue can be delayed damaging in this way the two marines alone who are jailed and have neither a process nor a fair process.

Why?

I think it is clear: from the day after the incident the Indian authorities, especially in Kerala, did strongly declare the Italian guilt, so that now it is difficult to start a trial in which the two marines could be cleared of the crime they are accused of and that could lead to start investigations against the Indian authorities that created a false reconstruction of the events and a false set of evidence.



The aim of this document is to support what I did referring to facts and circumstances, pieces of information collected during the last two years. With the purpose of sensitising the European institutions and ask them to engage with the Italian marines issue in order to protect the rights of the two Italian marines who are jailed in India: Massimiliano Latorre e Salvatore Girone.

About the author: The undersigned has twenty years of experience as court expert and has worked for different attorney’s offices in the field of air crashes (Ustica, Ancona and similar scenarios)

ANNEX

(BRIEF BIOGRAPHY OF LUIGI DI STEFANO)



ORIGINS OF THE PRESENT WORK

When the first reports about the incident were released by the press many and diverse contradictions and incongruities characterized the reports, the most striking ones were about the bullets and their bores found on the corpses of the two victims. They were different from the ones the anti-piracy team on board of the Enrica Lexie was equipped with. This led me to follow the development of the facts “as if “ I was a court expert and to carry out a technical analysis of the events based on the available information reported in the press and in the available sources, being aware that some elements may have been misrepresented and misreported in the available sources. In spite of the mentioned shortcoming, the method I used for the analysis is valid. This means that if one day you have access to verifiable evidences and exhibits coming from reliable sources other than those I took into consideration, it will be possible to replace the ones I used with the more reliable ones and repeat the analysis and the survey without changing the methodological structure of my analysis. Each technical survey follows a reliable method of inquiry and analysis. I did so with the purpose of analysing the nature of the facts and where they happened.

THE BEGINNING OF THE ISSUE

(REGISTERED AT THE PUBLIC PROSECUTOR'S OFFICE IN ROME ON 26TH AUGUST 2014)

This document was published in January 2014 and registered at the Public Prosecutor's Office in Rome on 26th August 2014. It describes what happened the day of the incident and in the days after the event. Considering Indian official documents and eyewitness accounts it shows that

- ❖ *The evening of the incident the Indian authorities did have the eyewitness account of the owner of the St Anthony where the victims were shot dead, which cleared the Italian marines of the crime they are accused of. The report of the owner of the St Anthony was broadcasted and presented in the local media the same evening of the incident in the presence of a policeman and was hence public;*
- ❖ *The Indian authorities did declare the guilt of the Italian marines the day after the incident and they misinformed the public opinion or omitted some elements and created false information.*

ANNEX

[ANNEX - ANALYSIS OF THE BEGINNING](#)



REQUEST TO THE PUBLIC PROSECUTOR'S OFFICE OF ROME TO PREVENT THE TWO ITALIAN MARINES FROM GETTING BACK TO INDIA

(REGISTERED AT THE PUBLIC PROSECUTOR'S OFFICE ON 13/03/2013)

This document was written after more than one year after the events, when the information I collected allowed to come to the conclusion that the Indian authorities conducted the survey and investigations in a negligent manner, that the dispute settlement procedure was invalid and that the two Italian marines could not have a fair trial in India, a country where there is the death penalty. On 3rd March 2013, while the two marines were in Italy for the Italian general elections, I asked the public attorney's office in Rome to prevent them from getting back to India.

ANNEX

EXPOSÈ TO THE PUBLIC PROSECUTOR'S

TECHNICAL ANALYSIS OF THE TRAJECTORY OF THE BULLETS

(REGISTERED AT THE PUBLIC ATTORNEY'S OFFICE IN ROME ON 3/7/2013)

The aim of this document and technical analysis is to show that the holes on the fishing boat St Anthony are not compatible with the shooting position of the two marines of the 2nd San Marco Regiment who declared to have opened fire and to have shot warning and barrage shots from the upper starboard deck (right) of the Italian tanker, which means hence from a considerable height from the sea level.

ANNEX

ANNEX - ANALYSIS OF THE TRAJECTORY OF THE BULLETS

ANALYSIS OF THE PIROLI REPORT

(REGISTERED AT THE PUBLIC PROSECUTOR'S OFFICE ON 3/7/2013)

The Piroli Report is document written by the Italian rear admiral Alessandro Piroli about the case of the Italian marines and about the state of the investigations in March 2012. The press released a summary of the report in April 2013. This document shows that the analysis of the Piroli Report identifies the



proofs or the evidence that the Indian ballistic expertise was falsified by the Indian authorities.

ANNEX

ANNEX - ANALYSIS OF THE PIROLI REPORT

TECHNICAL ANALYSIS OF THE POSITIONS

(REGISTERED AT THE PUBLIC PROSECUTOR'S OFFICE ON 3/7/ 2013)

This document shows that the analysis of the different eyewitness accounts given by the members of the crew of the fishing boat St Anthony allows to identify some contradictions about where the incident occurred. These contradictions make the witnesses unreliable.

ANNEX

ANNEX - TECHNICAL ANALYSIS OF THE POSITIONS

Together with the attached technical analyses registered at the public prosecutor's office in Rome I registered a request to have access to the official documents (radar data of the tanker Enrica Lexie). I reiterated the request at the end of August 2013 as an informed person and I suggested it again in August 2014 when I heard of the possibility of filing the act.





CONCLUSIONS

The undersigned is convinced to have reconstructed impressive records that support the thesis mentioned above. These records can be considered to be evidentiary, for they are based on verifiable sources or on available Indian official documents.

Summing up, we can say that the charge of the murder of two Indian fishermen against the two Italian marines is vitiated by the Indian authorities' bias at the beginning of the whole issue and by the later doubtful judicial steps. The right to have a fair process was violated. Moreover, misinformation based on false documents, the creations of false scenarios, proof concealment and so on seem to be instrumental to support the initial bias and distortion of the facts. Therefore, the Indian authorities did undermine the possibility to have a fair dispute settlement procedure. They also did not allow the Italian authorities and the defense to take part in the investigative acts that cannot be repeated. (This happened in February/March 2012).

Against this background I would like to address to those who are interested in and have the possibility to presenting the arguments and the documents mentioned here to the qualified European institutions in order to ask for their help and engagement with this issue. We hope that they can plead with the Indian authorities for a positive solution of the case and for doing justice to the two Italian marines jailed in India unjustly.

We hope that we will find support and consensus among other Italian and non-Italian members of the Parliament and that our effort will lead to the creation of a board or court of inquiry that can lead the Indian authorities to face up with their responsibility.

I remain at your disposal for any further questions and to convene wherever necessary.

SINCERELY
(LUIGI DI STEFANO)

Luigi Di Stefano

Roma, 23rd August 2014