

Italy and India have much to lose if they do not resolve their marines dispute

by Blog Admin

Bilateral relations between India and Italy have grown increasingly tense following Italy's refusal to return two of their Marines – who are accused of killing two Indian fishermen. In light of the countries' otherwise warm relations, [Anirudh Menon](#) looks at how Rome and New Delhi should address this diplomatic debacle.



After a series of bizarre developments worthy of a soap opera, the Italian government has now decided to return to India the two marines involved in the shooting of two Indian fishermen in February 2012. This unexpected turnaround from earlier this month, when Rome announced the marines would stay in Italy, follows an assurance by the Indian government to protect the fundamental rights of the marines and a request from Rome that the marines not receive the death penalty.

The on-going diplomatic row between India and Italy, which has now claimed the resignation of the Italian foreign minister, escalated after Italy announced on 11 March that it will not return the accused marines to face a murder trial, reneging on Italy's sovereign guarantee to the Supreme Court of India. This was followed by Prime Minister Manmohan Singh accusing Rome of violating all diplomatic parameters and warning of consequences should the Italian government not abide by its promise to return the marines. The Supreme Court of India temporarily barred Italy's Ambassador to India Daniele Mancini from leaving the country – a bar that will now likely be lifted.

The history of the drama is a murky one. Two marines of the San Marco Regiment, Salvatore Girone and Massimiliano Latorre, were part of a military detachment that was protecting the Italian oil tanker Enrica Lexie, which was en route from Sri Lanka to Djibouti. Last February, they opened fire at two Indian fishermen some 20.5 nautical miles off the coast of Kerala, claiming that they mistook them for pirates. The Indian coast guard escorted the marines back to Kerala and arrested them.

The point of contention between India and Italy now is the legal issue of jurisdiction, as stipulated by the UN Convention of the Law of the Sea (UNCLOS) of 1982. India has total jurisdiction within its "territorial waters," which is 12 nautical miles from the shoreline. UNCLOS also recognises a "contiguous zone" of a further 12 nautical miles where a state can exert its extraterritorial jurisdiction on financial, immigration, sanitation and customs issues. India claims the right to try the marines as the fishermen were Indians and on an Indian fishing boat during the time of the incident.



Supreme Court of India, Credit: Legaleagle86 [CC-BY-SA-3.0]

Italy's initial decision not to return the marines was unnecessary, because in November 2012, Italy had pushed to sign a bilateral agreement with India on the transfer of prisoners. According to this agreement,

Italian nationals who are sentenced for crimes committed within Indian jurisdiction can be transferred to Italy to serve the remainder of their prison term, provided both the countries can agree on the final judgment. The reverse is true for Indians committing crimes in Italy.

The current diplomatic fracture could have jeopardised bilateral relations, which have so far been robust. According to the Indian Ministry of External Affairs, trade between the countries stands at \$US10.3 billion and Italian foreign direct investment (FDI) in India is approximately \$3.5 billion, making it India's 12th biggest investor. More than 140 large Italian companies operate in India, including the iconic Fiat and Piaggio. With Italy battling a weak economy and social unrest, drawing unnecessary international flak at a time when it needs markets like India seems unwise.

India too should not hastily damage its ties with Italy. Most immediately, India needs Italy's support and cooperation to investigate the corruption charges associated with the sale of helicopters from AgustaWestland, a wholly-owned subsidiary of the Italian conglomerate Finmeccanica. In the near future, ruptured ties with Italy could potentially derail the bilateral trade and investment agreement with the European Union, which is at an advanced stage of completion.

India is currently reviewing all aspects of its diplomatic relationship with Italy and has also temporarily downgraded diplomatic ties by deferring the departure of the Indian Ambassador-designate to Italy. As regards Rome's request to waive the death penalty for the marines, India seems ready to oblige at this point. Foreign Minister Salman Khurshid told the Lok Sabha on March 22 that "according to well settled Indian jurisprudence, this case would not fall in the category of matters which attract the death penalty."

Rather than this unseemly diplomatic fracas, since both India and Italy are signatories to UNCLOS, India has the option of settling this dispute through international arbitrators like the International Tribunal for the Law of the Sea in Hamburg, Germany, or by setting up an ad hoc tribunal agreed to by both the parties. Since the Indian judiciary and the executive is infamously slow, third party arbitration can be an expeditious way forward to settle this unfortunate dispute and rescue ragged Indo-Italian relations.

This article first appeared at [Gateway House](#).

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