

Pathfinder View Point – 3

Fishy State of Relations

Contentious issue of Palk Strait fishing: can we learn from India's own policy?

Authored by Mr. Bernard Goonetilleke, Former Secretary Ministry of Foreign Affairs and the Chairman of the Pathfinder Foundation

The spirit of good neighbourliness is a cherished attribute particularly when nations share natural resources. Legal experts at the UN developed draft principles on shared natural resources, which were adopted by the UN General Assembly in 1979 (Res. 34/186). Principle 3 of the guideline states, “States have... the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction”.

Fast forward to contemporary times in Sri Lanka, where shared resources have become a contentious and flammable issue among those engaged in fishing as a livelihood in Sri Lanka and its closest neighbour, India. Local and foreign daily newspapers in recent times indulged in “arresting” headlines on the subject.

- ***‘Fishermen arrests may undermine talks: Tamil Nadu CM to Modi’ (India TV 15 April 2015)***
- ***‘Tamil Nadu fishermen protest against continuing arrests by Sri Lanka’ (Guardian April 11, 2015)***
- ***Free Arrested Fishermen Before Talks’, Tamil Nadu Chief Minister Writes to PM Modi’ (NDTV March 23, 2015)***
- ***‘TN CM Seeks PM’s Intervention for Release of Arrested Fishermen’ (Outlook Dec. 10.2014)***
- ***‘TN seeks Modi’s intervention for fishermen release’ (Hindustan Times Nov. 24, 2014)***
- ***‘Jayalithaa writes to PM on fishermen issue, seeks permanent solution’ (The Hindu June 8, 2014)***

Although these headlines reflect recent developments, the underlying issue had been sidestepped for several decades and dangerously smouldered beneath the embers for years. Ironically, both countries were disinclined to address and resolve this ‘livelihood’ issue that confronted not only Tamil fishermen in Tamil Nadu, but also predominantly Tamil fishermen in the North and East of Sri Lanka.

Indian fishermen and Tamil Nadu politicians sometimes claim that the Sri Lanka Navy (SLN) detain Indian fishing vessels outside Sri Lanka’s International Maritime Boundary Line (IMBL), implying that the arrests take place in Indian territorial waters - a far-fetched allegation contradicted by even the Indian Coastguard! (<http://www.thehindu.com/news/cities/Madurai/article2633760.ece>). At other times, they make an about turn and acknowledge that Indian fishermen are arrested in Sri Lankan waters and demand that they be treated leniently. The excuse made by the Indian parties is that their boats accidentally cross the IMBL, whereupon

they are immediately pounced upon by the SLN. In addition to arresting the 'innocent' interlopers, SLN is accused of harassment, assault, and even sending some fishermen to Davy Johns' Locker! When Sri Lanka side maintains that Tamil Nadu fishermen are arrested well within Sri Lankan waters, sometimes a few kilometres from the Sri Lankan shore – with satellite pictures as proof of allegation - the Indian side vociferously claims that the Palk Bay has been historically fished by the fishermen of both countries, and as such, Indian fishermen have a right to fish in their traditional fishing grounds! The latest round of arrests of Indian fishermen in April, seems to have irked Tamil Nadu politicians to the point of demanding that New Delhi take stern action against harassment of Indian fishermen fishing in what they consider their "traditional fishing grounds," and the Sri Lankan Prime Minister threatening to shoot the intruders.

Tradition Gave Way to Law: Legal Agreements

That fishermen of both countries have engaged in fishing in traditional waters cannot be denied. But Tamil Nadu fishermen and politicians need to accept that tradition gave way to law, when India and Sri Lanka signed the Maritime Agreement in 1974, thereby defining the maritime boundary between the two countries. That agreement saw India recognizing the sovereignty of Sri Lanka over the island of Kachchativu, and Sri Lanka agreeing to forgo their right to fish in the Wadge Bank, which was also a traditional right enjoyed by Sri Lankan fishermen for centuries.

The 1974 bilateral agreement indeed recognized the 'traditional rights' enjoyed by fishermen of both countries. Tamil Nadu politicians are quick to remind New Delhi about this 'right', particularly when poachers are apprehended. However, they appear to ignore Article 4 of the Agreement that stipulates each State shall have sovereignty and exclusive jurisdiction and control over the waters, the Islands, the Continental Shelf and the sub soil on its side of the Maritime Boundary in the Palk Strait and Palk Bay. Article 5 of the Agreement says, "Subject to the foregoing, Indian fishermen and pilgrims will enjoy access to visit Kachchativu as hitherto, and will not be required by Sri Lanka to obtain travel documents or visas for these purposes." Meanwhile, Article 6 states that, "The vessels of India and Sri Lanka will enjoy in each other's waters such rights as they have traditionally enjoyed therein." It should be clearly understood by all, that Article 6 only recognizes navigational rights of Sri Lankan and Indian vessels in each other's waters, and NOT fishing rights!

The 1974 Maritime Agreement was followed by another Agreement in 1976 covering the maritime boundary between the two countries in the Gulf of Mannar and the Bay of Bengal and related matters. These two agreements and the Exchange of Letters between the Indian Foreign Secretary Kewal Singh and his Sri Lankan counterpart W.T. Jayasinghe are unequivocal, and rules out fishing beyond the IMBL by either party.

Article VII of the Exchange of Letters states: "*Fishing vessels and fishermen of India shall not engage in fishing in the historic waters, the territorial sea and the EEZ of Sri Lanka nor shall the fishing vessels and fishermen of Sri Lanka engage in fishing in the historic waters, the territorial sea and the EEZ of India, without the express permission of Sri Lanka or India, as the case may be.*"

Plunder of Sri Lanka's Fisheries Resources

So, the belligerent arguments of Tamil Nadu fishermen's 'traditional rights over historic waters' are only a tactical ploy to justify continued plunder of Sri Lanka's fisheries resources by Tamil Nadu fishermen in unabated illegal fishing in Sri Lankan waters. New Delhi is keenly aware of the legality of the situation and is engaging in a difficult balancing act. External Affairs Minister, Ms Sushma Swaraj responded to the strongly worded letters of former Chief Minister Jayalalitha to Prime Minister Modi in June 2014, thus, 'The Centre is committed to find a permanent solution to the problem. Talks are on with Lankan officials... We are constructively working for a long term solution to the issue.' If Sri Lanka were out of line, New Delhi's response would have been quite different.

It is crystal clear why Tamil Nadu fishermen indulge in three weekly 'perilous' intrusions to Sri Lanka waters, despite 'harassment' by SLN by way of routine arrests, assaults and even occasional cases of alleged shooting. Having depleted their stocks of fisheries resources on the Indian side of the IML by employing unsustainable fishing practices such as bottom trawling, Tamil Nadu fishermen habitually venture across the IML to continue their destructive fishing practices in Sri Lankan waters, harvesting primarily prawns and in that process destroying the sea bed, home of chank shells, pearl oysters, Beche de mer, corals etc. To make a bad situation worse, these fishermen use internationally banned monofilament-fishing nets that prevent even small fish from escaping.

With an estimated 5000 plus boats engaged in fishing in the Palk Bay at a given time, expert views are unnecessary to establish that so many boats cannot possibly engage in sustainable fishing on the Indian side of the Palk Bay. If the current practice of three days a week intrusions into Sri Lankan waters is allowed to continue, before long, there will be no fish to catch on the Sri Lankan side of the IML either. For the Indian fishermen, this is obviously a livelihood issue, and majority of them work for big time Tamil Nadu boat owners. The irony of the situation is that, Sri Lankan fishermen do not dare venture in to the sea for three days a week due to intimidation by Indian fishermen, making it a livelihood issue for them as well. This being the situation, it is up to the Indian government to initiate steps to resolve the issue.

During decades long discussions with Sri Lankan officials, Indian officials repeatedly request more time to address the situation, and request "a licensing scheme" to permit Indian fishermen to continue their trade on the Sri Lankan side of the IML. During the height of the armed conflict, one top Indian bureaucrat, who was promoting the licensing scheme, commented to a Sri Lankan official that, "Fish in Sri Lankan waters were dying from old age." The request for licensed fishing, until alternatives are found, was originally made more than a decade and half ago. That duration was ample for New Delhi and Tamil Nadu government to come up with sustainable **arrangements to address the 'livelihood' issue of their fishermen.**

Tamilnadu's Fishers not Allowed to Freely Operate in Andhra Pradesh Waters

However, there are signs of some positive measures being taken, such as proposals for buying back excess fishing trawlers and converting vessels for deep-sea fishing. However, Sri Lanka SHOULD NOT allow Indian fishermen to raid its territorial waters with impunity until the Indian authorities come up with solutions to address their fishermen's livelihood issue. Writing on the issue Gautam Sen of the Institute for Defence Studies and Analyses states, "*Tamilnadu's fishermen are not allowed to freely operate in the coastal waters of adjoining (newly created) Andhra Pradesh state either. It is the same situation vis-à-vis Andhra fishermen's conventional jurisdiction off the Orissa coast. Indian fisher folk normally observe such territorial limitations and there is no reason why they should not do so apropos northern Sri Lanka*".

While India takes care of its responsibilities, Sri Lanka should come up with solutions to safeguard interests of its own impoverished fisher folk.

While the armed conflict raged in the north and east of Sri Lanka, Indian fishermen exploited Sri Lankan waters as Sri Lankan fishermen were prohibited from venturing into sea for security reasons. The Tamil Nadu fishermen want that freedom to continue and resent measures taken by post-conflict Sri Lanka to safeguard its natural resources.

A Non-Startier

Facilitating fishermen's associations of both countries to meet in the hope of reaching an understanding is a non-starter. Remember, such an attempt was made several years ago, and the Indian side made several solemn promises, which they failed to keep. They will find it hard to admit engaging in poaching using illegal and unsustainable methods and agree to suspend such practices. Instead, they will demand to fish several days a week and ask for several years to phase out the practice. They will also want to get 3-4 km closer to the shore and seek to continue the use of illegal fishing gear and engage in bottom trawling during the

phase-out period, which is unacceptable. Arresting Indian fishing vessels and releasing them when Indian fishermen carry out noisy protests, is not a good enough deterrent either. When a few vessels taken into custody, thousands of others would continue poaching in Sri Lankan waters.

Recommended Actions

There are several measures Sri Lanka could take to address the situation, such as confiscating and destroying illegal nets used by boats taken in to custody; confiscating fishing vessels engaging in poaching, or in the alternative, imposing stiff fines. The purpose of such action is to make it clear that there will be a high penalty to pay for poaching. However, it is clear that any such action would result in protests by the Tamil Nadu fishermen, extensive publicity by the media and demand for stern action against Sri Lanka by Tamil Nadu politicians. Similarly, the Indian side would respond by taking into custody Sri Lankan fishermen crossing Indian EEZ heading in the direction of the Arabian Sea, eventually leading to exchange of those in custody in both countries. Against this backdrop, it is necessary for Sri Lanka to engage New Delhi, and the latter to rein in the Tamil Nadu government.

The Indian side is bound to ask for time to implement their programme to bring the situation under control. Until then, they would seek Sri Lankan approval to allow their fishermen to continue their activity for several years.

If such a situation is unavoidable, Sri Lanka should try to make the best of a currently out-of-control situation. They should seek to limit the duration of the arrangement to a bare minimum, and restrict the number of vessels that could venture into Sri Lankan waters. Sri Lanka could also restrict the number of days for a week and the distance the Indian vessels could come beyond the IMBL. However, there should not be any leniency with regard to the use of illegal nets, and the destructive, unsustainable practice of bottom trawling. There will inevitably be howls of protest from the northern fishermen against such an arrangement, even for a short period. Perhaps India could be persuaded to go the extra mile and provide compensation to the Sri Lankan fishermen to cover their losses in keeping with the quantity/value of harvest by the Tamil Nadu fishermen.

There are other means to compensate Sri Lanka for its losses. Sri Lanka could demand that Sri Lankan fishermen be allowed to engage in fishing in the Indian EEZ for the same duration as the Tamil Nadu fishers are operating in the Sri Lankan side of the Palk Bay. The 1976 Exchange of Letters between the two countries provided for Sri Lankan fishing vessels duly licensed by the Government of India, to engage in fishing in the Wadge Bank for a period of three years. It was *“agreed that the number of Sri Lanka fishing vessels shall not exceed six, and their fish catch in the Wadge Bank shall not exceed two thousand tonnes, in any one year. At the expiry of this period, Sri Lanka vessels shall cease to fish in the Wadge Bank”*. It is possible to reach a similar arrangement for a limited duration, so that Sri Lanka would be compensated for the loss of revenue by allowing limited number of Tamil Nadu fishing vessels to engage in fishing in the Sri Lankan side of the IMBL for a limited duration. The long-term objective should be to prevent Tamil Nadu fishing vessels crossing the IMBL for poaching in Sri Lanka waters. One way to achieve that objective is to adopt a similar system i.e. a 3 km no go zone on either side of maritime boundary, that exists in Gujarat, between India/Pakistan IMBL.

Resolving this issue should not have taken decades, if Indian authorities wanted to address the issue, rather than allowing their fishermen to engage in poaching in contravention of international law or making requests for licensed fishing. However, with the northern fishermen taking up the issue and the Northern Provincial administration eventually deciding to act on behalf of affected northern fishermen, time has come for both countries to address the situation with a view to finding a lasting solution, rather than pushing Sri Lanka to seek international arbitration.

The spirit of good neighbourliness should allow sanity to prevail, and to safeguard the resources of a vulnerable small country.

Your views and comments are welcome at:
www.pathfinderfoundation.org / pm@pathfinderfoundation.org