



INDO-SRI LANKA  
FISHING DISPUTE:  
CAUSES, EFFECTS  
AND SOLUTIONS

CHULANEE ATTANAYAKE



# South Asia Scan



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## **Indo-Sri Lanka Fishing Dispute: Causes, Effects and Solutions**

Chulanee Attanayake

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## Executive Summary

Fisheries are a renewable resource exceedingly challenged due to climate change and industrialisation. The percentage of fish stock at biologically unsustainable levels increased from 10 per cent to 34.2 per cent between 1974 and 2017. Fisheries conflicts are a worldwide phenomenon and are increasingly becoming common. India and Sri Lanka's fishing conflict is one among many such conflicts that has been studied for a long time but remains unresolved. What began as a controversy and came into focus in the early 1990s has transformed into a conflict since the end of Sri Lanka's protracted war in 2009.

Sri Lankan and Indian fishers have been fishing in the Gulf of Mannar, Palk Bay and Palk Strait since time immemorial. Despite historical and cultural connections and relations built through intermarriages, the change in demarcation or delimitation of maritime borders since the colonial period has significantly affected the existing conflict.

The International Maritime Boundary Line (IMBL) has become a space for contestation over the past two decades. Poaching by Indian trawlers, overfishing, adoption of damaging and unlawful fishing methods, and illegal fishing as conduits of smuggling, cause concerns for the security of both countries and their navies. Thus, the IMBL and the Indo-Sri Lanka fishing dispute have become critical factors in Indo-Sri Lanka relations. Factors such as maritime boundary laws, contested sovereignty over nearby islands, civil war in Sri Lanka, and India's blue revolution have shaped the conflict into what it is today. Presently, several actors with various political agencies are involved. While the Indian fisher community enjoys significant political power, its counterpart in Sri Lanka has comparatively less political power. This difference in their political agency affects the ability of the conflict to be resolved at the national level.

The fishing dispute causes many legal, political and security concerns for Sri Lanka. As an island nation, the threat of terrorism spillover always comes from its maritime boundaries. Even though multiple discussions and dialogues have happened at the national and community levels, no sustainable solution has been found for the issue.

There are several solutions at the expense of both countries. While Sri Lanka can take international litigations, the asymmetric relationship and geopolitical sensitivities seemingly prevent the government from taking this step. Alternatively, the two countries can consider joint patrolling and joint efforts for marine environmental protection.

The Indo-Sri Lanka fishing dispute is a protracted conflict that affects their bilateral relations. Even though the issue takes priority in bilateral discussions, and multiple political, diplomatic and societal initiatives were made, it remains an unresolved conflict which the situation continues to aggravate. While the failure to resolve the conflict may impact bilateral relations, it may also have drastic consequences for both countries' traditional maritime security and human security issues. Thus, both countries should make finding a sustainable solution for the issue a priority.

## Introduction

Fish resources play critical roles in human food supply and aquatic ecosystems. It is among the most traded food commodities in many countries, making an important contribution to sustainable income and employment opportunities. Fish represents around 20 per cent of the animal protein consumed worldwide,<sup>1</sup> whilst in Japan and Iceland, it is the main source of animal protein intake.<sup>2</sup>

Despite its importance, fisheries are exceedingly challenged, due to climate change and industrialisation. Wild fisheries production has stagnated for over 20 years,<sup>3</sup> with a projected 88 per cent of fish stocks overfished well below the target biomass in 2050.<sup>4</sup> The Food and Agriculture Organization (FAO) of the United Nations (UN) assesses that the fraction of fish stocks that are within biologically sustainable levels decreased from 90 per cent in 1974 to 65.8 per cent in 2017. The percentage of fish stock at biologically unsustainable levels increased from 10 per cent to 34.2 per cent in the same period.<sup>5</sup>

Fisheries conflicts, therefore, are a worldwide phenomenon<sup>6</sup> and are increasingly becoming common — approximately 531 conflict events of international fisheries were reported between 1974 and 2016. The formation, manifestation and impact of fisheries conflicts differ and are poorly understood. According to the FAO, conflicts occur when there is a clash of interests of multiple parties and at least one party seeks to assert its claim at the expense of the other.<sup>7</sup> In terms of

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<sup>1</sup> OECD, *Environment at a Glance 2015: OECD Indicators*, OECD Publishing, Paris, 2015, <http://dx.doi.org/10.1787/9789264235199-en>.

<sup>2</sup> Ibid.

<sup>3</sup> Boris Worma, 'Averting a global fisheries disaster', *Proceedings of the National Academy of Sciences*, 2016: pp. 4895-4897; and Food and Agriculture Organization, *The State of World Fisheries and Aquaculture*, 2014.

<sup>4</sup> Ibid.

<sup>5</sup> Food and Agriculture Organization (FAO), *The State of World Fisheries and Aquaculture*, 2020.

<sup>6</sup> Elizabeth Bennett et al, 'Towards a better understanding of conflict management in tropical fisheries: evidence from Ghana, Bangladesh and the Caribbean', *Marine Policy* 25, No. 5, 2001: pp. 365-376; Maarten Bavinck, 'Understanding Fisheries Conflicts in the South—A Legal Pluralist Perspective', *Society and Natural Resources* 18, No. 9, 2005: pp. 805-820; and M Marzano, 'Managing European cormorant-fisheries conflicts: problems, practicalities and policy', *Fisheries Management and Ecology* 20, No. 5, 2013: pp. 401-413.

<sup>7</sup> Nadia Scialabba, ed., *Integrated coastal area management and agriculture, forestry and fisheries*, Food & Agriculture Organization, 1998.

fisheries resources, the competition over fish stock, fishing space or market access has led to fishing conflicts.<sup>8</sup>

Fisheries resources can be hypothesised to ignite violence between states or have some role in fomenting wars. The so-called Cold War between the United Kingdom (UK) and Iceland in 1972-1973,<sup>9</sup> and the bloodless conflict in the Turbot War between Canada and Spain are some examples.<sup>10</sup> Even though Exclusive Economic Zones (EEZ)<sup>11</sup> for coastal states were established in the 1980s to avoid such conflicts, they continue. They even have major political and diplomatic implications. For instance, conflict over fisheries in the European Union (EU) which fuelled British nationalist sentiments, partially contributed to calls for Britain's withdrawal from the EU.<sup>12</sup> Repeated Chinese fishing fleet incursions in the South China Sea have sparked diplomatic and military tensions between China and countries both near and far.<sup>13</sup>

India and Sri Lanka's fishing conflict is among many such conflicts that has been studied for a long time but remains unresolved. While fishers have been fishing in the Gulf of Mannar, Palk Bay and Palk Strait since time immemorial,<sup>14</sup> since the 1990s, controversies concerning Indian trawlers crossing into Sri Lankan waters have dominated newspaper headlines. With the end of the Sri Lankan Civil War in 2009, the number of cases of Indian fishers and their boats being arrested by the Sri Lanka Navy has increased, with numerous reports of Sri Lankan fishers engaging in physical brawls with Indian fishers who crossed the maritime boundary.

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<sup>8</sup> Maarten Bavinck, 'Understanding Fisheries Conflicts in the South—A Legal Pluralist Perspective', op. cit.

<sup>9</sup> Sholmi Dinar, ed. *Beyond Resource Wars: Scarcity, Environmental Degradation and International Cooperation*, 2011, p. 6.

<sup>10</sup> Jessica Spijkers, 'Global Patterns of fisheries conflict: forty years of data', *Science Direct*, Volume 57, July 2019, <https://www.sciencedirect.com/science/article/abs/pii/S0959378019301086>.

<sup>11</sup> The Exclusive Economic Zone is an area of the sea in which a state has special rights regarding the exploration and use of marine resources. As prescribed by the 1982 United Nations Convention on the Law of the Sea, it stretches from the outer limit of the territorial sea – which is 12 nautical miles from the baseline – to 200 nautical miles from the coast of the state in question. It is also referred to as a maritime continental margin and may include the continental shelf. The term does not include either the territorial sea or the continental shelf beyond the 200 nautical mile limit.

<sup>12</sup> Jessica Spijkers, 'Global Patterns of fisheries conflict: forty years of data', op. cit.

<sup>13</sup> Ibid.

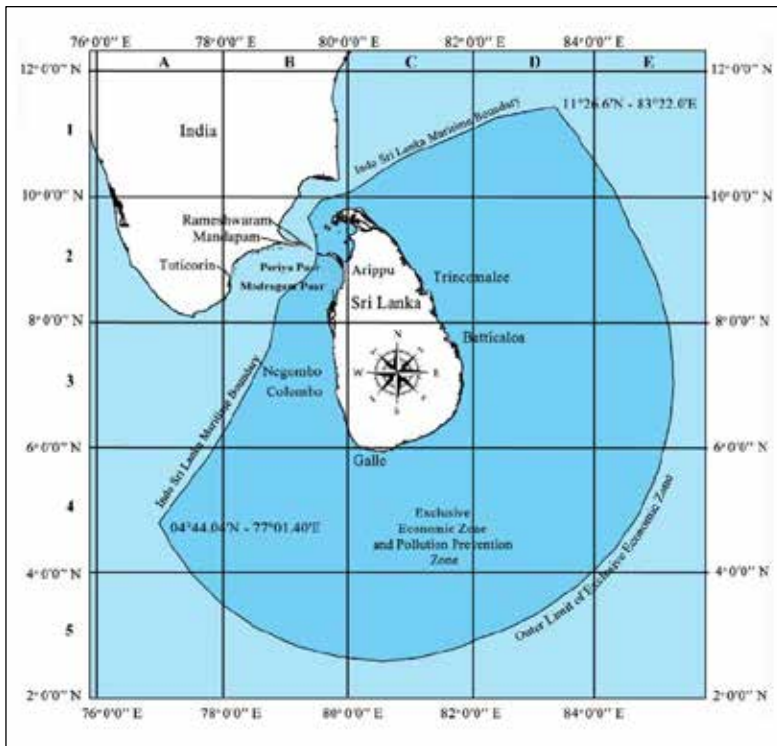
<sup>14</sup> Muttukrishna Saravananthan, 'Envisioning a smart resolution to fishing disputes between India and Sri Lanka', *Maritime Affairs: Journal of the National Maritime Foundation of India*, 2018.

The fishing dispute between India and Sri Lanka has added to the issues that strain the bilateral relations between the two neighbours. Despite appearing on the bilateral diplomatic agenda multiple times, a sustainable solution is yet to be found. Against this backdrop, this South Asian Scan attempts to contextualise the Indo-Sri Lanka fishing dispute using secondary literature available. It seeks to understand the nature of conflict, the actors involved and their interests and positions. It will also explore the causes and effects of the conflict and suggest ways to resolve the issue.

## Indo-Sri Lanka International Maritime Boundary Line

Sri Lanka and India are maritime neighbours. Their IMBL stretches for more than 600 nautical miles (1,122 kilometres), beginning from the trijunction point in the South and running through the Gulf of Mannar, Palk Bay, Palk Strait and the Bay of Bengal until the island's EEZ in the north. The seas between India and Sri Lanka in Palk Bay and Palk Strait are about 100 nautical miles (187 kilometres). The shortest distance between the two countries is about 24 nautical miles (45 kilometres), equally divided, falling 12 nautical miles on each side. The narrowest point is 16 nautical miles (29 kilometres) from Talaimannar in Sri Lanka to Dhanushkodi in Pamban Island in India along the Adam's Bridge. It is equally divided between the two countries, giving eight nautical miles to each side. Sri Lanka's far north harbour, Kankasanthurai, to India's Point Calimere in Palk Bay is 30 nautical miles (54 kilometres).

**Figure 1: Maritime Boundary Limits of Sri Lanka**



Source: Edited by the author using an image from Maritime Boundaries Geodatabase, Flanders Marine Institute.

The sea area of the IMBL is rich in marine biodiversity. The Gulf of Mannar, with a repository of over 3,600 species of plants and animals, is biologically rich and rated among the world's highly productive seas,<sup>15</sup> serving the first biosphere reserve in the Southeast Asian region, supporting various habitats within the main ecosystems of coastal lagoons, sea grass beds and coral reefs, and inhabiting five species of endangered marine turtles, innumerable fish, molluscs and crustaceans. It is also the largest remaining feeding ground for the globally endangered species, dugong. The Indian part of the Gulf of Mannar was declared a Marine Biosphere reserve in 1989. The Sri Lankan part of the Gulf has been declared a marine sanctuary, considering the necessity of preserving coastal fisheries' sustainability. It is also recognised under the UN Educational, Scientific and Cultural Organization Man and Biosphere Programme.

With its shallow flat character and the seasonal inflow of nutrients, Palk Bay allows many faunas to shelter, breed and flourish. It is known for its vibrant fishing grounds, particularly in Pedro Bank, Prawn Bank and Pearl Bank.<sup>16</sup> The bay is rich with 302 species of marine algae, 580 species of fishes, five marine turtle species, 11 seagrass species, and several mangrove species.<sup>17</sup> It is a rich breeding ground for new pelagic species like oil sardines. However, the southern part of the Indian side of Palk Bay is not as profuse or as productive as the Sri Lankan side leading to a relative profusion of shrimp on the Sri Lankan side.<sup>18</sup>

The IMBL has increasingly become a space for contestation in recent decades, with poaching by Indian trawlers causing tension between India and Sri Lanka. It has also become a conduit for multiple illegal activities, such as goods, drugs and human smuggling. Overfishing and using damaging and unlawful fishing methods are causing marine pollution and destroying the area's marine ecosystem. It also causes

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<sup>15</sup> H B Jayasiri and S K, Haputhanthri, 'Gulf of Mannar, Sri Lanka', <https://www.cbd.int/doc/meetings/mar/ebaws-2015-01/other/ebaws-2015-01-srilanka-en.pdf>.

<sup>16</sup> Joeri Scholtens, Maarten Bavinck and A S Soosai, 'Fishing in Dire Straits: trans-boundary incursions in the Palk Bay', *Economic and Political Weekly* (2012), pp. 87-95.

<sup>17</sup> Venkatesh Salagrama, 'Livelihoods assessment of the Palk Bay region for GIZ CSM-CMPA project', *ResearchGate*, 2015, [https://www.researchgate.net/publication/282332077\\_Livelihoods\\_assessment\\_of\\_the\\_Palk\\_Bay\\_region\\_for\\_GIZ\\_CSM-CMPA\\_project](https://www.researchgate.net/publication/282332077_Livelihoods_assessment_of_the_Palk_Bay_region_for_GIZ_CSM-CMPA_project).

<sup>18</sup> *Ibid.*



concerns for the security of both countries and their navies. Thus, the IMBL and the Indo-Sri Lanka fishing dispute have emerged as critical factors in Indo-Sri Lanka relations.

## Profile of the Conflict

No system informed legality or illegality in ocean navigation before the British colonial rule. During the colonial period, free interaction continued between Sri Lanka and India as both countries were under the same rule. During this period, international vessels rarely moved in the Palk Bay area. Hence, the bay was considered “landlocked and surrounded by British dominions”.<sup>19</sup> The colonial government saw ideas of territorial waters and jurisdictions in its formative stages<sup>20</sup> in the years of decolonisation.

However, the historical claim from India and Sri Lanka for Palk Bay led to contestation even during the colonial period. In 1918, authorities in Madras (in British India) proposed extending the Indian territorial water from three miles to 12 miles to safeguard its fisheries. There was also a proposal to declare the Gulf of Mannar and Palk Strait as open waters and delimit the waters between the two countries. Continuous contestation of the territorial waters between them led to a conference in 1918 in Colombo to discuss delimiting maritime boundaries between India and Sri Lanka where the delegations of colonial authorities of both countries agreed on the “need to avoid overexploitation” and to “take measures for the conservation of the marine resources”,<sup>21</sup> and accepted the delimitation of Palk Bay according to the International Law of the Sea Principles of Equidistance and Median Line. In 1921, the area was delimited, leaving the contested islet called Kachchativu under Sri Lanka’s jurisdiction.<sup>22</sup>

Following decolonisation, both India and Sri Lanka went on to freshly demarcate the IMBL. The agreement between India and Sri Lanka

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<sup>19</sup> N Manoharan and Madhumati Deshpande, ‘Fishing in the Troubled Waters’, *India Quarterly: A Journal of International Affairs*, Volume 74, Issue 1, 14 January 2018, <https://journals.sagepub.com/doi/10.1177/0974928417749643>.

<sup>20</sup> Shereen Sherif, ‘Negotiating Postcolonial Spaces: A Study of Indo–Sri Lankan Fishing Disputes’, *International Studies*, *ResearchGate*, January 2013, [https://www.researchgate.net/publication/311092021\\_Negotiating\\_Postcolonial\\_Spaces\\_A\\_Study\\_of\\_Indo-Sri\\_Lankan\\_Fishing\\_Disputes](https://www.researchgate.net/publication/311092021_Negotiating_Postcolonial_Spaces_A_Study_of_Indo-Sri_Lankan_Fishing_Disputes).

<sup>21</sup> *Ibid.*

<sup>22</sup> Sanath De Silva, ‘Sharing Maritime Boundary with India: Sri Lankan Experience’, 2008. This paper was presented at the Working Group meeting of the Regional Network for Strategic Studies Center, organised by US Defense University, Washington DC on ‘WMD and Border Security Issues’, from 12 to 15 October 2008 in Istanbul, Turkey, <https://fdss.kdu.ac.lk/dss/wp-content/uploads/2021/08/Publication-no-10.pdf>.

on the Boundary in Historic Waters between the Two Countries and Related Matters of 1974 and the agreement between India and Sri Lanka on the Maritime Boundary between the Two Countries in the Gulf of Mannar and the Bay of Bengal and Related Matters of 1976 demarcated the new IMBL, settling the maritime boundary issue. On 15 January 1977, the Sri Lankan government formally declared Sri Lanka's maritime boundary.

However, the fishermen's issue was not settled even after the border settlement agreement. The reports emphasised an increasing trend in which Indian fishermen poached in the resource-rich Sri Lankan side of the Gulf of Mannar, Palk Bay and Palk Strait. They have been involved in illegal and unfair practices like bottom trawling and pair trawling.<sup>23</sup> The situation continued even during the war between the Liberation Tigers of Tamil Eelam (LTTE) and the Sri Lankan government. When the Sri Lankan government imposed restrictions on the local fishermen in the Northern and Eastern Provinces due to security reasons between the 1990s and May 2009, Indian fishermen continued to enter the Sri Lankan maritime border. According to a Frontline report, in 2004, around 200 Indian boats could be spotted several times a week in high-security waters around the islands off the Jaffna peninsula, like Delft, Nainathivu, Karainagar and Kovilan Point.<sup>24</sup>

Indian fishermen entering the Sri Lankan waters intensified with the end of the civil war in May 2009. Multiple studies provide details of this increase. Kariyapperuma (2016), for instance, about 1,000 Indian fishing trawlers entered Sri Lanka's territorial water in the evening and engaged in poaching and bottom trawling until the following morning, catching about 200,000 kilogrammes of fish per day.<sup>25</sup> Scholtens (2016) shares similar observations about transboundary fishing activities increasing considerably after the war, peaking in

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<sup>23</sup> Muttukrishna Saravanathan, 'Envisioning a smart resolution to fishing disputes between India and Sri Lanka', op. cit.

<sup>24</sup> Charu Gupta Mukul Sharma, 'Deep-rooted trouble', *Frontline*, 16 January 2004, <https://frontline.thehindu.com/social-issues/article30220665.ece>. 2.

<sup>25</sup> Prasad Kariyapperuma, *A View from the International Maritime Boundary Line: India-Sri Lanka*, Godage Publishers, 2016, pp. 56-57.

2011.<sup>26</sup> Accordingly, the number of Indian trawlers sighted in Sri Lankan water by the Sri Lanka Navy in 2006 was 11,246, and this increased to 49,462 in 2011. As of 2015, there was a decrease to 40,544.<sup>27</sup> While there is no specific data on the fluctuating numbers of Indian trawlers entering Sri Lanka in recent years, the continuation of the encroachment is recorded in the mainstream media. For instance, two days after a Tamil Nadu government-imposed ban on its mechanised trawlers ended, hundreds of trawlers entered Sri Lankan territorial waters near Delft Island, 2,700 trawlers from Nagapattinam and 752 trawlers from Rameshwaram.<sup>28</sup>

According to local newspapers in India and Sri Lanka, 21,194 Indian fishermen were in custody as of 2013 in Sri Lanka, and an increase in the number of Indian fishermen and trawlers arrested in Sri Lankan waters in 2013, the Sri Lanka Navy arrested 670 fishermen with 125 trawlers. In 2014, 807 fishermen and 167 trawlers were detained; in 2015, the numbers were reduced to 450 and 70 respectively.

In February 2011, Sri Lankan fishermen captured Indian trawlers and their crew members fishing in Sri Lankan water on two occasions. Eighteen trawlers from Nagapattinam and seven from Kottaipattinam were seized along with their crew members. The boats and the crew were sent back home after the diplomatic intervention.<sup>29</sup>

## Factors Shaping the Conflict

Multiple factors have contributed to the changing dynamics of the conflict. The first factor is the maritime boundary laws that demarcated the IMBL between the two countries. The second factor is the sovereignty of the Kachchathivu island, which was commonly used by Indian and Sri Lankan fishing communities but later fell under

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<sup>26</sup> J Scholtens, *Fishing in the margins: North Sri Lankan fishers' struggle for access in transboundary waters*, Faculty of Social and Behavioural Sciences, Institute for Social Science Research, Amsterdam, 2016.

<sup>27</sup> Ibid.

<sup>28</sup> 'Ban ends, hundreds of mechanised Indian fishing trawlers in Lankan waters again', *The Sunday Times*, 19 June 2022, <https://www.sundaytimes.lk/220619/news/ban-ends-hundreds-of-mechanised-indian-fishing-trawlers-in-lankan-waters-again-486407.html>.

<sup>29</sup> Joeri Scholtens, Maarten Bavinck and A S Soosai, 'Fishing in Dire Straits', op. cit.

Sri Lankan jurisdiction. Apart from these, the three-decade-long Sri Lankan civil war and the parallel development in India’s industrialised fishing are also factors that contribute to the ongoing fishing dispute.

### Maritime Boundary Laws

Maritime boundary laws that came into existence in the 1970s are an important factor contributing to the existing fisheries dispute. Post-World War II advancement in military technology, maritime trade and growth in the economic value of offshore energy, mineral and living resources, rising competition among maritime powers, and a period of expanding coastal state claims over the sea and its resources highlighted the need to codify a legal system in the seas, resulting in, the UN Conference on the Law of the Sea held in Geneva in 1956, 1960, 1973 and 1982, resulting in the UN Convention of the Law of the Sea (UNCLOS).

These developments in the international arena were also mirrored in India and Sri Lanka.

**Table 1: India and Sri Lanka’s Steps in Maritime Jurisdiction**

Year	Country	Decision/Discussions
1953	India	Discussion on the extent of territorial waters
1956	India	Unilateral extension of territorial water from 3 to 6 nautical miles
1957	India	Jurisdiction over a contiguous area of 100 nautical miles
1957	Sri Lanka	Proclamation of sovereign rights over the continental shelf
1967	Sri Lanka/India	Extension of maritime jurisdiction to 12 nautical miles

*Source: Shereen Sherif, “Negotiating Postcolonial Spaces”*

In 1974 and 1976, India and Sri Lanka signed maritime agreements resolving contestation over the sovereignty of Kachchathivu, a small uninhabited island situated in Palk Bay.

Fishers from India and Sri Lanka frequent Kachchathivu as a staging post to dry their nets and catch and has significance concerning livelihood, resources, and religious and cultural rights.

Both countries express historical claims to the island. According to India, Kachchathivu island has been an integral part since 1605 during the regime of the Nayaks in Madurai. It is noted that the islet was considered a part of the Ramanathapuram Zamindari ruled by the Sethupathis.<sup>30</sup> Sri Lanka claims the island to be a part of Jaffna Patnam and was used during Portuguese and Dutch rule. The Sri Lankan side uses historical evidence from the Jaffna Kingdom, maps, documents and other records from the Dutch and Portuguese to demonstrate Sri Lanka's territorial right over the island.<sup>31</sup> For Sri Lanka, contesting claims over Kachchathivu island, which was once used as a military base during the colonial period, was a factor in settling the boundary issue.<sup>32</sup> Thus, when the dispute over ownership emerged in the 1920s, after several rounds of talks, the sovereignty of the island was decided in Sri Lanka's favour as Colombo had substantial proof of its rights to the small island.<sup>33</sup>

However, even today, some Indian policymakers and scholars claim that Sri Lanka's predisposition to claim sovereignty over the island is historically erroneous and politically incorrect.<sup>34</sup>

The 1974 agreement and 1976 agreements, which granted and affirmed Sri Lanka's sovereignty in Kachchathivu, were considered as 'bartering away' of the rights of Indian Tamil fishermen by the fishermen and regional political parties in Tamil Nadu, claiming that it had overlooked Indian historical rights were overlooked during the 1921 consultations.

Moreover, Article 5 of the 1974 agreement and Article 5(3) of the 1976 agreements are often misunderstood. While Article 5 of the

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<sup>30</sup> Shereen Sherif, 'Negotiating Postcolonial Spaces: A Study of Indo-Sri Lankan Fishing Disputes', op. cit.

<sup>31</sup> C V Vivekanathan, 'Kachchathivu was part of Sri Lanka even before the Agreement of 1974', *Daily Mirror*, 27 August 2013, <http://www.dailymirror.lk/34440/kachchathivu-was-part-of-sri-lanka-even-before-the-agreement-of-1974>.

<sup>32</sup> S D Muni, 'Kachchathivu Settlement: Befriending Neighbouring Regimes', *Economic and Political Weekly*, 13 July 1974, Vol. 9, No. 28, pp. 1119 and 1121-1122.

<sup>33</sup> Shereen Sherif, 'Negotiating Postcolonial Spaces: A Study of Indo-Sri Lankan Fishing Disputes', op. cit., p. 154.

<sup>34</sup> V Suryanarayan, *Conflict Over Fisheries in the Palk Bay Region*, Lancer Publishers and Distributors, 2005; V Suryanarayan, 'The India-Sri Lanka Fisheries Dispute: Creating a Win-Win in the Palk Bay', *Carnegie India*, 9 September 2016; and J Venkatesan, 'Katchatheevu's sovereignty has never been with Sri Lanka: Karunanidhi', *The Hindu*, 16 July 2014, <https://www.thehindu.com/news/national/tamil-nadu/katchatheevu-sovereignty-has-never-been-with-sri-lanka-karunanidhi/article6214681.ece>.

1974 Agreement claims, “Subject to the foregoing, Indian fishermen and pilgrims will enjoy access to visit Kachchathivu as hitherto, and will not be required by Sri Lanka to obtain travel documents or visas for these purposes”, Article 5(3) of 1976 agreement states, “Each Party shall respect rights of navigation through its territorial sea and exclusive economic zone in accordance with its laws and regulations and the rules of international law”. Thus, even though the multiple agreements signed between the Sri Lankan and Indian governments have legally and unquestioningly indicated Sri Lankan sovereignty over Kachchathivu and a letter by the then Indian Foreign Secretary in 1976 clearly stated there would be no cross-border fishing, these unquestioned representations are revisited by the Indian regional governments and breached by the acts of Indian fishermen transcending the borders for fishing.

## **Sri Lankan Civil War**

The civil war between the LTTE and the Sri Lankan government is an important factor that shaped the Indo-Sri Lanka fishing conflict. With the emergence of the LTTE as a dominant military group with its naval wing called ‘Sea Tigers’, and with the Sri Lankan government designating a high- security zone in the North and East coast heavy damage was inflicted on the northern fishing community in Sri Lanka, as they could not go for fishing daily due to restrictions on fishing hours. The motive was to prevent the LTTE from getting arms and other supplies via sea. Even during periods of relaxation in restrictions, Sri Lankan fishers had limited capability to fish far off from the coast due to various reasons, including displacement, lack of sufficient fuel or motorised boats, and other required resources.<sup>35</sup> Hence, when the Sri Lankan fishers resumed fishing activities after the end of the war in 2009, it added a significant dimension to the issue of transboundary fishing where the conflict between Indian trawlers and the Sri Lanka Navy transformed into a struggle between the small-scale Sri Lankan fishers and large-scale Indian trawler fishermen.

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<sup>35</sup> Joeri Scholtens, Maarten Bavinck and A S Soosai, ‘Fishing in Dire Straits’, op. cit.

Statistics reveal that Sri Lanka's northern province had a flourishing fishing industry before the outbreak of the war. The Jaffna district alone produced 48,000 tonnes of fish, contributing to 25 per cent of the total Sri Lankan catch in 1983.<sup>36</sup> The production immediately dropped to 13,161 tonnes in 1984 as the violence broke out. While Sri Lanka's output plummeted to almost zero (Figure 2) Indian fisheries production almost tripled during the 30 years Sri Lanka was engulfed in war (Figure 3).

Fish production in northern Sri Lanka gradually recovered once the war ended. It grew by 42 per cent in 2010 and at 50 per cent since the end of the war, due to the replacement of most equipment, easing of restrictions and return of fishing communities to their coastal homes. However, this merely contributes to six per cent of all contemporary Sri Lankan fish production. Even though the Northern Province's economy recovered rapidly post-war and recorded the highest provincial economic growth rate annually from 2011 to 2015,<sup>37</sup> the growth in the overall fishing sub-sector does not mirror the same growth pattern. Sri Lankan fishermen consider poaching by Indian trawlers off the northern coast of Sri Lanka as the primary reason for the stifle in the fishing sub-sector.<sup>38</sup> They accuse trawler fishers of turning the rich marine ecosystem into a marine desert and damaging their nets with Indian trawler nets.

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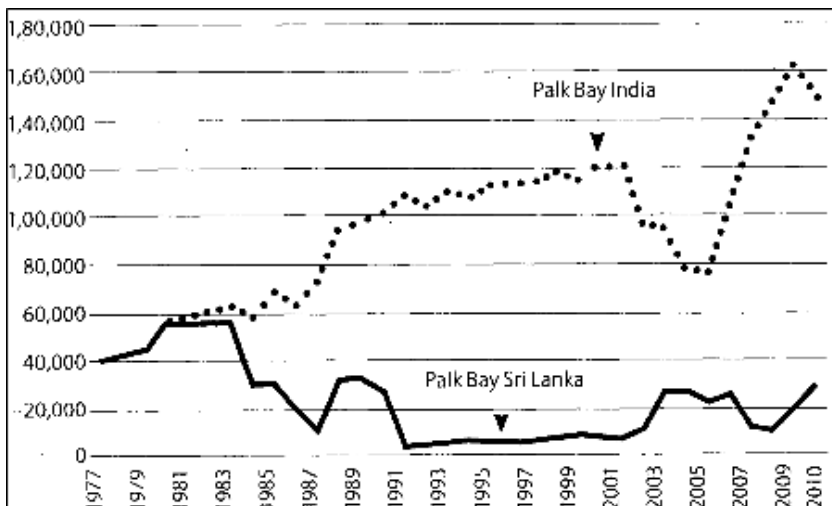
<sup>36</sup> Soosai Siluvaitathan, Augustine, and Kristian Stokke, 'Fisheries under fire: Impacts of war and challenges of reconstruction and development in Jaffna fisheries, Sri Lanka', *Norwegian Journal of Geography* 60, no. 3, 2006, pp. 240-248.

<sup>37</sup> Muttukrishna Saravanathan, 'Envisioning a smart resolution to fishing disputes between India and Sri Lanka', op. cit.

<sup>38</sup> Ibid.



**Figure 2: Marine Fish Production from Palk Bay between India and Sri Lanka**



Source: Scholtens, Bavinick and Soosai, *Fishing in Dire Straits*, 2012.

## Development of Industrialised Fisheries in India

The Blue Revolution, or the boom in trawler fishing, in the 1970s, is another significant factor in the contemporary fishing conflict between India and Sri Lanka. Following the devastating financial crisis in the 1960s, the Indian central government promoted revenue from the sea and boosted exports for the much-needed foreign exchange, leading to a massive investment in infrastructure for the trawler sector along the coast.<sup>39</sup> With the financial and technical support from the FAO and Norway, fishermen were offered significant subsidies for craft, gear and fuel for trawler fishing and development.<sup>40</sup> The Marine Products Export Development Authority, established in 1972, facilitated exports by establishing seafood processing units with new technology for freezing and production

<sup>39</sup> R L Stirrat, 'The Palk Bay fishing dispute revisited', 2018; and Ajit Menon, Maarten Bavinck, Johny Stephen and R Manimohan, 'The Political Ecology of Palk Bay Fisheries: *Geographies of Capital*, Fisher Conflict, Ethnicity and Nation-State', *Journal of Agrarian Change*, 2015.

<sup>40</sup> Johny Stephen & Ajit Menon, 'Fluid territories: Rethinking state territorialisation in Palk Bay, South Asia', *Norwegian Journal of Geography*, 70:5, pp. 263-275.

of value-added seafood products<sup>41</sup> to new markets that emerged in the United States, Japan and Western Europe. Additionally, state governments invested in improving infrastructures such as boatyards, harbours and post-harvesting technologies while the private sector brought in the capital giving hope for opportunity for even the communities not traditionally into fishing.

Consequently, trawling centres emerged from Mallipattinam to Rameswaram in Tamil Nadu, significantly increasing the number of trawling fleets between 1965 and 1980.<sup>42</sup> Trawler fishing was concentrated across six Tamil Nadu locations, with the largest fishing port in Chennai. Rameswaram transformed from a seasonal fishing centre to a large trawling centre. Statistics reveal that the trawler sector became accountable for the majority of fish caught from Palk Bay districts in the late 1980s,<sup>43</sup> and fish production doubled between 1980 and 1996.<sup>44</sup> It is estimated that between 2,500 and 5,300, boats of trawler fleets have been deployed in the small area of Palk Bay since then.<sup>45</sup> This growth also coincided with the break of violence on the Sri Lankan side of Palk Bay and the subsequent decline in Sri Lanka's fish production.

Sri Lankan fishers' limitation to engage in fishing activities in Palk Bay due to intensified security measures was exploited by the Indian trawler fishers. Once the war ended and Sri Lankan fishermen returned to the sea, small-scale fishers in northern Sri Lanka were confronted with approximately 2,000 trawlers frequenting Sri Lankan water. Their small boats stood no chance against 32-60 feet Indian trawlers equipped with powerful engine capacity. According to publicly available data, out of 5,300 boats in Tamil Nadu, approximately 2,500 fully or seasonally enter Sri Lankan waters to secure a profitable catch.<sup>46</sup>

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<sup>41</sup> Ajit Menon, Maarten Bavinck, Johny Stephen and R Manimohan, *The Political Ecology of Palk Bay Fisheries: Geographies of Capital, Fisher Conflict, Ethnicity and Nation-State*, op. cit.

<sup>42</sup> R L Stirrat, 'The Palk Bay Fishing dispute revisited', op. cit.

<sup>43</sup> Ajit Menon, 'The Political Ecology of Palk Bay Fisheries', op. cit.

<sup>44</sup> Joeri Scholtens, Maarten Bavinck and A S Soosal, 'Fishing in Dire Straits', op. cit.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

Moreover, the destructive and unsustainable fishing methods threaten the sustainability of Sri Lankan marine ecology as the increase in the number of trawlers has put pressure on fisheries resources, the ocean beds and the marine environment. Their unsustainable practices and over-capitalising of resources have already resulted in a rapid decline in the fishing stock on the Indian side of Palk Bay. Trawling gear damages the standing nets of other fishers in the area.<sup>47</sup>

Sri Lankan fishers' opposition to the Indian industrial trawlers invading their waters is based on legal, ecological and social justice grounds that have intensified the conflict.

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<sup>47</sup> Maarten Bavinck, 'Understanding Fisheries Conflicts in the South', op. cit.

## The Actor Analysis

Conflicts among fisheries stakeholders arise when there is a difference in power, interests, values, priorities, and usage of resources. Scholars note that such differences result in tension and strife and may even lead to force and war.<sup>48</sup>

### The Northern Sri Lankan Fishing Community<sup>49</sup>

The northern Sri Lankan fishing community is the primary Sri Lankan actor affected by the Indo-Sri Lanka fishing conflict. Belonging to three districts – Jaffna, Kilinochchi and Mannar – consisting of 25 fishing industrial divisions, the community is dependent on over 420 kilometres of coastline across Point Pedro, Jaffna islands, the western side of the Jaffna peninsula, Kilinochchi, and Mannar.

According to the 2019 statistics of the Sri Lankan Ministry of Fisheries, 43,860 households and 188,270 people are dependent on marine fishing in Palk Bay (Table 2).<sup>50</sup> An average of one person in a household is actively occupied in fishing. As of 2019, they jointly operated 12,975 boats. Given that the area's population in 2012 was 796,982<sup>51</sup> and there exists a limited industrial and services sector, there is a substantial dependency on the fisheries sector.

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<sup>48</sup> Ariel Dinar, Shlomi Dinar, Daene C Mckinney and Stephen C Mccaffrey, *Bridges over water: understanding transboundary water conflict, negotiation and cooperation*, Vol. 3. World Scientific Publishing Company, 2007.

<sup>49</sup> J Scholtens, J Stephen and A Menon, 'Between the devil and the not-so-deep blue sea: asymmetrical power in the Indo-Sri Lankan fisheries conflicts', *The Broker Online*, 2013, <https://www.thebrokeronline.eu/between-the-devil-and-the-not-so-deep-blue-sea-d80/>.

<sup>50</sup> Data calculated by the author using publicly available data from Ministry of Fisheries, Sri Lanka.

<sup>51</sup> This is based on the last population survey done in 2012.

**Table 2: Active Fishers and Fisheries Households in Marine Fisheries (Palk Bay Districts)**

District	Category	Year					
		1999	2004	2008	2012	2016	2019
Jaffna	Active Fishers	9,614	16,800	18,240	23,420	22,690	24,070
	Fisheries Households	6,922	16,100	17,100	19,480	21,800	22,940
Kilinochchi	Active Fishers	1,400	3,700	2,180	3,890	4,190	4,150
	Fisheries Households	400	3,400	2,100	2,970	4,120	4,070
Mannar	Active Fishers	4,593	9,400	10,450	18,960	18,570	18,610
	Fisheries Households	4,175	7,300	10,230	15,440	15,030	16,850

Source: Fisheries Statistics 2022, Ministry of Fisheries, Sri Lanka.

The northern Sri Lankan fishing community only contributed 10 per cent of the total catch in 2019, as shown in Table 3.

**Table 3: Marine Sector Fish Catch (Metric Tonnes)**

District	1995	2000	2005	2010	2015	2019
Kilinochchi	na	na	1,460	560	13,800	11,670
Jaffna	3,400	6,400	12,790	20,890	29,290	44,250
Mannar	700	1,200	8,380	10,790	19,390	25,270
Puttalam	27,020	29,730	11,670	24,830	43,790	36,440
Chilaw	24,550	25,650	9,360	27,020	33,830	24,150
<b>Total Sri Lankan Catch</b>	<b>217,500</b>	<b>263,680</b>	<b>130,400</b>	<b>332,260</b>	<b>452,890</b>	<b>415,490</b>

Source: Fisheries Statistics 2022, Ministry of Fisheries, Sri Lanka.

While they were also affected by natural disasters such as the December 2004 Indian Ocean tsunami and the 2008 Cyclone Nisha, the current inability to maximise fish catch and fish production is due to the unequal competition from the Indian trawler fleet that illegally enters Sri Lankan waters.

The Sri Lankan Palk Bay fishing community uses a diverse boat-gear combination, with motorised, fibreglass-reinforced plastic boats of 18-23 feet in length being the most commonly used boat type (Table 3). These vessels, however, only provide an operational radius of about 40 kilometres. Many traditional crafts, including wooden vallams<sup>52</sup> and kattumaransk,<sup>53</sup> are popular for operations closer to the coast and in the lagoons. The 2019 statistics of the Department of Fisheries and Aquatic Resources reveal that 824 inboard motorised boats operate in Jaffna, Kilinochchi and Mannar.<sup>54</sup> However, the report does not specify the exact number of trawlers among them. According to Scholtens, Bavinck and Soosai (2012), about 200 old trawlers were in use in Jaffna in 2010.<sup>55</sup> Kadirgamar and Scholtens (2015) noted that the total number of trawlers and gillnetters in the Sri Lankan Palk Bay is only 317 as of 2015.<sup>56</sup> Overall, northern Sri Lankan fishers have not been able to avail themselves of technological advancements, making them disadvantaged economically.<sup>57</sup>

**Table 4: Operating Boat Type in 2019**

Type of Boats	Jaffna	Kilinochchi	Mannar
Inboard Multi-day Boats	105	1	41
Inboard Single-day Boats	468	1	208
Outboard engine Fiberglass Reinforced Plastic Boats	4,076	730	3,098
Motorised Traditional Boats	596	78	460
Non-motorised Traditional Boats	1,880	225	781
Non-Motorised Beach Seine Crafts	290	-	18
<b>Total Boats</b>	<b>7,334</b>	<b>1,035</b>	<b>4,606</b>

Source: Fisheries Statistics 2022, Ministry of Fisheries, Sri Lanka.

<sup>52</sup> It is a small wooden boat used for net and rod fishing and is mainly used to sail the madela into the sea.

<sup>53</sup> Kattumaram are traditional wooden boats made from three to seven tree trunks tied together with fibre lashings and/or treenails.

<sup>54</sup> 'Fisheries Statistics 2020', Ministry of Fisheries Sri Lanka, 2020.

<sup>55</sup> Joeri Scholtens, Maarten Bavinck and A S Soosai, 'Fishing in Dire Straits', op. cit.

<sup>56</sup> Ahilan Kadirgamar and Joeri Scholtens, 'Breaking the Deadlock: Resolving the Indo-Lanka fisheries conflict', Unpublished Policy Briefing (2015).

<sup>57</sup> Muttukrishna Saravanathan, 'Envisioning a smart resolution to fishing disputes between India and Sri Lanka', op. cit.

Moreover, they are politically less powerful than their Indian counterparts.<sup>58</sup> They are not confident that they can influence politics in the country and allege that the Sri Lankan government maintains the status quo to undermine the minority Tamil economy in the north by allowing Indian encroachment.<sup>59</sup> They further allege that the Sri Lanka Navy, instead of protecting their waters and curbing encroachment, often leave the Indian fishermen in Sri Lankan waters as per instructions from government authorities.<sup>60</sup> Recently, they validated this fear with the reduced number of arrests of Indian fishermen by the Sri Lanka Navy. Only 34 arrests were reportedly made as of September 2020, as opposed to the previous year's 210 arrests. The fishermen alleged that the navy avoided arrests fearing the Indian fishers might be carriers of the coronavirus.<sup>61</sup>

Additionally, they are discriminated against by their political representatives based on the caste system prevalent in the northern Sri Lankan Tamil society. In Jaffna, most fishermen belong to the Karaiyar caste, except for a small number of people belonging to the Mukkiyar and Thimilmar communities in the western part of the district. The Karaiyars have historically contested leadership with the land-owning Vellalar caste. In Mannar, Paravar is the dominant fisher caste, which is similar to the predominant fishing caste on the Indian side of Palk Bay. However, the political leaders in the northern political architecture come from the land-owning farmer caste. For instance, the main political party in the region, the Tamil National Alliance (TNA), is dominated by the Vellalar caste. Thus, it is alleged that their enthusiasm and lobbying for fishermen's rights are minimal.

Some scholars have attempted to build unique and deep bonds based on similarities in language, culture and caste between the Indian and Sri Lankan fishermen on either side of Palk Bay. Yet, contemporary northern Sri Lankan fisher folk mostly view their Indian counterparts

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<sup>58</sup> Johny Stephen, Ajit Menon, Joeri Scholtens and Maarten Bavinck, 'Transboundary dialogues and the 'politics of scale' in Palk Bay fisheries: brothers at sea?', *South Asia Research* 33, no. 2 (2013): 141-161.

<sup>59</sup> J J Scholtens, J Stephen and A Menon, 'Between the devil and the not-so-deep blue sea', op. cit.

<sup>60</sup> Joeri Scholtens, Maarten Bavinck and A S Soosai, 'Fishing in Dire Straits', op. cit.

<sup>61</sup> 'Mahinda Rajapaksa to discuss fishermen's concerns with Narendra Modi', *The Hindu*, 20 September 2020, <https://www.thehindu.com/news/international/mahinda-rajapaksa-to-discuss-fishermens-concerns-with-narendra-modi/article32698742.ece>.

as intruders or stealers of their livelihood and resources who destroy and violate their fishing grounds and legitimate fishing rights.<sup>62</sup>

### Indian Fishing Community

The South Indian fishing community is the main actor from the Indian side involved in the current conflict. This community belongs to five coastal districts: Nagapattinam, Thiruvarur, Thanjavur, Pudukkottai and Ramanathapuram. While Nagapattinam and Thiruvarur cover only minor stretches of the coast along the Indian side of Palk Bay, Ramanathapuram and Pudukkottai account for nearly 70 per cent of the coastal area along Palk Bay (Table 4).<sup>63</sup>

While most of the fishing villages are in Ramanathapuram, it is challenging to ascertain the exact number of fishing villages in Nagapattinam as some of them are located quite far from the sea and have a diversified livelihood profile.

**Figure 3: Trawling Centres in Palk Bay**



Source: Johny Stephen et al 2013.

<sup>62</sup> 'Sri Lanka fishermen accuse Indian trawlers of stealing their livelihoods', <https://www.youtube.com/watch?v=VNgSPzcsjg>; and <https://www.youtube.com/watch?v=1rCrrZwQpe4>.

<sup>63</sup> Venkatesh Salagrama, 'Livelihood Based Analysis on Palk Bay Tamil Nadu and Suggestions for an Implementation Strategy for CSM-CMPA Project', Conservation and Sustainable Management of Existing and Potential Coastal and Marine Protected Areas (CSM-CMPA), 2014.



**Table 5: Fishing Villages and Active Fishers on the Indian side of Palk Bay**

District	Number of Fishing Villages
Thiruvavur	13
Thanjavur	31
Puddukkotai	33
Ramanathapuram	83
Nagapattinam	5

Source: Estimated number according to CMFRI. For more information, see Venkatesh Salagrama, *Livelihood Based Analysis on Palk Bay Tamil Nadu, 2014*.

Overall, there are not enough statistics on the number of people dependent on fishing in Palk Bay on the Indian side. Salagrama (2014) identifies approximately 170,000 people, of whom 54,500 are considered to be actively engaged in fishing.<sup>64</sup> Comparing population growth between 2000 and 2010 in Tamil Nadu, he notes that there has been an increase of about 68 per cent in the number of fishers over the decade.

Tamil Nadu ranks third in India in terms of marine fish production and is predicted to have the potential to emerge as a significant exporter of marine products. Reflecting on the general fish production trends across India, Tamil Nadu has experienced sustained and rapid growth in the fishing industry since the 1950s. Its marine fish production in 1951-52 was merely 45,000 tonnes.<sup>65</sup> As of 2019-20, fish production had increased to 583,000 tonnes.<sup>66</sup>

According to a report commissioned by the FAO, the Tamil Nadu fishing fleet consisted of about 46,000 crafts in 1983, of which 94 per cent were traditional and non-mechanised. They were responsible for at least 70 per cent of the marine landings.<sup>67</sup> As of 2020, there were 5,806 mechanised crafts registered in Tamil Nadu, consisting of the trawler fleet, gillnetters, purse seiners and ring seiners. Apart

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<sup>64</sup> Ibid.

<sup>65</sup> 'Marine Small-Scale Fisheries of Tamil Nadu: A General Description', Bay of Bengal Programme, Food and Agriculture Organisation of the United Nations, <http://www.fao.org/3/ae483e/ae483e.pdf>.

<sup>66</sup> 'Handbook on Fisheries Statistics 2020', Department of Fisheries, Ministry of Fisheries, Animal Husbandry & Dairying, Government of India, New Delhi.

<sup>67</sup> Marine Small-Scale Fisheries of Tamil Nadu: A General Description, Bay of Bengal Programme, <http://www.fao.org/3/ae483e/ae483e.pdf>.

from this, there are 36,645 motorised crafts comprising out-board units of gillnet, hooks and line, bottom set nets, trammel net, purse seine, traps and other gears, and 5,007 non-motorised crafts active in Tamil Nadu waters. Of the total fish production in the 2017-18 period, 48.63 per cent was produced by mechanised crafts.<sup>68</sup> Out of these, the majority were predictably produced by the trawler units.<sup>69</sup>

A significant number of Indian trawlers are dependent on the Sri Lankan side of Palk Bay for their fish catch. According to Kadirgamar and Scholtens (2015), about 1,907 trawlers and 61,162 active fishers operate on the Indian side of Palk Bay in the villages from Rameshwaram to Thiruvavur, excluding Nagapattinam.<sup>70</sup> These trawlers are 30-60 feet long with inboard engines of 70-190hp. There are about 4,143 motorised boats that use monofilament nets, which are banned in Sri Lanka. There has been an increase in these motorised boats encroaching on Sri Lankan waters since 2011.<sup>71</sup>

**Table 6: Details of Indian trawlers in the Indian side of Palk Bay**

District	Nagapattinam, Thiruvavur and Thanjavur	Pudukkottai	Ramanathapuram
Number of Trawlers (2015) <sup>72</sup>	805	520	1,182
Dependence on SL Waters	Partly	Partly	Mostly
Estimated Marine Fish Production by Mechanised Crafts (in Tonnes) 2017-18	65,568.32	44,864.89	39,562.23
Estimated Marine Fish Production by Non-Mechanised Non-Motorised Crafts (in Tonnes) 2017-18	46,452.61	33,182.33	40,404.97
Total Estimated Fish Production (in Tonnes) 2017-18	112,020.93	78,047.22	79,967.2

Source: Fisheries Statistics of Tamil Nadu Government, Ahilan Kadirgamar, and Joeri Scholtens, *Breaking the Deadlock: Resolving the Indo-Lanka fisheries conflict*. Unpublished Policy Briefing (2015).

<sup>68</sup> 'Fisheries', Statistical Hand Book of Tamil Nadu-2020-21, Commissioner of Fisheries, Marine Products Export Development Authority, India, <https://www.tn.gov.in/deptst/fisheries.pdf>.

<sup>69</sup> There is no publicly available information on the percentage of fish production by different motor units. There is no information on the contribution of the trawlers either. However, 'Marine Fish Production in Tamil Nadu & Puducherry', a report based on a detailed analysis of Central Marine Fisheries Research Institute Data, commissioned by the Food and Agriculture Organization, revealed that in 2004, 92.1 per cent of the total catch in the mechanised sector were by trawlers.

<sup>70</sup> Ahilan Kadirgamar and Joeri Scholtens, 'Breaking the Deadlock: Resolving the Indo-Lanka fisheries conflict', op. cit.

<sup>71</sup> Ibid.

<sup>72</sup> Kadirgamar and Scholtens (2015) note that these numbers could differ from official numbers as they are based on counting.

While Malipattinam and Sethu Chattiram in Thanjavur, Soliyakodi, Lanjiadi and Thondi are hardly dependent on Sri Lanka waters, trawlers from Nagapattinam, and Kottianpattinam and Jegathapattinam in Puddukottai, are partly dependent on the fish caught from the Sri Lankan side of Palk Bay. However, trawlers from Rameshwaram in Ramanathapuram are mainly reliant on the Sri Lankan water.<sup>73</sup>

Despite the maritime boundary demarcations between the Indian government and the Sri Lankan government, these fishermen consider fishing in Palk Bay their natural right, citing historical reasons. Moreover, they firmly believe that New Delhi ceded their right to fish in their traditional waters by signing the 1974 agreement without considering their interests.<sup>74</sup>

The Indian fishers possess considerable collective power and receive substantial political support in their struggle for fishing in Palk Bay of free will. They are organised under boat owner associations, caste associations, the church and political parties, and use these institutions to lobby for their fishing rights.<sup>75</sup>

Unlike their Sri Lankan counterparts, fishermen in India are well-represented in all major regional political parties and are even actively involved in local party politics in Tamil Nadu. As a result, they can make the Indian central government attentive to their sensitivities. The fact that the Kachchathivu issue and the allegations of killings of Indian fishermen in Sri Lankan waters became major rallying points during elections in Tamil Nadu are proof of the fishermen's power in the region.

## **The Sri Lankan Government**

The Sri Lankan government believes that the maritime boundaries between India and Sri Lanka were legally demarcated through the 1974 agreement and 1976 agreements respectively. Accordingly, from a legal point of view, the Sri Lankan government views the crossing of

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<sup>73</sup> Ahilan Kadirgamar and Joeri Scholtens, 'Breaking the Deadlock: Resolving the Indo-Lanka fisheries conflict', op. cit.

<sup>74</sup> V Suryanarayan, *Conflict Over Fisheries in the Palk Bay Region*, op. cit.

<sup>75</sup> J Scholtens, J Stephen and A Menon, 'Between the devil and the not-so-deep blue sea', op. cit.

Indian fishermen into Sri Lankan waters as a violation of Sri Lanka's sovereignty and territorial rights. It asserts the right to safeguard its territorial waters.

Sri Lankan leaders often condemn Indian fishers for causing environmental damage and threatening local livelihoods. For instance, then-Prime Minister Mahinda Rajapaksa repeatedly stressed that Indian fishers destroying the environment by using massive bottom trawlers and depleting marine resources is an act that cannot be tolerated.<sup>76</sup> Then-President Maithripala Sirisena, during one of his meetings with Indian Prime Minister Narendra Modi, highlighted the need for an early solution to the issue of Indian fishers coming into Sri Lankan waters.<sup>77</sup> In 2015, he clearly stated that his government would not tolerate Indian fishers' violation of Sri Lanka's territorial limits, and the Sri Lanka Navy was clearly instructed to arrest boats or trawlers that violated the country's water limits.<sup>78</sup>

However, notably, the Sri Lankan government follows a soft approach in articulating 'sovereignty' or 'territorial integrity' in discussing the fishing issue. It is averse to a diplomatic dispute through emphasis on the Indian fisher's acts as illegal and violative of Sri Lanka's sovereign rights. Both Mahinda Rajapaksa and Maithripala Sirisena, for instance, suggested that the objection was more on the use of bottom-trawling rather than Indian fishermen crossing the IMBL, emphasising seeking a solution without hurting bilateral relations.<sup>79</sup>

On one rare occasion, current President Ranil Wickremesinghe, during his tenure as prime minister, justified Sri Lanka's right to take serious action against Indian fishermen who illegally cross the

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<sup>76</sup> 'Indian fishermen destroy environment: Rajapaksa', *The Hindu*, 11 September 2014, <https://www.thehindu.com/news/national/tamil-nadu/indian-fishermen-destroy-environment-mahinda-rajapaksa/article6398587.ece>.

<sup>77</sup> 'We need an early solution to the fishermen's issue: Sirisena', *The Hindu*, 21 September 2016, <https://www.thehindu.com/news/international/We-need-an-early-solution-to-the-fishermens-issue-Sirisena/article14991647.ece>.

<sup>78</sup> 'Indians not allowed to fish in Lankan waters: Sirisena', *The Hindu Business Line*, 23 January 2018, <https://www.thehindubusinessline.com/news/world/indians-not-allowed-to-fish-in-lankan-waters-sirisena/article7064530.ece>.

<sup>79</sup> Ibid; 'Indian Fisherman destroy environment: Rajapaksa', op. cit.; 'Indians not allowed to fish in Lanka waters: Sirisena', op. cit.; and 'We have not allowed fishing in our waters for the Indians: Maithripala Sirisena', *FirstPost*, 3 April 2015, <https://www.firstpost.com/world/not-allowed-fishing-waters-indians-maithripala-sirisena-2184957.html>.

border. However, his comments generated significant criticism and controversy in India.<sup>80</sup>

The Sri Lankan government's changing stance and its soft peddling around the issue of sovereignty result from the asymmetric power distribution between the two countries. Several examples show Sri Lanka repeatedly caved into Indian pressure when diplomatic issues arose. In 2014, then-President Rajapaksa ordered the release of all Indian fishermen in Sri Lankan custody as a goodwill measure to mark the swearing-in of Modi as prime minister ahead of his participation in the ceremony in New Delhi.<sup>81</sup> In March 2014, another group of fishers, arrested for poaching, were released after India abstained from voting on an anti-Sri Lanka motion at the UN Human Rights Council in Geneva.<sup>82</sup> In September 2015, following then-Prime Minister Wickremesinghe's public justification of shooting Indian fishermen illegally crossing the border,<sup>83</sup> India and Sri Lanka issued a joint statement calling for direct negotiations between fishing communities to resolve the dispute.<sup>84</sup>

## The Indian Central Government

Like the Sri Lankan government, the Indian central government agrees that the maritime boundaries between the two countries are legally resolved. However, it has never admitted to its fishers violating Sri Lanka's sovereign rights. Instead, the Indian central government claims the issue to be a livelihood issue and demands that Sri Lanka manage it humanely.<sup>85</sup> Admitting that 'bottom trawling'

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<sup>80</sup> 'Lankan PM's comment on Indian fishermen triggers controversy', *Hindustan Times*, 7 March 2015, <https://www.hindustantimes.com/india/lankan-pm-s-comment-on-indian-fishermen-triggers-controversy/story-uGLIKOqIRtANDhjMvcm66N.html>.

<sup>81</sup> 'Sri Lanka Prez Rajapaksa Orders Release Of All Indian Fishermen', *The Hindustan Times*, 25 May 2014, <https://www.hindustantimes.com/india/sri-lanka-prez-rajapaksa-orders-release-of-all-indian-fishermen/story-43VTMo2XEDcpuNYtYwSoKN.html>.

<sup>82</sup> *Ibid.*

<sup>83</sup> 'Sri Lankan PM justifies shooting of Indian fishermen amid Sushma visit', *India Today*, 27 March 2015, <https://www.indiatoday.in/india/north/story/sri-lankan-pm-justifies-shooting-of-indian-fishermen-amid-sushma-visit-243268-2015-03-07>.

<sup>84</sup> 'Ministerial level talks on fishermen issues between India and Sri Lanka', Ministry of External Affairs, Government of India, 5 November 2016, [https://mea.gov.in/press-releases.htm?dtl/27576/Ministerial\\_level\\_talks\\_on\\_fishermen\\_issues\\_between\\_India\\_and\\_Sri\\_Lanka](https://mea.gov.in/press-releases.htm?dtl/27576/Ministerial_level_talks_on_fishermen_issues_between_India_and_Sri_Lanka).

is an unsustainable fishing mode that indiscriminately captures aquatic life, leading to overfishing, the Indian central government agrees to encourage its fisherfolk to avoid the practice. In 2017, the Indian external affairs ministry noted in its press release that “bottom trawling would be phased out in a graded time-bound manner within a practicable timeframe.”<sup>86</sup>

Although it is the Indian fishers who cross the maritime border illegally, the Indian central government seems to have more control and authority in addressing the fishing issues. For the Indian government, managing fishing-related disputes with Sri Lanka has been an exercise in balancing national interest-driven foreign policy with centre-state political considerations. More often than not, the Indian central government has used the issue as a bargaining chip in realising its national and state-level political objectives.

### **Northern Province Political Parties in Sri Lanka**

The northern Tamil political parties in Sri Lanka, led by the TNA, are important in pushing for a permanent solution for the Sri Lankan fisher community. Despite having the ability to push the fishing dispute to the forefront, given the larger political interests of the eastern and northern Tamils in Sri Lanka, northern Tamil politicians have largely been averse to taking action. Neither the Northern Provincial Chief Minister C V Wigneswaran nor any other politicians from the council have intervened in the issue of poaching or the occasional arrest of fisherpersons by the Indian coast guards for trespassing into the Indian maritime border.

Despite the eager raising of Tamils’ political and language rights with the Indian central government and Tamil Nadu on every occasion, the injustice faced by the Sri Lankan fishers due to Indian fishers trespassing and poaching in its waters has not made it to the agenda so far. Instead, in 2016, B Deniswaran, former Minister of Fisheries

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<sup>85</sup> ‘Manmohan Singh Asks Rajapaksa To Treat Fishermen Issue In Humane Manner’, *Times of India*, 4 March 2014, <https://timesofindia.indiatimes.com/india/manmohan-singh-asks-rajapaksa-to-treat-fishermen-issue-in-humane-manner/articleshow/31424971.cms>.

<sup>86</sup> ‘India, Sri Lanka Revisit Palk Strait Fishing Dispute in Ministerial Talks’, *The Diplomat*, 3 January 2017, <https://thediplomat.com/2017/01/india-sri-lanka-revisit-palk-strait-fishing-dispute-in-ministerial-talks/>.

in the Northern Provincial Council, urged his community to be restrained because India, in general, and Tamil Nadu, in particular, supported the Sri Lankan Tamils against oppression by the Sri Lankan state.<sup>87</sup> He stated to the Indian press that the fisheries issue could only be resolved if the two fishing communities agreed to negotiate directly “with an open mind and in a spirit of give-and-take”.<sup>88</sup> Notably, this response is contrary to that of Indian regional governments and politicians in cases where their own compatriots’ rights are violated.

In an exception, Sri Lankan Minister of Fisheries and Aquatic Resources, Douglas Devananda, launched an aggressive campaign against Indian fishers trespassing the maritime border and damaging the country’s marine ecology and urged then-Prime Minister Rajapaksa to take up the issue of transgression at the India-Sri Lanka virtual summit in September 2020.<sup>89</sup>

Northern Tamil politicians’ hands-off approach to the fisheries issue is due to several reasons. Apart from the caste issue explained in a previous section, the political elite’s personal connections and relationships with Tamil Nadu beyond political comradeship play an important role. Some politicians and their families may have ties to Tamil Nadu through intermarriage as marriage institutions emerged to escape violence for the people in Northern and Eastern Sri Lanka during the war.<sup>90</sup> They may have sought refuge in Tamil Nadu during Sri Lanka’s ethnic conflict and their families may continue to live there without proper legal status. Given this, it is likely that they fear stricter immigration laws or deportation of their families if they take a hard stance on the fisheries issue with the Tamil Nadu government.<sup>91</sup>

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<sup>87</sup> ‘North Lankan Fisheries Minister Pleads for ‘Give and Take’ to End Fishing Row’, *New Indian Express*, 29 February 2016, <https://www.newindianexpress.com/world/2016/feb/29/North-Lankan-Fisheries-Minister-Pleads-for-Give-and-Take-to-End-Fishing-Row-898225.html>.

<sup>88</sup> Ibid.

<sup>89</sup> ‘Mahinda Rajapaksa to discuss fishermen concerns with Narendra Modi’, *The Hindu*, 25 September 2020, <https://www.thehindu.com/news/international/mahinda-rajapaksa-to-discuss-fishermens-concerns-with-narendra-modi/article32698742.ece>.

<sup>90</sup> Sidharthan Maunaguru, *Marrying for a Future: Transnational Sri Lankan Tamil Marriages in the Shadow of War*, University of Washington Press, 2019.

<sup>91</sup> Muttukrishna Saravanathan, ‘Envisioning a smart resolution to fishing disputes between India and Sri Lanka’, op. cit.

## Tamil Nadu State Government

The Tamil Nadu state government opposes the demarcation of maritime borders; hence, claiming its fishermen's legitimate right to fish in the Sri Lankan side of Palk Bay. It rejects the Indian central government's decision to relinquish the legal right of Kachchathivu to Sri Lanka. Tamil Nadu politicians argue that the demarcation of maritime limits was conducted without considering the sentiments and circumstances of the local community. Thus, they argue that the retrieval of Kachchathivu and revoking the 1974 agreement is the solution to restore their fishing rights.<sup>92</sup>

Unlike their Sri Lankan counterparts, Tamil Nadu politicians often stand by the side of Indian fishermen and lobby against the arrest of Indian fishers by the Sri Lankan government. For instance, former six-time Chief Minister of Tamil Nadu between 1991 and 2016, Jayaram Jayalalitha, repeatedly criticised the Sri Lankan government for arresting Indian fishermen for crossing the border and the Indian central government for its inefficiency in protecting the rights of its citizens, claiming that the Sri Lanka Navy arrest of Indian fishermen undermined the confidence and goodwill sought to be built through direct talks between fishermen of the state and Sri Lanka.<sup>93</sup>

Moreover, the Tamil Nadu politicians have a bipartisan agreement on retrieving Kachchathivu to prevent its citizens from getting arrested by the Sri Lanka Navy.<sup>94</sup> In 2011, a unanimous resolution was passed in the Tamil Nadu Legislative Assembly to implead the Revenue Department in the Writ Petition WP (Civil) No.561/2008, filed before the Supreme Court of India in 2008.<sup>95</sup> In 2013, the Assembly passed another unanimous resolution urging the Indian central government to retrieve Kachchathivu. In 2014, another resolution was passed on the same.<sup>96</sup> In numerous instances, they have written to the Indian

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<sup>92</sup> Shereen Sherif, 'Indo Sri Lanka Fishing Dispute under postcolonial state', op. cit.

<sup>93</sup> 'Sri Lanka Navy Spoiling the 'Conducive Atmosphere' Created by the Talks: Jayalalitha', *Daily Financial Times*, 1 February 2014, <http://www.ft.lk/article/248984/Sri-Lanka-Navy-spoiling-the--conducive-atmosphere--created-by-the-talks--Jayalalitha>.

<sup>94</sup> V Suryanarayan, *Conflict Over Fisheries in the Palk Bay Region*, op. cit., p. 125.

<sup>95</sup> D Jayakumar, Fisheries Policy Note 2020-2021: Demand No. 7, Animal Husbandry, Dairying and Fisheries Department, Government of Tamil Nadu.

<sup>96</sup> *Ibid.*



central government for intervention to secure the release of the Indian fishermen.<sup>97</sup>

While the allegations against Sri Lanka for protecting its rightful sovereign rights are astounding, the Tamil Nadu politicians' actions demonstrate their strong political power. They are more involved in the fishing issue for two reasons. Firstly, fishers are widely represented in every regional political party, giving them more political voice. Secondly, as per the Indian media, many Indian commercial fishing trawlers are owned by powerful regional and local politicians of Tamil Nadu.<sup>98</sup> As a result, the same group which sympathises with the Tamil struggle for autonomy in Sri Lanka are insensitive to the struggle of the Sri Lankan fishing community to protect their rightful livelihood rights.

## Sri Lanka Navy

The Sri Lanka Navy is an important actor in the fishing dispute, due to its essential involvement in securing the maritime border in the Palk Bay area. The Sri Lanka Navy's primary duty is to protect the sovereign boundary of the island state. It intervenes in any illegal activity within Sri Lanka's maritime border.

Indian fishers crossing into Sri Lankan waters during the civil war period was comparatively infrequent. However, Indian transgression increased following the ease of restrictions for fishing in Palk Bay with the end of the LTTE terrorism in 2009.<sup>99</sup> Since then, the Palk Bay maritime boundary has become a contentious issue between the Tamil Nadu fishermen and the Sri Lanka Navy.<sup>100</sup> As shown in Table 7, the number of Indian fishermen arrested for poaching in Sri Lankan

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<sup>97</sup> 'Narayanan seeks PM Modi's intervention to secure release of Tamil Nadu fishermen', *The Hindu*, 21 December 2021, <https://www.thehindu.com/news/cities/puducherry/narayanan-seeks-pm-modis-intervention-to-secure-release-of-tamil-nadu-fishermen/article38003837.ece>; and 'Stalin writes to Centre seeking release of Indian fishermen from Sri Lankan custody', *The Hindu*, 28 October 2022, <https://www.thehindu.com/news/national/tamil-nadu/stalin-writes-to-centre-seeking-release-of-indian-fishermen-from-sri-lankan-custody/article66066371.ece>.

<sup>98</sup> Muttukrishna Saravananthan, 'Envisioning a smart resolution to fishing disputes between India and Sri Lanka', op. cit.

<sup>99</sup> This will be discussed in detail in the next section.

<sup>100</sup> M Mayilvaganan, 'Troubled Waters': Maritime Issues in Palk Strait, Indian Ocean', *SAMUDERA-Journal of Maritime and Coastal Studies*, Volume 1(1), September 2019, pp. 35-48, <https://ejournal.um.edu.my/index.php/SAMUDERA/article/view/19961/10490>.

waters has dramatically increased between 2010 and 2014. However, since 2015, it has shown a significant decline with occasional increases.

**Table 7: Indian Fishermen Arrested by Sri Lankan Authorities (2010-2020)**

Year	Fishermen Arrested	Fishermen Released
2010	26	26
2011	198	198
2012	197	197
2013	676	676
2014	787	787
2015	454	454
2016	290	290
2017	453	453
2018	156	156
2019	210	209
2020 (till 2 February 2020)*	23	4
<b>Total</b>	<b>3,470</b>	<b>3,450</b>

Source: Rajya Sabha Unstarred Question No.537, [www.mea.gov.in/rajyasabha.htm?dt/32371/QUESTION+NOS537+INDIAN+FISHERMEN+ARRESTED+BY+SRI+LANKA](http://www.mea.gov.in/rajyasabha.htm?dt/32371/QUESTION+NOS537+INDIAN+FISHERMEN+ARRESTED+BY+SRI+LANKA)

The numbers reported in international media on trawlers seized during the above period vary. For instance, a *Al Jazeera* article in 2014 reported that around 1,850 Tamil Nadu fishermen were arrested in the year. The Sri Lanka Navy reportedly also seized trawlers at the rate of one per week.<sup>101</sup> In 2015, *Daily FT* reported that 61 Indian trawlers, some of which were seized during arrests by the Sri Lanka Navy as far back as May 2014, were auctioned instead of released.<sup>102</sup> Indian media cited instances of legal arrests of Indian fishers due to

<sup>101</sup> 'Fishing for shrimp but netting jail time', *Al Jazeera*, 12 September 2014, <http://america.aljazeera.com/features/2014/9/fishing-for-shrimpcatchingjailtime.html>.

<sup>102</sup> 'SL to auction seized Indian fishing trawlers', *Daily FT*, 1 December 2015, <http://www.ft.lk/article/502547/SL-to-auction-seized-Indian-fishing-trawlers>.

the crossing of the IMBL as acts of aggression toward India, primarily Tamil Nadu,<sup>103</sup> which the Sri Lankan government has rejected.<sup>104</sup>

The data released by the media also differs from the official data released by the Indian Ministry of External Affairs. The Indian central government reported in August 2017 that the Sri Lanka Navy arrested 2015 Indian fishers and seized 37 fishing vessels. Between 2019 and 2020, 284 Indian fishermen were reportedly arrested and 53 Indian boats were confiscated by the Sri Lankan authorities.<sup>105</sup>

From the Sri Lanka Navy's perspective, patrolling and controlling illegal transgression in the northern maritime boundary is essential to Sri Lanka's national security. As evidenced during the conflict period, the border was used for illegal migration and trade. Given that Tamil Nadu continues to sympathise and promote the LTTE's cause for a separate state, the Sri Lankan government cannot take the security situation in the northern border or the Indian fishers entering Sri Lankan waters lightly.<sup>106</sup>

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<sup>103</sup> Kosala Wijesooriya, 'Churning Historic Waters: Maritime and National Security in The Palk Bay and Sri Lanka', Defence Technical Information Center, 1 December 2017.

<sup>104</sup> 'Lanka Denies Its Navy Harassed Indian Fishermen', *Economic Times*, 5 July 2008, <https://economictimes.indiatimes.com/topic/the-economic%20times%20%28july%2005%2C%202008%29%2C%20http%3A//economictimes.indiatimes.com/news/politics-and-nation/lanka-denies-its-navy-harassed-indian-fishermen/printarticle/3200661.cms>.

<sup>105</sup> 'Question No.1201 Indian Fishermen Killed by Sri Lankan Navy', Ministry of External Affairs, Government of India, 11 February 2021, [https://mea.gov.in/rajya-sabha.htm?dtl/33508/QUESTION\\_NO1201\\_INDIAN\\_FISHERMEN\\_KILLED\\_BY\\_SRI\\_LANKAN\\_NAVY](https://mea.gov.in/rajya-sabha.htm?dtl/33508/QUESTION_NO1201_INDIAN_FISHERMEN_KILLED_BY_SRI_LANKAN_NAVY).

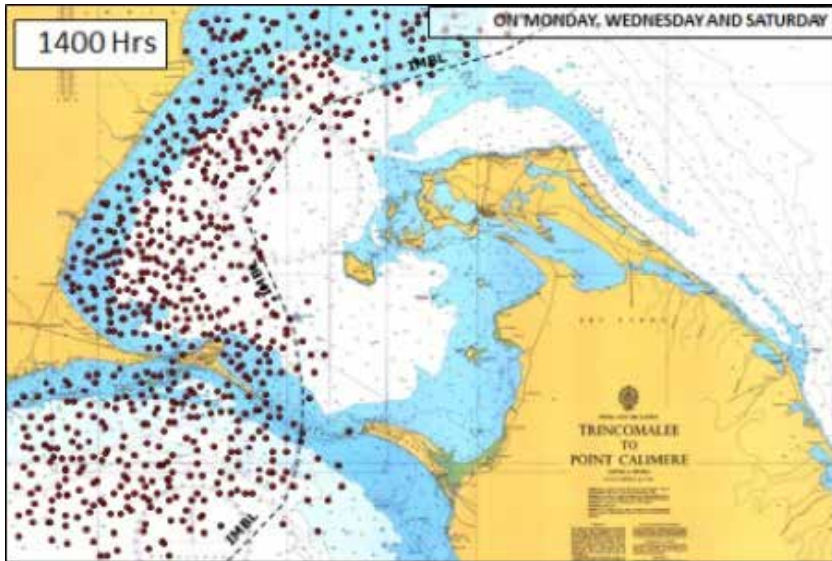
<sup>106</sup> Kosala Wijesooriya, 'Churning Historic Waters: Maritime and National Security in The Palk Bay and Sri Lanka', op. cit.

## The Causal Analysis

The causal analysis of a conflict explains the reasons for the conflict and its effects. It identifies the core issue and the root cause of a problem. By identifying the effects, a causal analysis explains the conflict's current and past manifestation. Causes are usually long-term structural issues, with underlying factors that result in a range of problems and conflicts.

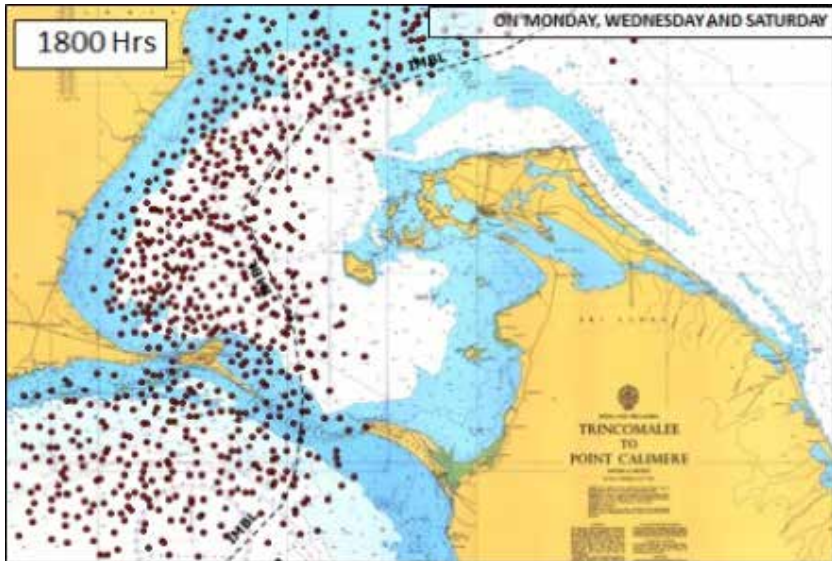
### Indian Encroachment

**Map 1: Poaching Pattern of Indian Fishermen at 1400 Hours (2012)**



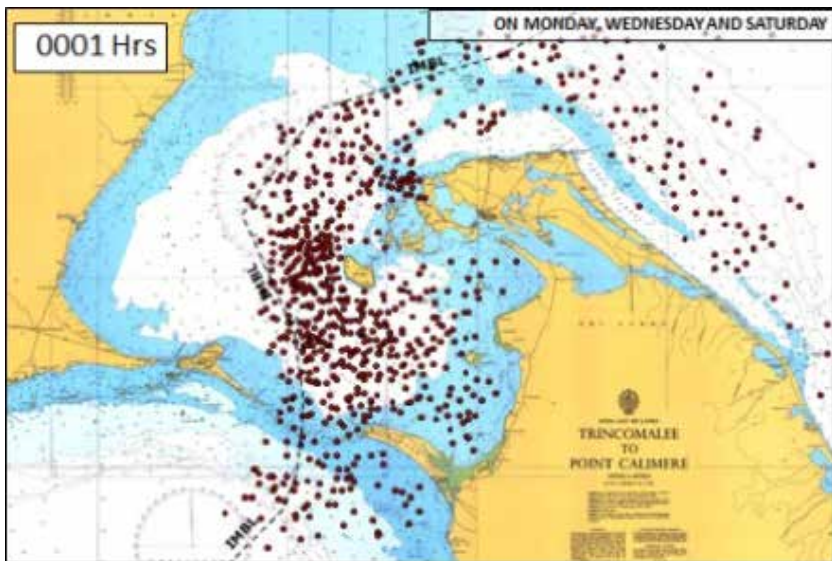
Source: Kosala Wijesooriya, *Churning Historic Waters: Maritime and National Security in the Palk Bay and Sri Lanka*, Naval Postgraduate School, 2017.

## Map 2: Poaching Pattern of Indian Fishermen at 1800 Hours (2012)



Source: Kosala Wijesooriya, *Churning Historic Waters: Maritime and National Security in the Palk Bay and Sri Lanka*, Naval Postgraduate School, 2017.

## Map 3: Poaching Pattern of Indian Fishermen at 0001 Hours (2012)



Source: Kosala Wijesooriya, *Churning Historic Waters: Maritime and National Security in the Palk Bay and Sri Lanka*, Naval Postgraduate School, 2017.

The three maps (Maps 1, 2 and 3), issued by the Sri Lanka Navy in 2012, provide a radar analysis of the Indian trawlers' intrusion into Sri Lankan waters,<sup>107</sup> showing the trends of Indian fishers poaching in Sri Lankan maritime limits. Wijesooriya (2017) provides a detailed analysis of the above radar pictures. As can be seen, Indian trawlers show a regular pattern in their intrusion into Sri Lankan waters.<sup>108</sup> They set their course towards the IMBL from the coastal belts of Thiruvallur, Chennai, Kanchipuram, Pondicherry, Cuddalore, Thanjavur, Nagapattinam, Pudukottai, Ramanathapuram, Toothukudi, Tirunelveli and Kanniyakumari in Tamil Nadu and reach the IMBL around 1400 hours, as shown in Map 1. By around 1800 hours, they gradually intrude into Sri Lankan waters, setting sail to the north, northeast and north-west areas of the Sri Lankan coast.

The Sri Lanka Navy states that these intrusions happen in an organised manner congesting the Sri Lankan territorial waters, with the fishermen ignoring clear instructions from the naval patrol craft. They exploit the Sri Lanka Navy's limitation in sealing the entire stretch of the IMBL, due to its limited human resources and difficulty in identifying and differentiating legitimate fishers at night. Hence, their infiltration and aggressive encroachment during the night have led to possible collisions and are instrumental in increasing existing tensions at the Indo-Lanka border.

## **The Problem of Sharing Common Resources**

Another major cause of the Indo-Sri Lanka fishing dispute arises from the problem of sharing common resources. Sharing the fishing grounds and territory is essential in the Indo-Sri Lanka fishing dispute. Scholarly articles acknowledge that capture fishing belongs to a particular occupation category that depends on common-pool resources.<sup>109</sup> Fish move and migrate frequently. They are unevenly spread out in the sea as they are concentrated in environments

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<sup>107</sup> A single red echo in the radar map may depict more than one trawler as there is a possibility of two or three trawlers being closer to each other and then representing a single echo on the radar display.

<sup>108</sup> Kosala Wijesooriya, 'Churning Historic Waters: Maritime and National Security in the Palk Bay and Sri Lanka', op. cit.

<sup>109</sup> Maarten Bavinck, 'Understanding Fisheries Conflicts in the South—A Legal Pluralist Perspective', *Society and Natural Resources*, pp. 805-820, 24 February 2007.

conducive to their growth. As a result, some areas of Palk Bay can be rich in fish resources than others. The inability to divide fish resources and having fish in a spatial setting that was not historically or traditionally divided have significant implications for existing conflicts.

This is further intensified by the growing demand for fish production globally due to population growth and demand for marine protein. As the fish supply and demand change, fish prices have increased. Moreover, as the fish catch is declining in the Indian Ocean Region, it contributes to conflict and impacts fish-dependent economies.

### **Unsustainable Fishing Practices Resulting in Environmental Degradation**

According to the FAO, of the 600 marine fish stocks globally monitored, 76 per cent are fully exploited, overexploited or depleted. Many fish categories are depleted or overexploited in the Indian Ocean, resulting in a reduced or declining fish catch. At the same time, there are other species where the level of exploitation is unknown or is extremely difficult to determine.<sup>110</sup>

This pattern is reflected in Palk Bay area as well. Palk Bay is facing ecological decline due to anthropogenic and climate change-oriented issues. Anthropogenic causes include pollution, due to the dumping of untreated sewage into the bay, effluents from aquaculture, tourism and salt pans, and the dangers of cultivating introduced seaweed species.<sup>111</sup>

Moreover, technological advancements and modern fishing vessels, including multi-day boats, trawlers, and modern fishing nets, aggressively harvest and exploit marine resources. India's Blue Revolution caused overexploitation and unsustainable fishing practices on the Indian side of Palk Bay, leading to environmental degradation and a reduction in the quantity and quality of fish

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<sup>110</sup> Rumley, Dennis, Sanjay Chaturvedi, and Vijay Sakhuja, eds., *Fisheries exploitation in the Indian Ocean: threats and opportunities*, Institute of Southeast Asian Studies, 2009, pp. 3-5.

<sup>111</sup> Makarand Purohit, 'Conserving Palk Bay', India Water portal, 28 November 2017, <https://www.indiawaterportal.org/articles/conserving-palk-bay#:~:text=The%20bay%20is%20a%20highly,fishing%20spots%20in%20south%20India.>

resources.<sup>112</sup> When the resources are scarce, and the demand and dependence rise, conflict to share the resources is inevitable. As a result, Palk Bay area is becoming a more intense ground for conflict and competition over scarce fish resources.

## **Institutional Failure**

The conflict also emanates from institutional failure in India and Sri Lanka in managing fisheries, enforcing laws and regulations and providing livelihood opportunities for the communities.

As discussed in the previous sections, the majority of the coastal communities are dependent on coastal and marine resources for their livelihood. Over the years, the respective governments have done little to facilitate the communities to explore new livelihood opportunities. The Tamil Nadu government's policy measures to assist in deep-sea fishing (tuna longliners) and buying back trawlers are yet to be implemented,<sup>113</sup> making a large percentage of the community dependent on fishing in Palk Bay area.

Moreover, both India and Sri Lanka have failed to establish proper institutional arrangements to manage fisheries and to implement and enforce regulations to protect the marine environment. Compared to the incentives to expand commercialised fishing, India lacks regulations or institutional arrangements to control illegal and irregular fishing practices. Its fishers excessively use unsustainable and universally banned methods such as bottom trawling and poaching, damaging its marine environment on the Indian side of Palk Bay, and making them encroach into Sri Lanka waters searching for the catch. They show little or no interest in implementing regulations to ensure sustainable fishing practices. They also lack the enthusiasm to establish institutional mechanisms to resolve the problem.<sup>114</sup>

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<sup>112</sup> Shlomi Dinar, *Beyond Resource Wars, Scarcity, Environmental Degradation*, The MIT Press, 2011, p. 4.

<sup>113</sup> V Suryanarayan, 'The India-Sri Lanka Fisheries Dispute: Creating a Win-Win in the Palk Bay', op. cit.

<sup>114</sup> Muttukrishna Saravanathan, 'Envisioning a smart resolution to fishing disputes between India and Sri Lanka', op. cit.



In Sri Lanka, the government has not taken adequate measures to improve the livelihoods of its fishing communities. There are no significant provincial or national level initiatives to improve and commercialise the fishing industry. Despite being an island nation with a maritime territory of more than twice its land territory, the Sri Lankan authorities do very little to improve the fishing industry. So far, the government has not introduced technologically advanced and environmentally sustainable fishing practices to improve fish catch.

Sri Lanka also does not implement existing laws and regulations about illegal fishing practices that negatively impact the livelihoods of the northern fishing communities. Even though the Sri Lanka Navy have arrested Indian fishermen weekly and confiscated their bottom trawlers, the number of arrests has dwindled over time.<sup>115</sup> Moreover, these arrests have been conducted in an ad hoc manner. The Sri Lankan government released the Indian fishers either after the Indian government intervened or to reduce the overcrowding in prisons in the northern and eastern provinces.

Additionally, the fishermen are charged under the Immigration and Emigration Act of Sri Lanka for entering the country illegally instead of the Fisheries (Regulation of Foreign Fishing Boats) Act No 59 of 1979. As a result, the incarcerated fishermen are released and repatriated as their cases cannot be heard in courts under the current legislation.<sup>116</sup> Had they been charged under the correct law, the Sri Lankan government could have made a strong case against illegal fishing and encroachment of Sri Lankan fishing grounds, and, thereby, prevent them from coming back.

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<sup>115</sup> Kris Thomas, 'In Sri Lanka, Illegal Fishing Slips through the net of Legislation', *Roar Media*, 28 March 2019, <https://roar.media/english/life/in-the-know/illegal-fishing-slips-through-the-net-of-legislation>.

<sup>116</sup> Ibid, and Muttukrishna Saravanathan, 'Envisioning a smart resolution to fishing disputes between India and Sri Lanka', op. cit.

## Issues and Challenges

Many issues and challenges emerge from the Indo-Sri Lanka fishing dispute that impact Sri Lanka's security, economy and society. This section explores those issues and challenges.

### Legal Challenges

Indian fishers entering Sri Lankan waters and practising fishing practices banned under the Sri Lankan jurisdiction raise multiple legal issues nationally and internationally. According to the UNCLOS, Indian vessels have no legitimate right to seek passage or fish in Sri Lanka's territorial seas. As Indian commercial fishers have overwhelmingly taken over the fishing industry in Palk Bay, their presence is not considered as an innocent passage but as an act of prejudice towards Sri Lanka's peace, good order and security.<sup>117</sup> Thus, their entry into the Sri Lankan maritime boundary is a clear violation of international law. The Indian trawlers' entry into Sri Lankan waters also violates several domestic laws and bilateral agreements. First and foremost, it violates the agreements of 1974 and 1976 in which the two countries agreed to respect navigation rights through their territorial seas and EEZs.

Trawlers also violate several Sri Lankan laws, including the Maritime Zone Law No. 22 of 1976, the Fisheries (Regulation of Foreign Fishing Boats) Act of 1979 and the Fisheries and Aquatic Resources Act No. 2 of 1996. The Maritime Zone Law proclaims and recognises the importance of the country's maritime boundaries for national security. It restricts any foreign vessel from entering and passing through the territorial seas without the prior consent of the Sri Lankan government. The Fisheries (Regulation of Foreign Fishing Boats) Act of 1979, amended in 1982, prohibits anyone from engaging in prescribed fishing operations and activities in Sri Lankan waters without a license from the Ministry of Fisheries of Sri Lanka.

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<sup>117</sup> Dan Malika Gunasekera, 'Securing the Maritime Waters Around Sri Lanka', *Academia*, ; and Dan Malika Gunasekera, 'The Doctrine of Innocent Passage and threats to national security: Should the law of the state be reformed?', *Academia*.

Moreover, an amendment to the Fisheries and Aquatic Resources Act in 2017 bans bottom trawling in Sri Lankan waters.

While there are adequate laws for Sri Lanka to take punitive actions against the Indian fishers, the authorities are reluctant to take optimal actions. The arrested fishers are charged under the immigration law, knowing that the courts cannot hear a case but only repatriate them. The reason for the soft approach can only be understood through geopolitical and diplomatic factors.

Secondly, law enforcement has limitations because hundreds or thousands of trawlers and fishers are involved in these illegal activities. Neither the Sri Lanka Navy nor the Sri Lankan coast guards can detect and arrest all encroaching vessels and fisherpersons. As seen in the small number of arrests, geopolitical imperatives have overruled the country's laws.

## **Political**

Politicisation and political polarisation of the fishing dispute are other issues that warrant attention. The fisheries dispute has been played for the political convenience of the Tamil Nadu politicians, where Sri Lanka's national security and sovereignty issue is couched in enduring ethnic conflict. Every time an Indian fisherperson is arrested for illegally intruding into Sri Lanka's sovereign waters, Tamil Nadu politicians portray it as an assault on 'innocent Tamil fishermen' by the 'Sinhala Navy'.

In Sri Lanka, on the other hand, the issue has been soft peddled by politicians for convenience and political goodwill with India. Numerous research articles indicate that Sri Lankan fishermen's repeated appeals to their government to act against Indian intrusion have had little or no effect. On the Sri Lankan government's part, its willingness to promote bilateral ties with India overrides its willingness to ensure the stability of fishermen's livelihood. Apart from the soft approach taken in law enforcement, the Sri Lankan government shows a lack of interest in emphasising the fisheries dispute internationally for fear of disturbing bilateral relations. This has been proven by the Sri Lankan government's reluctance to seek the assistance of multilateral platforms such as the EU to promote its cause.<sup>118</sup> The EU has stringent regulations on fishing methods

and practices that emphasise actions against bottom trawling and poaching. Given that both India and Sri Lanka export fish products to the EU, Sri Lanka can resolve the issue to its advantage if it is reported.

Despite gaining regional ethnic votes, the TNA does not represent the problem of fishing dispute for the broader interests of ethnic solidarity and pan-Tamil nationalism between the people of the northern province of Sri Lanka and Tamil Nadu.<sup>119</sup> While no Sri Lankan government wants to jeopardise its relationship with India over resolving the fishing dispute, no Sri Lankan Tamil politician wants to jeopardise the support they get from Tamil Nadu in realising their wider political goals. For all the political actors involved, resolving and implementing the Thirteenth Amendment to the Constitution of Sri Lanka takes precedence over maritime boundary issues. Hence, there is only a remote chance for political actors to enter political negotiations to resolve the fishing dispute and ensure effective law enforcement.

## Security

For Sri Lanka, the fishing dispute poses a security threat beyond the challenges to the livelihood of its community. As an island nation, there exists the threat of terrorism spillover from its maritime boundaries. Experience during the period of LTTE terrorism showed how terror groups can exploit the maritime environment to transport men and materials such as weapons, explosives and fuel from India to their territories. During the formative years of the ethnic conflict, Tamil Nadu was the sanctuary and backyard of the Tamil Eelam movement and there was a close nexus among fishermen, smugglers, and Tamil militants.<sup>120</sup> The LTTE's leadership, Velupillai Prabhakaran, 'Kittimani', 'Kittu' and 'Baby Subramanian', hailed from Valvettithurai, which was a smuggler's paradise. During the early stages of the conflict, the LTTE cadres were trained in Tamil Nadu

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<sup>118</sup> Sunil, 'SL not to approach EU against Indian Fishermen', *Daily Mirror Online*, 17 October 2015, <https://www.dailymirror.lk/91661/sl-not-to-approach-eu-against-indian-fishermen>.

<sup>119</sup> Muttukrishna Saravanathan, 'Envisioning a smart resolution to fishing disputes between India and Sri Lanka', op. cit.

<sup>120</sup> M Mayilvaganan, 'Troubled Waters': Maritime Issues in Palk Strait, Indian Ocean', op. cit.

under political support, namely, then-Prime Minister of India, Indira Gandhi. Moreover, the Tamil Nadu government's support was vital to the LTTE's success.<sup>121</sup> Even though the LTTE was defeated militarily in Sri Lanka, its ideology is still alive worldwide. Tamil Nadu's continuing sympathy towards the LTTE's cause<sup>122</sup> is all the more reason why Sri Lanka cannot take the issue of illegal entry into its waters so lightly.

Moreover, the maritime border between India and Sri Lanka is being used to smuggle persons and goods and drug trafficking. There have been multiple incidents where the Sri Lanka Navy arrested fishing boats smuggling drugs such as cannabis from India to Sri Lanka via the maritime border. Smugglers have taken advantage of the opportunity created by hundreds of fishing boats poaching in Sri Lanka to come closer to the maritime boundary line.<sup>123</sup> In recent years, Sri Lanka has become a centre for drug traffickers to smuggle drugs from India and Pakistan to Europe.<sup>124</sup> There have also been incidents reported on human smuggling where Indian dhows took cover as fishing boats, entered Sri Lankan territorial waters, and illegally transported people.<sup>125</sup>

Given the political, economic and security conditions in Sri Lanka at a given time, smuggling can have widespread repercussions such as facilitating maritime terrorism, piracy and armed robbery. The fact that these smugglers and illegal traders disguise themselves as fishermen and take cover under fishing boats highlights the security sensitivity of the fishing issue in Sri Lanka.

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<sup>121</sup> Daniel Byman, *Trend in Outside Support for Insurgent Movement*, Santa Monica: RAND Corporation, 2001, pp. 83-84.

<sup>122</sup> 'Imminent defeat of LTTE causes tension in Indian state of Tamil Nadu', *Reliefweb*, 26 April 2009, <https://reliefweb.int/report/india/imminent-defeat-ltte-causes-tension-indian-state-tamil-nadu>.

<sup>123</sup> Prasad Kariyapperuma, *A View from the International Maritime Boundary Line: India-Sri Lanka*, op. cit., pp. 26-27.

<sup>124</sup> *Ibid*, pp. 33-34.

<sup>125</sup> *Ibid*, pp. 45-47.

## Approaches and Solutions

The Indo-Sri Lanka fishing dispute is a protracted conflict. Resolution and political negotiation continue to be remote possibilities. Over the years, numerous attempts and approaches have been made to resolve the dispute. Yet, the efforts have not brought effective results. In this section, approaches made to resolving the fisheries dispute will be discussed. It will also shed light on possible other solutions to provide a sustainable resolution to the fishing dispute.

The fisheries issue is among the main agenda items during bilateral discussions between India and Sri Lanka. Since holding the first bilateral meeting regarding the fisheries issue in 2005, numerous bilateral meetings and joint working group meetings between the two countries have been held.

The first bilateral meeting was held on 21 April 2005, following the agitations by Tamil Nadu fishers and their leaders. The respective ministries drew up a joint memorandum of understanding to establish a bilateral Joint Working Group of fisheries. Since then, three bilateral joint working group meetings were held in 2008, 2011 and 2012. The joint statements, issued after the meetings, highlighted the need to keep in mind the livelihoods dimension in resolving the fisheries issue. They condemned the use of force and violence under any circumstance and highlighted the need for dialogue between the fishing communities. The meetings emphasised practical arrangements that should be in place to deal with bonafide Indian and Sri Lankan fishers crossing the IMBL.<sup>126</sup>

Since 2016, there have been regular ministerial meetings to address the fishing dispute.

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<sup>126</sup> Ahilan Kadirgamar and Joeri Scholtens, 'Breaking the Deadlock: Resolving the Indo-Lanka fisheries conflict', *op. cit.*

**Table 8: India-Sri Lanka Joint Working Group of Fisheries Meetings (2016-2020)**

Meetings	Dates and Locations
First Meeting of the Joint Working Group	31 December 2016, New Delhi
Second Meeting of the Joint Working Group	7 April 2017, Colombo
Third Meeting of the Joint Working Group	13 October 2017, New Delhi
Fourth Meeting of the Joint Working Group	30 December 2020, Virtual

Source: Compiled by the Author using various publicly available media reports.

After the first meeting, India and Sri Lanka decided to increase joint patrolling to avert the fisheries crisis.<sup>127</sup> The ministerial meetings continue to discuss and exchange views on the status of cooperation between the navies and coast guards of both countries in patrolling the existing hotline between the coast guards, and related operational matters and collaboration in preserving the marine environment. During the latest virtual bilateral summit between Prime Minister Modi and Prime Minister Rajapaksa on 26 September 2020, both leaders agreed to “continue engagement to address the issues related to fishermen through regular consultation and bilateral channels.”<sup>128</sup>

Apart from national-level initiatives, several fishers’ dialogues were organised and facilitated by civil society organisations and non-government organisations to find solutions.<sup>129</sup> Between 2004 and 2014, five such meetings were held between fisherpersons of both countries.<sup>130</sup> During these meetings, efforts were made to find viable solutions to address the concerns of overfishing by Indian trawlers in Sri Lankan waters and the evident disruptive impact on Sri Lankan fishers’ livelihoods.<sup>131</sup> It is believed that the dialogue between the two communities can be more effective, given the cultural-linguistic

<sup>127</sup> ‘India, Sri Lanka to increase joint patrolling to avert fisheries crisis’, *Xinhua*, 2 January 2017, [http://www.xinhuanet.com/english/2017-01/02/c\\_135949908.htm](http://www.xinhuanet.com/english/2017-01/02/c_135949908.htm).

<sup>128</sup> ‘Sri Lanka-India fishers’ talks to resume’, *Lake House*, 21 December 2021, <http://www.lakehouse.lk/content/sri-lanka-india-fishers%E2%80%99-talks-resume>.

<sup>129</sup> Johny Stephen, Ajit Menon, Joeri Scholtens and Maarten Bavinck, ‘Transboundary dialogues and the ‘politics of scale’ in Palk Bay fisheries: brothers at sea?’, *South Asia Research*, 33(2), 141-161 and 2013.

<sup>130</sup> *Ibid*; and Ahilan Kadigamar and Joeri Scholtens, ‘Breaking the Deadlock: Resolving the Indo-Lanka fisheries conflict’, *op. cit*.

<sup>131</sup> *Ibid*.

commonalities and mutual sympathies of fishers on both sides. However, they have not succeeded due to the non-adherence to the agreement between the two parties and the non-endorsement of such an agreement by the respective national or provincial governments.<sup>132</sup>

Due to the political difficulties of addressing the fishing issue, finding a solution through agreements between the Indian and Sri Lankan governments or between the leaders of fishing communities in both countries seems remote. The situation calls for innovative and new ways of approaching the problem to find solutions. Moreover, it is important to approach the issue by addressing every component of the conflict.

### **Combined Maritime Surveillance and Coast Guard**

A possible solution would be to implement combined maritime surveillance and coast guard by Sri Lanka and India in Palk Bay area. Combined naval surveillance is a practice used by many countries and regions to safeguard territorial seas against maritime piracy, maritime terrorism and other forms of illegal maritime activities. Establishing a combined surveillance system between Sri Lanka and India will effectively facilitate and strengthen the ability to secure the IMBL between the two countries.

The coast guards of both countries held high-level meetings in 2019 and 2021 to discuss enhancing cooperation on various maritime issues, including search and rescue missions, combating transnational crimes at sea, and protecting the marine environment in the Indian Ocean. Their cooperation can be extended to securing the maritime border in Palk Bay and preventing illegal encroachment into Sri Lankan seas.

Additionally, this will address the Sri Lanka Navy's challenge of monitoring an entire stretch of border with limited resources. It will

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<sup>132</sup> Ibid.



prevent violence due to mistaken identities and help address the limitations of effectively patrolling the borders.

## International Litigation

As a small country, Sri Lanka has limited political clout against India. As a result, its ability to resolve the fisheries dispute through bilateral negotiations is limited. Amidst this backdrop, Sri Lanka should seek international litigation to find a permanent resolution to the Indo-Sri Lanka fishing dispute.

The UNCLOS provides an avenue for states to resolve disputes over the oceans through consensus. As India and Sri Lanka are parties to this treaty, they have consented to apply the UNCLOS and refer to international arbitration as a form of dispute resolution.

Sri Lanka can call upon India for failing to act with sufficient diligence in preventing illegal fishing in Sri Lanka's waters and failing in its obligations to protect and preserve the marine environment.<sup>133</sup> Sri Lanka can seek provisional measures while the proceedings continue to prevent serious harm to the marine environment by making India immediately take all steps to prevent bottom trawling by its nationals in Palk Strait.

Sri Lanka should take note that smaller states have taken larger states to litigation under the UNCLOS and have been able to assert their sovereign rights in a way that has not proven successful in other forums.<sup>134</sup> Examples of such litigation include the cases of the Philippines versus China, Mauritius versus the United Kingdom and the Netherlands versus Russia. Even Bangladesh pursued this option against India and resolved the boundary dispute in a way acceptable to both parties.<sup>135</sup>

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<sup>133</sup> Natalie Klein, 'Can international litigation solve the India-Sri Lanka fishing dispute?', *The Diplomat*, 14 July 2017, <https://thediplomat.com/2017/07/can-international-litigation-solve-the-india-sri-lanka-fishing-dispute/>.

<sup>134</sup> *Ibid.*

<sup>135</sup> Mark E Rosen and Douglas Jackson, *Bangladesh v. India: A positive step forward in public order of the seas*, Center for Naval Analyses Arlington, United States, 2017.

## Protection of the Marine Environment

The fishing dispute is aggravated because the fisheries' resources are depleting fast due to over-exploitation and unsustainable and damaging fishing practices. Hence, it is crucial to explore scientific and technical mechanisms to resolve this long-festering conflict. Researchers and scientists who observe marine environment disputes worldwide suggest that measures taken to improve marine ecological conditions and biodiversity will provide a more sustainable solution to fisheries disputes. Such solutions will enhance the fishing resources and will be environmentally sustainable. As such, the construction and deployment of artificial reefs to restore coastal ecosystems, improve biodiversity, and increase biological resources are proposed as possible solutions.<sup>136</sup> The technology is expected to increase the sea bottom substratum, thereby increasing the biodiversity of the bottom living biofoulers. Artificial reefs can also be an effective deterrent against bottom trawling since trawlers cannot operate in such areas as they could severely damage trawler nets.<sup>137</sup>

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<sup>136</sup> Muttukrishna Saravananthan, 'Envisioning a smart resolution to fishing disputes between India and Sri Lanka', op. cit. p. 103.

<sup>137</sup> Ibid.

## **Conclusion**

The Indo-Sri Lanka fishing dispute is a protracted conflict that affects the bilateral relations between the two countries. Even though the issue takes priority in bilateral discussions and multiple political, diplomatic and societal initiatives have been taken, it continues to be an unresolved conflict where the situation is aggravating every day.

While the failure to resolve the conflict may impact bilateral relations, it may also have drastic consequences for both countries' traditional maritime security and human security issues. Thus, both countries must find a sustainable solution to the issue.

## About the Author

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