

Troubled Waters: The Palk Bay Row

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Abstract

Fisheries, that is the lifeblood of fishermen in the coastal regions of India and Sri Lanka (Palk Bay) is yet again going through a battle. The arena is now bestowed with latitudinal biodiversity¹ and absence of strong currents; for each party to come in for the treasures of the seas, in the form of seafood.

Ever since the Sri Lankan Civil war ended in 2009, the subcontinent has witnessed a myriad of issues erupting. Known for its poaching domain, Island of Kachchatheevu has been the heart of it all. Even after commitments from Indian and Sri Lankan governments “to find a permanent solution to fisherman issue”,² there seems to be no end to this tussle.

Background

Importance of Palk Bay

The Palk Bay is considered to be the skeleton which supports a wide diversity of marine living resources and related livelihood. The Palk

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¹ Klaus Rohde, *Latitudinal gradients in species diversity: the search for the primary cause*, Vol. 65, No. 3 (Dec., 1992), pp. 514-527, Blackwell Publishing on behalf of Nordic Society Oikos, <http://www.jstor.org/stable/3545569>

² Ministry of External Affairs, Government of India, “Visit of External Affairs Minister to Sri Lanka, February 5–6, 2016,” press release, February 6, 2016, https://www.mea.gov.in/pressreleases.htm?dtl/26330/Visit_of_External_Affairs_Minister_to_Sri_Lanka_February_5_2016, Accessed 19 June 2021.

Bay is a 137-kilometre-long bay, bordered by five Indian districts and three Lankan districts which consist of at least 262,562 Indian fisherman and about 119,000 Sri Lankan fishermen.³ The Sri Lankan side is littered with a series of Islands, but the Indian side is devoid of any of these island ecosystems.⁴

Sri Lanka and India enjoy a very cordial relationship at the moment, where both countries find commonality of culture. Thousands of Tamil laborers of India are ferried across, so as to provide labour for the development of tea plantations. It is when the ethnic conflict in Sri Lanka happened, many of the laborers entered the region of Palk Bay.⁵

MOUs by Two Countries in Respecting Border Sovereignty

Sri Lanka and India signed an MOU on March 23, 1976, leading to establishment of boundaries in the Bay of Bengal and Gulf of Mannar.⁶ Post this, an International Maritime Boundary Line (IMBL) was drawn which made it illegal for any fisherman from whichever side to delve into another's water to fish.⁷

1960 was a year of developmental schemes for India, to revitalise the economy, the government experimented with the mechanised trawling in the district of then Rameswaram.⁸ Soon, with a prospect such

³ V. Suryanarayan, *Conflict Over Fisheries in the Palk Bay Region*, Lancer Publishers, 2005, pg 10-53.

⁴ H. Mohamad Kasim, *Resources and livelihoods of the Palk Bay: Information from India & Sri Lanka*, ResearchGate, 24 August 2015, <https://www.researchgate.net/publication/281198322> , Accessed on 20 June 2021.

⁵ *Supra*.

⁶ Limits in the Seas, No. 66 – *Historic Water boundary: India – Srilanka*, U.S. Department of State, December 12, 1975 <https://2009-2017.state.gov/documents/organization/58833.pdf> , Accessed on 20 June 2021.

⁷ V. Suryanarayan, *The India–Sri Lanka Fisheries Dispute: Creating a Win-Win in the Palk Bay*, 9 September 2016, Carnegie India, <https://carnegieindia.org/2016/09/09/india-sri-lanka-fisheries-dispute-creating-win-win-in-palk-bay-pub-64538>, Accessed on 19 June 2021.

⁸ Ritika V. Kapoor, *Reviving Indo-Lanka relations: Reigning in bottom trawling*, 2 November 2018, Observer Research Foundation, <https://www.orfonline.org/expert-speak/reviving-indo-lanka-relations-reigning-in-bottom-trawling-45299/> , Accessed in 23 June 2021.

as this, Indian fishermen, in an attempt to make quick cash, began to encroach Sri Lankan waters.⁹

Tamil War & Consequences

There was a ban on the fishing activities in Palk Bay during the early 1980s when the Sri Lankan administration observed that armed rebellion was engaging with fishermen in their demand of a new country for the oppressed Tamils. Naturally, a precautionary principle adopted by the Sri Lankan Navy led them to abandon their waters, which eventually became a hub for Indian Fishermen to golden their fortunes.¹⁰

Post lifting of the ban, the Sri Lankan Navy had expanded and become more vigilant. The primary attention of the Navy now, was towards the Indian fishermen poaching in the region. The Navy, till date has arrested at least 1, 348 Indian fishermen.¹¹ Next up, was the regulation of the fisheries industries, the Fisheries and Aquatic Resource Act No. 2 of 1996, the Sri Lanka Coast Conservation Act no. 57 and (Amendment of 1988) ensured that the activity of fishing is to be carried out in a stringent manner.¹² Along with this, Sri Lanka enforced a National plan of action so as to deter, eliminate and prevent Illegal,

⁹ Bodhisattwa Majumdar & Ankit Malhotra, *The Fishing Wars: Maritime Border Conflicts between Sri Lanka and India*, 12 June 2021, http://www.mjilonline.org/the-fishing-wars-maritime-border-conflicts-between-sri-lanka-and-india/#_ftn4 , Accessed on 23 June 2021.

¹⁰ N Manoharan, Madhumati Deshpande, *Fishing in troubled waters: Fishermen Issue in India-Srilanka Relations*, *India Quarterly: A Journal of International Affairs*, Volume 74 Issue 1, March 2018, <https://journals.sagepub.com/doi/full/10.1177/0974928417749643#:~:text=The%20various%20dimensions%20into%20Indian%20waters> ., Accessed on 21 June 2021.

¹¹ Joeri Scholtens, *Limits to the governability of transboundary fisheries: implications for small-scale fishers in Northern Sri Lanka and beyond*, Springer International Publishing, Chapter 27, January 2015, https://www.researchgate.net/publication/281319980_Limits_to_the_Governability_of_Transboundary_Fisheries_Implications_for_Small-Scale_Fishers_in_Northern_Sri_Lanka_and_Beyond , Accessed on 23 June 2021.

¹² Department of Fisheries and Aquatic Resources, Colombo. Sri Lanka, *The Compendium of High Seas Fishing Legislations in Sri Lanka*, February 2016, <http://extwprlegs1.fao.org/docs/pdf/srl4092.pdf> , Accessed on 23 June 2021.

Unregulated and Unregulated (IUU) fishing in 2013.¹³ The battle for Palk Bay had then begun.

The Indian side's efforts in order to ease these conflicts have been minimal.¹⁴ Skirmishes between the Fishermen and the Navy were frequent, where the most affected community continue to be these fishermen.

Analysis With Regards To International Laws

a.) Is the Dispute Settlement Mechanism of UNCLOS An Answer?

The United Nations Charter mandates all member states to settle disputes by peaceful means. The UNCLOS, prospectively provides a compulsory and binding framework for the same. The UNCLOS was meant to be the pivot upon which the delicate equilibrium of compromise must be “balanced” and “the cement which should hold the whole structure together and guarantee its continued acceptability and endurance for all parties.”¹⁵

The Legislation gives the states a choice of procedures which they want to comply with at times of disputes. These includes seeking redressal from the International Tribunal for the Law of the Sea (ITLOS), The International Court of Justice (ICJ), an arbitral tribunal under Annex VII, and a special arbitral tribunal for disputes pertaining to environment, fisheries, scientific research and navigation) under Annex VIII.

The Dispute Settlement Mechanism (DSP) is primarily required to achieve a sense of control for the flag state over their territorial waters. It generates a sense of striking a balance between the states for determining any dispute. Further, within the UNCLOS itself, harmonious

¹³ Sashini Fernando, *User Rights: Conflict between Sri Lanka's small scale fishermen and mechanized trawlers in Northern Sri Lanka, Tropic Sri Lanka*, <http://www.fao.org/fishery/static/tenure-user-rights/root/volume6/C65.pdf> , Accessed on 23 June 2021.

¹⁴ ID at 11.

¹⁵ Nigel Banks, *Precluding the Applicability of Section 2 of Part XV of the Law of the Sea Convention*, 18th October 2017, <https://doi.org/10.1080/00908320.2017.1328933> , Accessed on 25th August 2021.

relations between the coastal and flag states have been time and again emphasised, the DSP endeavour to strike a balance between the same through the means of its various Articles (for instance Article 56 and Article 58 of UNCLOS).

More importantly. The DSP provides for fleshing out broad obligations of the UNCLOS into reality. The means to which is not just limited to Judicial intervention (as is evident with the creation of IMO). However, a dispute concerning the interpretation and application of provisions setting out general standards of conduct would fall to a court of Tribunal.

The United Nations Convention of the Law of the Seas (UNCLOS) have both, India and Sri Lanka as their party. However, both governments prefer to sidestep the process.¹⁶ The UNCLOS gets the prima facie jurisdiction under Part XV of UNCLOS¹⁷, and as India and Sri Lanka have ratified the same the same on 19th July 1994 and 29 June 1995¹⁸ the most appropriate forum for the same is this itself. Reasons for India and Sri Lanka to forego international litigation is multifaceted. The dependency of Sri Lanka over India for imports and exports, Sri Lanka facing the risk of harming other economic interests, the camaraderie between the Indian side and Sri Lankan side in terms of customs, religion and language as well as literature between the Tamils of Sri Lanka and Indian side are some the factors that weigh in. moreover, political implications for Sri Lanka, in case of any wrong stand-off has also to be considered. The promotion of trawlers by the state another tangent

¹⁶ 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/> , Accessed on 23 June 2021.

¹⁷ Settlement of Disputes, Part XV, *United Nations Convention on the Laws of the Sea of 10 December 1982*, https://www.un.org/Depts/los/convention_agreements/texts/unclos/UNCLOS-TOC.htm , Accessed on 23 June 2021.

¹⁸“Chronological list of accessions and successions to the Convention and the related Agreements”, UN, https://www.un.org/depts/los/reference_files/chronological_lists_of_ratifications.html , Accessed on 22nd May, 2021.

through which this issue gets further complicated.¹⁹ This shows the lack of commitment of India towards international standards set due to the 1976 IMBL in terms of preserving the marine resources.

b.) Did the IMBL pivot its purpose? If not what next?

The IMBL of 1976 along with other agreements was to be the answer to the myriad of conflicts in the Indian Ocean.²⁰ However, this proved to be of no avail. One respite could be that the equidistance principle, in most cases, have come to aid in order to determine the maritime boundaries. The principle mandates that the maritime boundary of a country must be a medial line which has to be equidistant from coastal areas of neighbouring nations.²¹ This principle now has become quite inefficient, as there was a need felt in the 1974 agreement, wherein a more of marine space was distributed at the cost of other.²² This was primarily due to the inability of making out an equidistant median. The fishermen too because of the lack of any clear marine boundary poached fishes over unknown waters.

Article 206 of UNCLOS also comes into consideration as India, due to its failure of evaluating the potential effect of the Sethusamdram Shipping Canal Project (SSCP) in Sri Lanka. India also had the obligation to have a precautionary approach towards preserving the marine ecosystem under Part XII (Article 194 and 204) of the UNCLOS. The most recent precedent in this regard becomes the case of South

¹⁹ The Hindu Net Desk, *All you need to know about Sri Lanka's bottom trawling ban and India's deep-sea fishing plan*, The Hindu, <https://www.thehindu.com/news/national/tamil-nadu/sri-lankas-bottom-trawling-ban-indias-deep-sea-fishing-all-you-need-to-know/article19396217.ece> , Accessed on 23 June 2021.

²⁰ Roy Chowdhury, Rahul, *Trends in the Delimitation of India's Maritime Boundaries*, *Institute of Defense Studies and Analysis*, <https://www.idsa-india.org/an-jan9-5.html> , Accessed on 23 June 2021.

²¹ Dallmeyer, Dorinda G. and De Vorse, Louis, Right to Oceanic resources: Deciding and drawing maritime boundaries, BRIL, (Jan, 1989), at 34-37.

²² Legault, L and Hankey, B., *International Maritime Boundaries*, American Society of International Law, (Volume 1) 208-209.

China sea case²³ at the International Tribunal for the Law of Sea (ITLOS), where it has been held that approaches which cause pollution substantially are grounds for being reported under Article 206. The obiter dicta in the instant case is similar when compared to the system of ‘dynamite- propeller’ used by Chinese fishermen, as trawlers and can be categorised as a harmful change to the ecosystem of the seas.

Article 197 read along with Article 123 of the UNCLOS imposes duty on the parties involved to provide prior notification, cooperate and proceed only when consultation is done. Here, India has not fulfilled its obligation by not engaging with the Sri Lankan side.²⁴

Conclusion

It is evident that both India and Sri Lanka have shown dedication towards the multilateral agreements throughout decades of their relationship. But in the instant case, failure of complying with the international standards and the complexity of the issue in the status quo ante has left international litigation as the only option amongst the parties. There is a dire need for a more specific and clear line of division between these two nations from the UNCLOS as an initial step of providing a long-term solution to this prolonged issue.

²³ Dr. Graham Blackmore, *Fisheries Problems in the South China Sea, Global Underwater Explorers*, <https://www.gue.com/fisheries-problems-south-china-sea> Accessed on 23 June 2021.

²⁴ Chinthaka Mendis, *Sovereignty vs. trans-boundary environmental harm: The evolving International law obligations and the Sethusamuduram Ship Channel Project*, United Nations/ Nippon Foundations, 2006 https://www.un.org/depts/los/nippon/unff_programme_home/fellows_pages/fellows_papers/mendis_0607_sri_lanka.pdf , Accessed on 23 June 2021.

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