

Building Governance to resolve fisheries conflicts in the Palk Bay area

the role of an
Interactive Joint Working Platform (IJWP)

A Policy Brief

*Palk Bay has become an area of escalating fisheries conflicts and a serious political issue that has important implications for relations between two friendly countries; India and Sri Lanka. An International Maritime Boundary Line (IMBL) separates the Palk Bay area, the waters of which were historically shared by the fishers of both countries. Due to fisheries compulsions, Indian fishers exert immense fishing pressure and poach in Sri Lanka's waters. After the cessation of the war, the fishers in the north of Sri Lanka have just resumed fishing, but confront Indian trawlers intensely harvesting their resources and damaging their gear. Fishers often get arrested for poaching and are detained for long periods of time, and both fishers and their families suffer. Neither discussions between the governments, nor those between fisher groups of the two countries have produced meaningful results. Based on two newly emerging concepts in the field of social sciences: the human Wellbeing and Interactive Governance, **this policy brief proposes the establishment of an Interactive Joint Working Platform (IJWP) to effectively deal with fisheries issues in the Palk Bay area.***

1. The Maritime Boundaries between India and Sri Lanka

Much before the United Nations Convention on the Law of the Sea of 1982 (UNCLOS) came into effect, maritime boundaries between India and Sri Lanka in the narrow Palk Strait area were decided by two agreements between the two countries in 1974 and 1976. The former, which was based on the basis of equidistance, divided the fisheries in this region by an International Maritime Boundary Line (IMBL), which was quite close to the boundaries of both countries—sometimes as close as 16 km.



Map No. 4172 Rev. 2 UNITED NATIONS
January 2007

This agreement also gave Sri Lanka the right to Kachchativu island. The 1976 agreement established maritime borders in the Bay of Bengal and Gulf of Mannar regions. The fishers who were traditionally sharing these waters did not find these arbitrary boundary lines a deterrent to share fish resources in these waters, which were popularly known as “historic waters”. The 30 years of civil war in Sri Lanka saw many restrictions on fishing imposed on the Sri Lankan side while providing opportunities for Indian fishers to poach on the Sri Lankan side of the IMBL. Many Indian fishers crossing the IMBL were arrested during this time for security reasons by the Sri Lankan Navy, and some were detained in prisons. Now that the war is over, the fishers in the northern provinces have resumed fishing, but face enormous difficulties in competing with the Indian trespassers, especially trawl fishers, who are crossing the IMBL in large numbers. The hostilities between the two parties are growing. Being two friendly countries, both India and Sri Lanka are eager to find a solution, which is acceptable to all parties concerned.

2. “Historic Waters”

The Palk Bay is around 70 miles long and is bounded on the north and the west by the coastline of the

Indian mainland, on the south by the Pambian Strait, islands of Rameshwaram and Ramasethu (a line of coral reefs known as Adams Bridge), on the east by the island of Sri Lanka and in the northeast by an open passage to the Bay of Bengal, about 32 miles wide. The northern part of the Bay that opens to the Bay of Bengal is called the Palk Strait. Only Sri Lankan and Indian vessels used the Bay for fishing, and transport of goods and people. The Palk Bay region has provided means for the peoples of Sri Lanka and India to interact with each other since ancient times. It has also been the source of livelihood to tens of thousands of fishermen both of Sri Lanka and South India since time immemorial.

In the beginning, the fishing craft of the Bay on both the Indian side as well as the Sri Lankan side were non-motorised, with the predominance of the kattamaras. A variety of traditional nets made of nylon fibres were in use. Kachchativu, a small, uninhabited island (which has no water source) was of special significance to the fishing operations. In an era of non-motorised fishing, it was a very useful place to have a base to exploit the fishing grounds that were difficult to cover in daily operations. Seasonally, the Rameshwaram fishermen would put up huts and stay there for up to a week, conducting fishing operations. The fishermen from Mannar would also come and fish from Kachchativu, and both had an excellent understanding. Kachchativu was also a place of annual pilgrimage due to the presence of the St. Anthony’s church, which was under the ecclesiastical jurisdiction of the Bishop of Jaffna. Fisherfolk from both sides of the Palk Bay would turn up in large numbers for the annual feast. Though fishers of the two countries used to fish in the same waters, their fishing practices differed and they were targeting different species of fish, hence there were no clashes.

3. Post-War developments

Post-war developments in fisheries in the region were related to three forces; a. the so called “pink gold rush”—the steadily rising international demand for shrimp and the large scale investments on shrimp harvesting by Tamil Nadu fishers; b. the introduction of mechanized crafts, again on the Indian side, with large investments going into building mechanized vessels, especially trawlers and, c. the commencement of civil war in Sri Lanka in early 1983, imposing severe restrictions on fishing in the north and the east.

Trawlers from the coastal districts of Tamil Nadu; Nagapattinam, Thanjavur, Pudukkottai, Ramnathapuram,

etc. started fishing for shrimp in their own territory and later, with limitations imposed on fishing in northern Sri Lanka, started crossing the IMBL to fish on the Sri Lankan side. The Sri Lankan Navy, which was quite vigilant in the Palk Bay area due to LTTE's 'sea tiger' activities, arrested large numbers of Indian fishers who were found fishing on the Sri Lankan side of the IMBL. The arrests were often made under the "Prevention of Terrorism Act", rather than for poaching.

From the point of view of fishers in the Northern areas of Sri Lanka, there is no need to cross the IMBL and fish on the Indian side because the South Indian trawlers have degraded the resources on their side of the IMBL by intensive trawling operations. Sri Lankan fishers getting arrested for poaching on the Indian side of the maritime boundary are those fishers from the southern and eastern coasts of Sri Lanka, who operate multi-day boats. They often get arrested for poaching in the Bay of Bengal and Arabian Sea and arrests are made under the Maritime Zones of India Act of 1981, Passport Act and Foreigners' Act. This is completely a separate issue, and no attempt is made to address this issue in this brief.

Evidently, the problem has now boiled down to one of "addressing the clash between fisher wellbeing goals and eco-system health goals"

4. Government efforts to resolve the issue

Following agitations of Tamil Nadu fishers and their political leaders, the officials of the Governments of India and Sri Lanka met in New Delhi and agreed to form a Joint Working Group. The First meeting of the Joint Working Group was held in New Delhi on 21st April 2005.

A draft MOU between the Ministry of Agriculture, Department of Animal Husbandry and Dairying of the Government of India and Ministry of Fisheries and Aquatic Resources of the Democratic Socialist Republic of Sri Lanka was prepared and sent to Sri Lanka by the Indian authorities in 2005 (21-04-2005). This MOU, was revised and amended by the Sri Lankan counterpart and again by the Indian authorities (on 25th October 2008).

Some of the matters in this document related to 'poaching and arrests' included, cooperation for enhanced surveillance, institutionalization of assistance for salvage operations of released vessels, procedures to deal with arrested fishermen and their boats, modalities for prevention of use of force against fishermen, easy and simple procedures to facilitate early release of boats, etc. Yet, no further

action with respect to this MOU has so far been taken.

BOX 01

"The Prime Minister of India and the President of Sri Lanka expressed satisfaction that the Joint Statement on Fishing Arrangements of October 2008, which sought to put in place practical arrangements to deal with bonafide fishermen crossing the International Maritime Boundary Line (IMBL), had led to a decrease in incidents. Both sides agreed to explore ways to strengthen the safety and security of fishermen and, in this context, directed their respective officials to revive the meetings of the bilateral Joint Working Group on fishing. It was also decided to enhance and promote contacts between the fishermen's associations on both sides".

(Article 31, Joint Declaration of India and Sri Lanka on the state visit to India by His Excellency Mahinda Rajapakse from 8th – 11th June 2010

The joint declaration of India and Sri Lanka on the state visit to India by His Excellency Mahinda Rajapakse from 8th – 11th June 2010, also emphasizes the need to establish the above Joint working group (see box 1).

5. The Fisher dialogues

Two clear instances of effective dialogue between Indian and Sri Lankan fishers could be noted: a. the Goodwill Mission in May 2004 in Colombo and Mannar and the b. Chennai Discussions in August 2010. At both discussions the issues of IMBL and poaching, arrests, and plight of fishers were discussed.

a. Goodwill Mission 2004

A goodwill mission consisting of a group of fishers from Tamil Nadu visited Sri Lanka in May 2004, to negotiate with Sri Lankan fishers, on the clashes between fisheries interests in the Palk Bay region. The mission was organised by ARIF (Association for the Release of Innocent Fishermen), an NGO involved in providing humanitarian assistance to arrested fishers and their families. As an interim measure, the Indian trawl fishers agreed to stop the use of four types trawls (considered to be destructive) and to keep a distance of 3 miles from the Sri Lankan coast in the

Palk Bay and 7 miles on the northern coast (Jaffna-Vadamarachchi stretch)¹. However, the exact follow up of this agreement is not known!

b. The Chennai Talks- August 2010

A delegation of Sri Lankan fishers, along with representatives of NGOs and two officials of the Ministry of Fisheries and Aquatic Resources visited a number of fisheries villages and groups of fishers in Tamil Nadu during 16 – 22 August 2010. With the aim of finding a solution acceptable to fishers of both countries, several discussions and a workshop were held.

One of the important outcomes of these discussions was the agreement on the Indian side that mechanized trawling on the Sri Lankan waters shall be stopped and that, whatever they do, the livelihoods of the Sri Lankan fishers should not be affected. Following this, a schedule of phasing out the withdrawal of mechanized trawling in Sri Lankan waters - more specifically, allowing only 70 trawl days over a period of one year - has been worked out, after which trawling in Sri Lankan waters by the Indian fishers would be terminated. Another very important proposal made by the fishers was the establishment of a joint working committee to monitor the issue of poaching and arrests (see box 2).

BOX 02

“All the conditions for fishing (by Indian trawlers) should be monitored with the help of the two Governments. The monitoring group should be composed of representatives from the fisheries officials, fishermen and the Navy/Coast Guard from both countries”.

(English translation of joint declaration by the Indian and Sri Lankan fisher groups, Chennai meeting, 16-22 August, 2010)²

There are three important outcomes of the fisher dialogues in the past. First, both parties agree that trawling is harmful to resources and that it should be stopped. Second, Indian fishers accept that they should stop poaching in Sri Lankan waters. Third, fishing activities in Palk Bay should be monitored by the involvement of the two governments- say by forming a joint monitoring group.

¹ Vivekanandan, V. (2004). Historic Goodwill; report on a goodwill mission of Indian Fishermen to Sri Lanka in May 2004, Samudra Report, No. 38, International Collective in Support of Fishworkers, Chennai, India, 24-32.

² Vivekanandan V. (2010), Alliance for the Release of Innocent Fishermen (ARIF), (personal communication).

6. The issue of arrests

Fishers arrested for poaching in the Indian Ocean generally fall into two different groups. One group consists of Sri Lankan fishers from the southern and western provinces, who operate multi-day boats in the Indian ocean (Arabian Sea, Bay of Bengal, Gulf of Mannar, Andaman Islands, Lakswadeep Islands, etc.). The second group consists of Tamil Nadu fishers who cross the IMBL to fish in the Sri Lankan side of the Palk Bay area. Arrests in respect of the first group are made by the Indian authorities, while arrests of the second, by the Sri Lankan authorities. Since this policy brief only deals with fisheries conflicts in the Palk Bay area, no attempt is made here to deal with the first group.

Although Article 73 and 73(2) of the Law of the Sea of 1982 (UNCLOS) states that “..arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security..” and that, “..penalties for violation of fisheries laws and regulations in the EEZ may not include imprisonment or any other form of corporal punishment...”, neither India nor Sri Lanka has paid any attention to this. Fishers are arrested, as mentioned earlier, under other acts and not for ‘poaching’.

Arrests of Sri Lankan fishers by Indian Authorities are often made, for violating the MZI Act (Maritime Zones of India Act of 1981), Passport Act and Foreigners’ Act (quite often under the MZI Act). Primary inquiries are made by the state government and the reports are sent to the central government in New Delhi for decision. The whole process often takes about a year. Both, the arrested fishers and their families suffer and the boat owners do not bear any responsibility because they are not bound by any of the ILO laws on „work in the fishing sector’. Indian fishers crossing the Palk Bay are arrested by the Sri Lankan Navy, mainly for security reasons - often under the Prevention of Terrorism Act. After preliminary inquiries, they are produced before Anuradhapura Courts. They are also shunted to various prisons in the country before their cases are heard and penalties imposed. The process takes about 3 – 12 months. One of the major causes of long periods of detention is the time taken to establish the identity of fishes (to find out whether they are bona-fide fishers). In this respect, both governments could think of jointly issuing a kind of a ‘document of identity’ to fishers, who are operating in the Indian Ocean.

However, in a recent initiative, the Tamil Nadu govern-

ment has decided to release the arrested fishers from Sri Lanka based on the approval of the Tamil Nadu Fisheries Minister who in turn depends on the Joint Interrogative Report from the District Collector. Thus, the state government of Tamil Nadu does not refer the matter to the Government of India at all, which will definitely minimize delays. This is something that Sri Lanka too should adopt- a strategy to minimize delays. Rather than the involvement of a number of authorities, like the Police, the Department of Immigration and Emigration and the Attorney General's Department, which are the state institutions involved at present in Sri Lanka, one could think of a single authority to handle issues of fisher arrests.

There have been complaints that the arrested fishers are also subject to harassment while in detention. Besides, fishers, their families have to undergo tremendous hardships. There is no authority to take care of the families of the affected fishers. Naturally, their lives are threatened and they are also forced to run behind various people, to get their dear ones released.

7. Policy Failure

The governments in both countries were trying to strictly adhere to maritime boundaries. The Indian Coast Guard was better able to enforce the MZI Act with its strong monitoring, control and surveillance activities. The Sri Lankan navy, with the more important task of fighting with the LTTE and its sea tiger force, was not much concerned with maritime boundary crossing but, unauthorised operation of crafts in Sri Lankan seas, the reason why Indian fishers were often taken into custody under the Prevention of Terrorism Act. It is to be noted that, in many instances, the Sri Lankan navy has not taken any

BOX 03

"From 1983 to 2001, 105 fishermen have been killed in firing by the Sri Lankan Navy, 286 fishernen have been injured and hundreds of fishermen have been arrested. Though the number of firings has come down since January 1997, the problem still remains intractable...The affected area is essentially the Rameshwaram-Mandapam area, with most incidents taking place in the Palk Bay and a few in the Gulf of Mannar are also occassionally affected"

(Vivekanandan, 2001³).

legal action against the arrested fishers, who had been released once their identity had been established. Yet, when the navy was suspicious, their action has been harsh, and there are complains that Indian fishers have also been killed (see Box 3).

Arrests have not solved the problem, because of fishing compulsions on one hand, and the low probability of arrest. Failure of governments to adhere to UNCLOS in dealing with poachers have resulted in unnecessary suffering by fishers and their families. The governments have so far been unable to work out simple procedures to deal with arrested fishers. Lack of understanding of the wellbeing goals of the fishers has also been a serious problem. No interest has been shown by the governments to hear the view points of the fishers to work out an appropriate strategy to deal with the issue, although fishers have made some progress towards this initiative. Fishers on both sides blame their governments, for their failure to effectively deal with the fisheries conflicts in the Palk Bay.

Policy failure has been quite costly, in terms of fisher unrest on the Tamil Nadu side, for fishers are not being able to earn a living without trawling the ocean bottom of the Palk Bay region, while it has caused serious losses to the Sri Lankan economy, by poachers taking away millions of Rupees annually, degrading the marine ecosystem and preventing the northern fishers in Sri Lanka from exploiting their side of the Palk Bay resources, to which they have traditional and legal rights.

8. A new policy direction to address the issue: Wellbeing and Interactive Governance.

The preceding discussion points to two important concerns: achievement of human development goals and, ecosystem health considerations. Indian fishers who are compelled to cross the IMBL to earn a living and the Sri Lankan fishers wanting to prevent Indian fishers from poaching in their side of the IMBL, are the most important issues associated with the human system. A related issue is the arrest of fishers, long periods of detention and long periods of suffering by

³ Vivekanandan V. (2001): Crossing Maritime Borders: The Problem and Solution in the Indo-Sri Lankan context, Forging Unity: Coastal Communities and the Indian Ocean, Conference organised by International Collective in Support of Fishworkers (ICSF) at IIT Madras, Chennai, India 9 – 13 Oct. 2001

fishers and their families. In respect of the ecosystem, both countries are interested in its sustainability. Then both countries have to closely monitor the activities on their side of the IMBL to ensure that resources are used in a sustainable manner. This is the major ecosystem health issue. But how could this be achieved? Evidently, the Palk Bay problem boils down to one of 'effectively addressing the clash between the human development goals and ecosystem health goals'. This policy brief proposes to make use of two emerging theoretical concepts in the field of social sciences, in addressing these issues: Wellbeing and Interactive Governance (see box 4).

BOX 04

Wellbeing and Interactive Governance

Wellbeing has been defined as "a state of being with others, where one's needs are met, where one is able to meaningfully pursue ones, goals, and where one is able to experience a satisfactory quality of life". The 'Interactive governance, approach provides the means to achieve this latter goal. It emphasises the diversity, complexity and dynamics of fisheries, which can be only addressed through governance systems responsive to these qualities. Interactive governance theory proposes "policy making by the interaction of all relevant parties concerned, which would ensure that both ecosystem and human needs are met".

[Bavinck et al (2005); McGregor Allister (2007)]

Human beings differ from each other in what they conceive of as wellbeing and in the strategies that they are able to adopt in their efforts to achieve wellbeing. Wearing a wellbeing lens one is not only able to understand why people adopt various strategies, but also as to what needs to be done to improve their wellbeing.

The 'Interactive governance' approach provides the

means to achieve this goal. It emphasises the diversity, complexity and dynamics of fisheries, which can be only addressed through concerted effort. It is accepted that there are many actors in the field of governance, the state being an important one. We have already noted that, by operating separately, both the state governing system and the fisher governing system have failed to address the Palk Bay fisheries issues effectively. Interactive governance theory proposes policy making by the interaction of all relevant parties concerned which would ensure that both ecosystem and human needs are met.

Quite interestingly, past negotiations between fishers of the two countries have established that trawling and poaching in the Palk Bay area should be stopped. Giving due consideration to the illbeing issues of the Tamil Nadu trawl fishermen at present, the Sri Lankan fishers have agreed for a one year 'Indian withdrawal' period. Both fishers and the governments agree that issues should be handled by a 'joint working group'. This is a significant development in terms of resolving Palk Bay conflicts and it is high time that action is taken in this direction.

9. The Way Forward

Based on the various issues highlighted, solutions proposed and agreements arrived at by diverse groups, both state and non-state, this brief makes the following recommendations to the government.

Policy Recommendations

- a) **Establish joint (Indo-Sri Lankan) Monitoring, Surveillance and Control (MCS) operations of the IMBL**
- b) **Indian and Sri Lankan fishers operating in the Indian Ocean should be provided with identity papers jointly issued with the involvement of the two governments (to establish that they are bona fide fishers).**
- c) **Bona Fide fishers arrested for poaching in the Indian Ocean are only to be charged under Article 73 and 73(2) of United Nations Convention of the Law of the Sea (UNCLOS)**

- d) **Power of dealing with arrests to be vested with a single authority to minimize delays.**
- e) **Ratify 2007 ILO convention on 'work in the fishing sector', among other things, to make craft owners responsible for their crew.**
- f) **Actual mechanisms in respect of a) to e) above to be worked out with the involvement of an Interactive Joint Working Platform.**

The Joint Working Group (JWG) proposed in the 2008 MOU and highlighted in the June 2010 - Joint Declaration of the heads of state of India and Sri Lanka, provides a good interactive platform to address the 'human system - ecosystem clash' in Palk Bay. Rather than a JWG consisting of state officials, this paper proposes an **Interactive Joint Working Platform (IJWP)**, consisting of all stakeholders concerned in the two countries; officials of the relevant ministries, coast guard, navy, fisher organisations, etc. Such an interactive platform shall provide all stake stakeholders with an arena of interaction, to deliberate upon their experience, knowledge and needs, to come out with solutions acceptable to all parties concerned. Undoubtedly, an IJWP would be in an ideal position to device methods to deal with the policy recommendations made above; border issues, fisher poaching issues, issues of arrest and methods of resolving conflicts. Moreover, apart from Palk Bay issues, the IJWP will be in the best position to deal with the issue of poaching by multi-day boats of Sri Lanka in Indian waters: Arabian Sea, Lakswadeep Islands, Gulf of Mannar, Bay of Bengal and Andaman Islands, which is a completely different issue from Palk Bay conflicts, but need to be resolved through agreement between the two countries.

Key References

Amarasinghe O. (2009), Building Governance for Sustainable Small-Scale Fisheries: Bridging Human and Ecosystem Wellbeing. A Policy Brief. "Building Capacity for Sustainable Governance in South Asian Fisheries: Poverty, Wellbeing and Deliberative Policy

Networks", NERC-ESRC-DFID Ecosystem Services and Policy Alleviation Programme (ESPA)
Bavinck M, Ratana Chuenpagdee, Mamadou Diallo, Peter van der Heijden, Jan Kooiman, Robin Mahon and Stella Williams, (2005): *Interactive Fisheries Governance- a guide to better practice*, Centre for Maritime Research (MARE), Amsterdam, 72p.

McGregor Allister (2007): Wellbeing, Poverty and Conflict, Briefing Paper 1/08, ESRC Research Group on Wellbeing in Developing Countries, Feb. 2008, University of Bath, UK.

Suryanarayan, V. (2005). *Conflict over fisheries in the Palk Bay region*, Lancer Publishers and Distributors, New Delhi, India, 207 p.

This policy brief was prepared by Oscar Amarasinghe, Professor of the University of Ruhuna, for Pathfinder Foundation, based on his long experience in working with fishing communities and his close association with the Ministry of Fisheries and Aquatic Resources and also with fishworker organizations in and outside Sri Lanka. He is also a member of the International Collective in Support of Fishworkers (ICSF), Chennai, India. The inputs for this study have come from a number of sources; books, published and un-published documents-articles and reports, information obtained from ARIF (Alliance for the Release of Innocent Fishermen) in Tamil Nadu and National Fisheries Solidarity (NAFSO) in Sri Lanka, who have jointly been involved in devising mechanisms for the release of arrested fishers in both countries and providing humanitarian assistance to the families of affected fishers. They were also involved in organizing dialogue between the fishers of India and Sri Lanka in resolving Palk Bay conflicts. Professor Amarasinghe is also a member of the Fact Finding Mission on Palk Bay Fisheries Conflicts, appointed by the Honourable Minister of Fisheries and Aquatic Resources.

Oscar Amarasinghe, Faculty of Agriculture, University of Ruhuna Mapalana, Kamburupitiya, Sri Lanka (e): oamarasinghe@yahoo.com | (t): 0777 -074141

