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**Crossing Maritime Borders:  
The Problem and Solution in the Indo-Sri Lankan context**

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## **Abstract**

The number of incidents of firing at Indian fishing boats in the Palk Bay by the Sri Lankan navy and the consequent loss of lives has been a serious issue in Tamil Nadu for the last many years. An equally important issue associated with this has been the arrest of Indian fishermen at sea and their subsequent detention in jails by the Sri Lankan authorities. At times, the resentment of the fisherfolk of Rameswaram and neighbouring villages has boiled over, leading to demonstrations and even violent protests. Less publicised in India has been the regular arrest and detention of Sri Lankan fishermen by the Indian authorities for crossing the maritime border. However, this is an important issue in Sri Lanka itself and many fisherfolk organizations and NGOs from that country have been contacting NGOs and fisherfolk organizations in India to seek help in the release of arrested Sri Lankan fishermen.

The problem of fishermen crossing borders is a serious problem on the Indo-Sri Lankan maritime border. It has led to great deal of suffering among the fisherfolk on both sides. Both governments are treating the problem without acknowledging the real causes behind the problem. The problems need to be squarely faced and creative solutions found so that national interests are protected as well as fishermen's livelihoods.

## **1. Introduction**

### **The problem**

The number of incidents of firing at Indian fishing boats in the Palk Bay by the Sri Lankan navy and the consequent loss of lives has been a serious issue in Tamil Nadu for the last many years. An equally important issue associated with this has been the arrest of Indian fishermen at sea and their subsequent detention in jails by the Sri Lankan authorities. At times, the resentment of the fisherfolk of Rameswaram and neighbouring villages has boiled over, leading to demonstrations and even violent protests. Less publicised in India has been the regular arrest and detention of Sri Lankan fishermen by the Indian authorities for crossing the maritime border. However, this is an important issue in Sri Lanka itself and many fisherfolk organizations and NGOs from that country have been contacting NGOs and fisherfolk organizations in India to seek help in the release of arrested Sri Lankan fishermen.

## **2. Historical Evolution of the problem**

India and Sri Lanka share a long and common history, with considerable interaction between the coastal communities of both nations. However, to understand the historical evolution of the particular problem at hand, a quick look at the geographical aspects is vital.

### **The geographical aspects**

The island nation of Sri Lanka lies off the southeast coast of India, with the northern part of the island being at the same latitude as the southern part of Tamil Nadu, India's southernmost State. The maritime boundary between the two countries were settled through two agreements in 1974 and 1976, even before the Law of the Sea was negotiated at the United Nations, and India declared its 200 nautical mile exclusive economic zone (EEZ). The Indo-Sri Lanka maritime boundary cuts through three different seas: the Bay of Bengal in the north, the Palk Bay in the centre, and the Gulf of Mannar (which opens to the Indian Ocean) in the south. The 1974 agreement between Indira Gandhi and Srimavo Bandaranayaka, the then Prime Ministers of the two countries, was for the Palk Bay, which was termed as the "historic waters". The 1976 agreement was for the Bay of Bengal and the Gulf of Mannar.

The maritime boundary (or International Boundary Line or IBL as it is called by the Coast Guard and Navy) is uncomfortably close to the shores of both countries in the Palk Bay, where the maximum distance between the two countries is only around 45 km, and the minimum is just 16 km between Dhanushkodi on the Indian coast and Thalaimannar on the Sri Lankan coast. A crossing of the IBL would imply entry into the territorial waters (12 nautical miles or 22 km) rather than the EEZ. The distances between the Indian coast and the Sri Lanka coast are much longer in the Bay of Bengal and the Gulf of Mannar. As far as the Gulf of Mannar is concerned, except for a few of the centres like Mandapam, south of Rameswaram, the distances are considerable. As far as the Bay of Bengal is concerned, except for centres close to Pt. Calimere (Kodikarai), the distances to Sri Lanka are quite considerable.

Some remarks about the Palk Bay are warranted at this point. The bay is a shallow system with the depth not increasing beyond 50 m at any point. The southern end of the bay is narrow and the so-called Adams Bridge that connects Dhanushkodi and Thalaimannar acts as a barrier to the Gulf of Mannar. This ridge between Dhanushkodi and Thalaimannar makes it difficult for larger vessels to cross over from the Bay to the Gulf and *vice-versa*. This makes the Palk Bay a distinctly different ecosystem and the fish resources and stocks are different from that of the Gulf.

### **Historic contacts**

The fishermen communities on either side of the Palk Bay are Tamil-speaking and have common origins. Further, the Bay is a common fishing ground for fishermen of both countries. It is, therefore, not surprising that there has been close contact between the fishermen of both countries for centuries. There has also been a free movement of goods across the bay before independence, which did not completely stop after independence. During the colonial period, both countries were under the administration of the British, and this ensured that the free intercourse that existed prior to colonisation was not disrupted. The coming of independence and the creation of two modern nation States did not alter the picture substantially as far as the coastal fishermen were concerned. The free movement of men and material continued across the Palk Bay. The two events that affected this and progressively led to the current situation were the 1974 agreement between India and Sri Lanka on the maritime border in the Palk Bay and the start of the civil war in Sri Lanka in 1983.

### **The pre-1974 scenario**

As mentioned earlier, there was a great deal of continuity in the relationship between the fishermen on either side of the Palk Bay, even after independence. But some of the developments during this period are worth mentioning. Up to the 1940s, the Rameswaram Island was only a seasonal base for migrant fishermen from the Gulf of Mannar side. Only a small group of cast net fishermen permanently resided in the island. The *parava* fishermen from the Gulf would come with their fishing equipment during the lean season in the Gulf and base themselves in the island, putting up temporary huts. It is only after independence that the *parava* fishermen started settling down permanently in Rameswaram.

The changes in the post-independence period were essentially related to technological changes. In the beginning, the fishing craft of the Bay on both the Indian side as well as the Sri Lankan side were non-motorized, with a predominance of the *kattumarams*. A variety of traditional nets made of natural fibres were in use. The boat-seine (*thattumadi*) was an important gear for the *parava* fishermen who went after the shoaling fishes in an operation that needed two *kattumarams*. Kachchativu, a small, uninhabited island (which has no water source) was of special significance to the fishing operations. It is located around two-and-a-half hours sailing distance from Rameswaram. In an era of non-motorized fishing, it was a very useful place to have as a base to exploit the fishing grounds that were difficult to cover in daily operations. Seasonally, the Rameswaram fishermen would

put up huts and stay there for up to a week, conducting fishing operations. The island was ideal for drying the fish and nets. The fishermen from Mannar would also come and fish from Kachchativu, and both had an excellent understanding. It was worth noting that the two groups used different fishing gears (the boat-seine in the case of the Rameswaram fishermen and gill nets in the case of the Mannar fishermen) and had very little competition between them.

The Kachchativu was also a place of annual pilgrimage due to the presence of the St. Antony'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.

An important development in the early 1960s that led to friction between the two groups of fishermen was the introduction of nylon nets in Sri Lanka. Finding the nylon nets much superior, the Rameswaram fishermen used to be envious of their brothers across the Bay. Things became serious when some Indian fishermen started stealing the nylon nets at night when they were set at sea. This resulted in a clash and the first reported firing by the Sri Lankan navy on Indian fishermen. The problem was, however, transient in nature and got resolved once the Indian fishermen also acquired nylon nets, which soon became easily available in India also. The nylon nets gave a boost to gill-netting, especially with large drift nets. This, in turn, led to the Tuticorin *vallams* (canoes), which are solidly built and have greater carrying capacity, becoming more popular and replacing a part of the *kattumaram* fleet of Rameswaram.

The late 1960s saw another gear conflict erupting. This was due to the introduction of small mechanized trawlers (32-footers) on the Indian side in 1967. The trawlers created conflicts with artisanal fishermen on both sides of the bay. This problem also got resolved (at least as a source of conflict between the fishermen of the two countries) when the Sri Lankan fishermen also acquired trawlers. However, it must be understood that the trawler problem is a permanent one in India, with constant conflicts between the mechanized trawlers and the artisanal fishermen.

Thus the pre-1974 period was one of a long history of close contact between the fishermen on either side of the Bay. Towards the end, however, new technological developments had led to some conflicts, which got resolved when the new technologies became accessible to both groups.

### **The 1974 and 1976 agreements**

In 1974, the Prime Ministers of India and Sri Lanka met to decide on crucial issues between the two countries that had been hanging fire for long. The most important issue that affected the relationship between the two countries was that of the "Stateless Tamils", the large number of people from Tamil Nadu who had gone to work on the tea plantations of Sri Lanka during the British period and who were refused citizenship by independent Sri Lanka. The other pending problem had been the absence of a mutually agreed upon maritime boundary between India and Sri Lanka. This boundary problem was related to differences on the status of Kachchativu. Since the 1920s (well before independence!), the Sri Lankan side had

been staking claims on the island, while India (represented by the Madras Presidency) was convinced that it belonged to India.

The Government of India (GoI) saw the Kachchativu problem as a minor irritant and the mandarins in Delhi felt that a “barren rock” in mid-sea was not worth fighting for with a friendly country. The problem of the Stateless Tamils was the more serious one and all diplomatic energies were concentrated on that problem. Whether the concessions made by the Sri Lankans on the problem of the Stateless Tamils were satisfactory or not can be debated. However, the GoI felt satisfied enough to concede Kachchativu to Sri Lanka. As a result, a boundary in the Palk Bay was agreed upon, with Kachchativu going to the Sri Lankan side.

The extent to which the fishing interests were taken into account by either government is difficult to assess. Even for Sri Lanka, the main reason for seeking Kachchativu appears to have been a suspicion of untapped petroleum resources in the Bay. However, the fishermen on either side do not appear to have played any role in the negotiations and their opinions were never sought.

It is, however, worth noting that the 1974 agreement has two special clauses that appear to protect the interest of Indian fishermen. Article 5 states:

Subject to the foregoing, the Indian fishermen and pilgrims will enjoy access to visit Kachchativu as hitherto and will not be required by Sri Lanka to obtain travel documents or visas for these purposes.

Article 6 is even more significant, as it states:

The vessels of Sri Lanka and India will enjoy in each other's waters such rights as they have enjoyed therein.

While Article 5 relates to the continuing use of Kachchativu for pilgrimage and for drying nets and fish, Article 6 appears to grant Indian fishermen the right to continue fishing in the Palk Bay as before (even though fishing is not explicitly mentioned).

The Dravidian parties of Tamil Nadu (the DMK was in power) had strongly criticised the agreement and the DMK members had walked out of the parliament in protest. However, they were unable to make much impact on the GoI's thinking on the matter.

In 1976, another agreement was signed between India and Sri Lanka on the boundary in the Bay of Bengal and the Gulf of Mannar. Both these boundaries were non-controversial, with no disputed island in the picture. The well-accepted principle of equidistance was adhered to.

Probably the most important event that actually deprived the Indian fishermen of their right to fish in the Palk Bay was an exchange of letters between India and Sri Lanka in 1976. In March 1976, the Foreign Secretary of India wrote to his counterpart that

...the fishing vessels and fishermen of India shall not engage in fishing in the historic waters, the territorial sea and the exclusive economic zone of Sri Lanka nor shall the fishing vessels and fishermen of Sri Lanka engage in fishing in the historic waters, territorial sea and the exclusive economic zone of India, without the express permission of Sri Lanka or India, as the case may be...

The contents of this letter, apparently, are also binding on the GoI and constitute an agreement. The Minister of External Affairs, Shri Y.B.Chavan, stated this categorically in the Parliament:

...Consequent to the signing of the Agreement, there was also an Exchange of Letters ...*This Exchange of Letters also constitutes an agreement between the two countries...*Both countries have agreed that after the determination of the maritime boundary, fishing vessels and fishermen of one country shall not engage in fishing in the waters of the other...

Thus, through an exchange of letters, the GoI had more or less given away the benefit that Article 6 of the 1974 agreement appeared to grant the Indian fishermen (despite some ambiguity in its wording).

### **1974 to 1983 : some trouble, but business as usual**

The agreement of 1974 and the exchange of letters in 1976 did not lead to any significant change in the activities of the fishermen. It was business as usual. If anything, the fishing operations in the Bay only further intensified as a result of the expansion of the fleet of trawlers on both sides. The nylon net revolution had led to an increase in gill-netting on the Indian side and the *vallams* also increased as a result. Motorisation of the *vallams* using single cylinder diesel engines also took place, increasing the range of operations of these vessels. The nylon net usage also meant that Kachchativu's significance, as a centre for drying nets, was lost. With increased mechanical propulsion, the need of Kachchativu as a base for fishing and fish drying was also reduced.

However, the Sri Lanka authorities did attempt to restrict fishing by Indian vessels on the basis of the agreement. In this, they were obviously handicapped by the limitations of their navy. The Sri Lankan Navy, prior to the civil war, was a nominal entity and had very little capacity to undertake patrolling. Small vessels with handguns would occasionally stop Indian vessels and direct them to the Sri Lanka shores for interrogation and, subsequently, release them after a few hours. A significant fact was that, on such occasions, the Sri Lanka authorities would seize the fish and the nets. Often, the violations were by Indian trawlers and trawl nets would be seized. The Indian fishermen attributed this, in part, to the fact that trawling was still developing in Sri Lanka, and the seized Indian nets would find their way to Sri Lankan boats!

There seems no evidence that the Indian authorities had taken any steps to restrict the fishing vessels of Sri Lanka similarly. The Indian Coast Guard, with a mandate to protect India's EEZ, came into being only in 1979, and if any action had to be taken, it was possible only after that.

### **The civil war and its consequence**

The start of the civil war in 1983 completely altered the nature of the problem, and produced tragic consequences for the fishermen. The Liberation Tigers of Tamil Eelam (LTTE), which had open support from various political organizations in Tamil Nadu prior to the Indian Peace Keeping Force (IPKF) operations (and even after!), was receiving supplies from the Tamil Nadu coast. The LTTE also developed its own naval wing called the "Sea Tigers", which mounted deadly attacks at times on the Sri Lankan navy. The Sri Lankan navy had to expand its fleet and intensify patrolling to counter this threat. Innocent Indian fishermen have become victims of the war and many incidents have occurred in the last 15 years wherein Indian fishermen have been shot dead and many more wherein Indian fishermen have been taken in custody by Sri Lankan authorities and have been kept for months in detention in Sri Lanka.

Despite the mechanization of fishing and motorisation of artisanal vessels, navigation is entirely based on fishermen's traditional skills and, in the absence of chart work, it is difficult for the fishermen to pinpoint their location at sea. Modern communication equipment is non-existent and the fishermen normally do not know even the rudiments of signalling. This means that a patrol vessel can not find out from a distance whether a vessel is a genuine fishing vessel or not. This increases chances of misidentification at night and firing by jittery naval personnel.

From 1983 to 2001, 105 fishermen have been killed in firing by the Sri Lanka navy, 286 fishermen 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 and fishermen**

The Palk Bay is clearly the most affected area, as far as Indian fishermen are concerned. This is undoubtedly due to the earlier mentioned proximity. Even in the Palk Bay, the most affected place is the Rameswaram Island (Ramanathapuram District), which is extremely close to Sri Lanka. Here both the mechanized boats (all using trawl nets) and the traditional canoes (Tuticorin-type *vallams*, with or without motors) can easily cross the IBL and get into trouble. Over 75 per cent of incidents involving shooting and of arrest of fishermen by Sri Lanka navy relate to the Rameswaram Island.

As far as the rest of the Palk Bay is concerned, Jagadapattinam, an important mechanized landing centre in Pudukottai District is the next affected centre with occasional incidents of shooting and arrest of Indian fishermen by the Sri Lanka navy. Kottaipattinam, another mechanized boat centre is also at times affected. Jagadapattinam and Kottaipattinam are around 32 km from the IBL.

Nagapattinam District also has a part of its coast line in the Palk Bay and a few incidents affecting centres of that district have also been reported. Kodikarai (Point Calimere), the northern end of the Palk Bay on the Indian side is just 24 km from the IBL.

As far as the Bay of Bengal is concerned, it is generally unaffected but for the southern extreme of the coast close to the Palk bay. Some fishing centres of Nagapattinam District and Karaikal (Union Territory of Pondicherry) have also, in the past, recorded incidents involving the Indian fishermen and the Sri Lankan Navy.

As far as the Gulf of Mannar is concerned, if there is a problem, it is essentially on the northern end, south of Rameswaram. Boats from Mandapam which go fishing in the Gulf of Mannar have chances of reaching/crossing the IBL and hence are sometimes affected. Further down the coast, there are virtually no recorded incidents involving the Indian fishermen and the Sri Lankan navy.

It must, however, be mentioned that the Arabian sea coast has had some incidents of artisanal fishing craft drifting to the Sri Lanka shores due to engine failure or natural causes in view of the deep seagoing aptitude of the Kanyakumari fishermen and the risks they take. These incidents, of course, do not normally involve shooting or arrest.

To sum up, the affected area is essentially the Rameswaram-Mandapam area, with most incidents taking place in the Palk Bay and a few in the Gulf of Mannar. Jagadapattinam, Kottaipattinam and a few other centres of the Palk Bay are also occasionally affected. A few fishing centres on the southern end of the Bay of Bengal have also been affected.

The type of fishing vessel that gets affected is normally the small mechanized trawler (32-42 footers) which dominates the fishing in the affected areas. In Rameswaram Island, however, even the traditional canoes from the Pamban area are among those affected in view of the proximity to the IBL and the use of large drift-nets. Occasionally, one hears of *kattumarams* also being affected. Both the mechanized boats and the *vallams* have a five man crew while the *kattumarams* have just 1-2 persons on board. While the fishermen on *vallams* and *kattumarams* are locals, the crew of mechanized boats might come from distant centres and may at times include fishermen from castes, which are not traditionally involved in fishing.

### **Crossing the border—fisheries compulsions**

The closeness of the IBL at Rameswaram has been already discussed. When this fact is combined with the lack of proper equipment on board the Indian vessels, one may believe that this explains the inevitability of accidental border crossing by the Indian fishermen. However, such a scenario only provides a partial picture. *Fishing vessels crossing over by mistake cover only a small percentage of the cases.* The vast majority of border crossings is intentional and involves travel deep into Sri Lankan waters. It is an open secret that Rameswaram fishing vessels, especially trawlers, find good fishing grounds only on the Sri Lankan side and, therefore, do most of

their fishing on that side. Fishing takes place in Indian waters only in the season for oil sardines, when most trawlers do pair trawling with pelagic trawl nets. Prawns, the mainstay of the trawler fleet of Rameswaram, are mainly obtained in the Sri Lankan waters. Every alternate day, around 500 Rameswaram trawlers routinely cross the IBL and go into Sri Lankan waters and conduct fishing operations.

Behind this routine incursion into Sri Lankan waters lie the following factors:

- (i) the limited trawling grounds available on the Indian side.
- (ii) the growth of the trawler fleet at Rameswaram to a level that has depleted the Indian grounds, so much so that its survival depends on fishing in Sri Lankan waters.
- (iii) the virtual collapse of the fishing operations on the Sri Lankan side of the Palk Bay due to the civil war, leaving the fishing grounds open to the Indian vessels without any competition.

The growth of the Rameswaram fleet and the increase in fish landings after the civil war started in 1983, provide validation for the above analysis. A. J. Vijayan has termed it “unnatural growth in the midst of severe constraints” in his report “An Overview of the Marine Fisheries and Fishers In and Around Rameswaram”. The following table from his report is revealing:

Table 1: Coastal Region-wise Estimation of Marine Fish Production in Tamil Nadu (four-year annual averages) (quantity in tonnes)

<b>Year</b>	<b>Coromandal coast (35.0)*</b>	<b>Palk Bay (27.0)*</b>	<b>Gulf of Mannar (32.0)*</b>	<b>West Coast (6.0)*</b>	<b>Total (100.0)*</b>
1980-84	57,850 (24.3)**	59875 (25.2)	66,559 (27.9)	53,858 (22.6)	238,142
1984-88	51,196 (20.5)	66,848 (26.7)	69,386 (27.8)	62,535 (25.0)	249,965
1988-92	67,527 (23.3)	101,116 (34.9)	87,948 (30.3)	33,265 (11.5)	289,856
1992-96	92,780 (28.6)	118,890 (36.7)	84,158 (25.9)	28,450 (8.8)	324,278

\* per cent share of Tamil Nadu’s coastline

\*\* per cent share of Tamil Nadu catches in brackets

Source : S. Durairaj et.al, Dept. of Fisheries, Govt. of Tamil Nadu, March 1997.

While the landings of Tamil Nadu increased during the 16 years under analysis, the growth of the fish landings in Palk Bay has been very significant and higher than for the other regions of Tamil Nadu. This is undoubtedly due to the additional fish resources and grounds tapped by the Palk Bay boats in the Sri Lanka waters due to the decline of fishing effort on the Sri Lankan side.

An important conclusion one can arrive from this analysis is that the Sri Lankan authorities are not strict in restricting Indian fishing vessels and that the few vessels captured each year are not normally for fisheries violations. The various incidents of capture and shooting are related to the situation created by the civil war that is still raging. Only when the civil war ends will the fisheries issues come to the fore.

### **The problems of Sri Lankan fishermen**

It is worth noting that the above historical background is not of much consequence in understanding the problem of Sri Lankan fishermen arrested in Indian waters. This problem appears to have different origins altogether and needs to be analyzed separately. It is significant that the fishermen arrested by the Indian Coast Guard do not come from the Palk Bay area, which is the area affected by the civil war. The phenomenon of Sri Lankan fishermen caught in Indian waters is also mostly a post-1990 phenomenon, long after the Indian Coast Guard came into existence and the Maritime Zones of India (MZI) Act of 1981 came into existence. (This act deals with foreign fishing vessels in Indian territory.)

### **The affected area and fishermen in Sri Lanka**

As mentioned, the Sri Lankan boats and fishermen regularly captured by the Indian Coast Guard do not come from the Palk Bay where the IBL is close, but from other areas. The state of fishing as well as the plight of the fishermen in the Palk Bay areas of Sri Lanka, is pathetic. The civil war has meant that there are severe restrictions on fishing and fuel for mechanized operations is unavailable. Whenever they go fishing, the Sri Lanka vessels set out for short distances and come back soon. Similar is the case of fishermen on the war-affected east coast. It is only on the western coast (south of Mannar) and the south coast that fishing is normal and fisheries development has been taking place during the civil war period.

The fishing vessels of Sri Lanka can be broadly categorized into non-motorized craft, motorized craft and mechanized (multi-day) boats. The non-motorized craft are *kattumarams*, outrigger canoes (*oru*) and small canoes (*vallam*). The motorized craft are small 18-foot FRP boats with outboard motors (OBMs), which operate a variety of gear in the coastal waters. The mechanized vessels are essentially 40-50 foot vessels (wooden and FRP), that go deep into the ocean for long voyages of 2-3 weeks operating longlines and gill-nets for offshore pelagic resources like tuna and pelagic sharks.

On the western and southern coasts, non-motorized fishing has become marginal in most places as the artisanal fishermen have shifted to the FRP motorized craft, which the government promoted with subsidies during the 1960s and 1970s. These FRP boats are used with many small gill-nets and handlines for coastal fishing on the continental shelf. With Sri Lanka being a small island country with a narrow continental shelf, it is no wonder that the limit to fisheries development was being felt in the early 1980s itself. The artisanal fishermen of the west coast used to migrate during the lean season to the north and east before the civil war. This stopped after 1983 and the fishing pressure has, therefore, increased in the shelf areas of the western and southern coasts. The government, aware of the dangers of this, has promoted a new class of vessels that can fish in the deeper waters and go

after untapped resources. These vessels called “multi-day fishing boats” are 40-50 foot vessels with a good insulated fish-hold and have the capacity for staying up to a month at sea. Almost all of them have good navigation aids like the GPS (Global Positioning System) and navigational charts. They are also equipped with radio equipment that enables them to communicate with other vessels at sea as well as their home base. The fishing methods are passive and most vessels use a large drift net in combination with a pelagic long line. The fishing is entirely in the deep sea, and mainly for tunas and sharks.

It is the growth of this multi-day fishing boat fleet that is behind the problem of Sri Lankan fishermen getting caught by the Indian Coast Guard. Except for the rare FRP boat that drifts accidentally towards the Indian coast in the Gulf of Mannar, the Sri Lankan vessels captured are all multi-day fishing boats, which are found operating in the Arabian Sea and the Bay of Bengal. A number of them are caught near the Andamans and the Lakshwadeep Islands. It is worth mentioning that the Sri Lankan boats are caught even in the Maldives and Seychelles!

The current fleet strength of multi-day fishing boats is around 1,500 and they are spread over half a dozen landing centres on the west and southern coasts of Sri Lanka. The government provides up to 50 per cent subsidy for these vessels and the fleet is still growing. In the early phase, the vessels were smaller and the ownership was with artisanal fishermen who graduated from FRP boats. But now the size is increasing and even 60-footers costing over Rs50 lakhs have made their entry, owned by rich entrepreneurial fishermen. There are clear indications that this large fleet cannot survive on just the tuna and shark resources of Sri Lanka’s EEZ and have to necessarily poach in other waters for survival. It is interesting that these vessels often make a beeline for island territories where there is an aggregation of tuna resources.

The Indian Coast Guard are very strict in their implementation of the MZI Act, and Sri Lankan fishing vessels inside India’s EEZ are caught and handed over to civilian authorities on shore.

Thus, it is the multi-day vessels from the west and south coasts of Sri Lanka that are caught in Indian waters, and it is worth noting that they are manned by traditional fishermen, predominantly Sinhala.

### **Concluding remarks on the problem of IBL crossing**

It will be obvious from the above detailed history of the problem that the crossing of the IBL by the Sri Lankan and Indian fishing vessels are rarely due to honest mistakes or unavoidable reasons like engine failure, natural causes, etc. By and large, the IBL crossing is deliberate and for better fishing opportunities. In both cases, the respective governments (of Tamil Nadu and Sri Lanka) have actively promoted the development of fishing fleets that can not fish profitably in their own grounds and whose economics depend on “poaching” in foreign waters.

### **3. Fate of captured/arrested fishermen**

The fate of fishermen captured/arrested when found beyond the IBL of their respective countries varies considerably, as both countries have different approaches to the problem and the internal systems of managing such problems differ considerably. The administrative structures, legal system and political dynamics are all different, leading to different results.

#### **Indian fishermen in Sri Lanka**

As discussed earlier, the Indian fishermen cross the IBL in large numbers routinely in the Palk Bay and are generally ignored by the Sri Lankan Navy. It is only on certain occasions that they are caught, normally for security-related concerns. It should be understood that the primary task of the Sri Lankan Navy is related to the civil war and the large number of fishing boats are a major distraction as well as impediments in achieving its military goals. The Sri Lankan side has controlled this problem by severely curbing fishing operations in the north and east. There are times when fishing is completely prohibited for the Sri Lankan fishermen in the affected areas. At other times, there are very strict regulations on time of fishing and distance of fishing. The loss of livelihoods and incomes of the fishermen in the north and east, and the acute distress caused by this is one of the untold stories of our time. Such restrictions on the Indian boats are not feasible and practical, given the Indian situation. At the time of the IPKF operations, the option of banning/regulating fishing was seriously considered by the Indian Navy and Coast Guard, but given up as impractical, due to the large numbers whose livelihoods will be affected and the high political costs of such an action.

A major problem at sea is the difficulty in distinguishing between genuine fishing boats and those that are involved in nefarious activities. The absence of communication and signalling systems on board the Indian vessels, difficulty in distinguishing Indian fishermen from Sri Lankan fishermen (all Tamils), etc., create conditions for genuine fishing boats to be apprehended by the Sri Lankan Navy. The unpredictability of the LTTE and fear of its methods have also led to a policy of “shoot first, question later”. Analyzing the incidents of firings and capture reveals the following reasons attributed by the fishermen themselves for their occurrence:

1. Suspicious behaviour on the part of Indian fishing boats when approached by Sri Lankan naval vessels, which, in turn, might stem from fear of the intentions of the Sri Lankan Navy.
2. Just trigger-happy behaviour on the part of Sri Lankan naval personnel at times of tensions.
3. Venting their anger on Indian vessels in retaliation for LTTE actions.

Once again, it must be emphasized that the capture of Indian fishing vessels is a rare event in the overall scheme of things, but even these rare events have tragic consequences and vitiate the atmosphere. The frequency of such incidents also tends to fluctuate from time to time and may have some connection with the course

of the civil war in Sri Lanka. The following table gives the number of firings and casualties over the years.

Table: Incidents Involving Death or Injury  
to Fishermen in the Palk Bay  
(1983 – 2000)

Year	No. of Incidents	No. of Fishermen			Boats Sunk
		Killed	Missing	Injured	
1983	2			5	
1984	4	1		5	
1985	33	4		87	
1986	2			2	
1987	4	3		4	
1988	4	1		7	
1989	2			5	
1990	11	6		37	
1991	17	13		18	
1992	7			23	
1993	8	8		5	
1994	10	8		8	
1995	10	6		13	
1996	31	7	12	20	5
1997	15	13	2	11	1
1998	4	6		1	
1999	7	7		2	
2000	5	2		3	
Total	176	85	14	276	6

Source: Computed from information provided by the Asst. Director of Fisheries, Rameswaram

The actual number affected is likely to be more by around 10 per cent, if incidents outside the Palk Bay are concerned. Since 1998, the number of incidents has gone down. This is attributed by the Coast Guard to the various discussions between the Indian and Sri Lankan naval authorities, as a result of which the Sri Lankan navy has been asked to restrain itself when dealing with Indian fishing vessels.

The actual incidents of shooting recalled by the survivors are harrowing and heart-rending. In one of the incidents, the lone survivor escaped as he was covered with others' blood and was given up for dead.

Those who survived and those who were taken without shooting are then taken to Sri Lanka's nearest port and handed over to local police. The main centres where they are taken are Kankesanthurai, Mannar, Vavunia and Jaffna, depending on

where they are caught. In many cases, the fishermen are kept in military custody for a day or two, until arrangements can be made to hand over them to the police. One has to remember that a war is being fought in the areas where the fishermen are taken.

### **From arrest to release: the process**

In some instances, the boat and crew are released in just a few days, after just an enquiry, without charging the fishermen. In such cases, if the boat is in good condition, the fishermen may straightaway return by sea to Rameswaram. However, once charges are made, they are then taken to the court at Anuradhapura. In the first few weeks, the fishermen might be shunted from location to location and kept in more than one jail. Normally, after they are produced in the Anuradhapura court, they are taken to jails in the west and south of the country. One of the jails where most fishermen are kept is the Kalutara prison, south of Colombo. The charges are normally for illegal entry into Sri Lankan territory. Quite often, the charges may be under the Prevention of Terrorism Act.

The actual court case and the entire process vary considerably from case to case. The Immigration Department and the Attorney General's office are normally the two government departments that are concerned with the cases. If the pressure from the Indian side is strong enough, the cases are often withdrawn or compromised so that the fishermen can be released. In the last four years, local NGOs who are in touch with Indian NGOs have intervened with legal assistance and have helped to expedite the release in many cases. While in some cases there may be genuine reasons to suspect smuggling and other nefarious activities, in most cases, the actual charges need not necessarily indicate the real situation. In some cases, where the charges (true or false) are serious and require punishment, the fishermen have been let off with nominal fines of a few thousand rupees per head.

Once the cases are withdrawn or settled, the fishermen are then taken to the Mirihana camp in Colombo, where foreigners of all nationalities are kept until they are repatriated. It is an open-air camp, with considerable freedom of movement. Inmates who have been there for months may even go outside for a cup of tea or to buy some personal articles. Once in the camp, it is for the Indian government and the Indian High Commission in Colombo to work out details of repatriation. For long, the fishermen would be air-lifted to the north of Sri Lanka and taken to the places where their boats are in custody. From there, they were allowed to sail back to India. Another variation of this used to be the taking of the fishermen by a naval vessel and transfer to the vessels of the Indian Navy or Coast Guard at mid-sea. Quite often, the fishermen would return to India after months in Sri Lanka, only to be confronted with the problem of getting their boats back. There have been years when getting the boat back has been extremely difficult and many a boat has been damaged beyond salvage. Generally, after considerable amount of negotiations between the Indian authorities and the Sri Lankan authorities, the order for taking the boat back is received. Then, a large group of Indian fishermen are permitted to sail across to Sri Lanka and bring back the boat that is in custody after the necessary repairs.

In the last couple of years, the transfer of the released fishermen from Mirihana camp to the north of Sri Lanka and the mid-sea transfer of fishermen have more or less stopped. This appears to be due to security problems and the unwillingness of the Sri Lankan authorities to spare the necessary aeroplanes and naval vessels. Hence, in recent times, the fishermen have to be sent by commercial flight from Colombo to Trivandrum, which is the nearest Indian airport. The Indian High Commission issues a temporary passport and buys the fishermen an air ticket and sends them home. The expense of the air ticket is normally treated as a loan to the fishermen. This is just for the record and no fisherman ever repays the loan. Perhaps if they have to approach the passport office in India for a permanent passport, they may be asked to repay the loan. Once back in India, the fishermen will then have to work to get the boat back from wherever it is anchored in the north of Sri Lanka.

The total time involved can vary considerably for the entire process to take place. The lucky fishermen are those who are released in a few days without going through the entire process. For the rest, the process may take a few weeks or many months. With the exception of fishermen who are sentenced for smuggling or other offences, the time spent by an Indian fishermen ranges from three months to a maximum of one year.

Some fishermen who have spent time in the Sri Lankan police stations and prisons have had bitter experiences. In the initial enquiry after capture, third-degree methods are often used. This is undoubtedly due to the war situation and the suspicion that Sri Lankan military or police have of Indian fishermen abetting the LTTE. Even in the regular prisons, the fishermen have, at times, faced problems. There are many hardcore LTTE cadres in some of the prisons and Indian fishermen may get caught in the tensions that exist between the jail authorities and the Tamil militants.

### **Sri Lankan fishermen in India**

As explained in the previous section, the Sri Lankan fishermen who end up in Indian prisons are entirely from the west and the south, with a few from the east of Sri Lanka. The Sri Lankan fishermen from the north and the northeast are never involved in this process as a rule. Inevitably, it is the multi-day fishing boat that is captured in Indian waters. In some seasons, the arrests are mostly in the Gulf of Mannar, while, in other months, it takes place in the Arabian Sea. Some boats, especially those from the east, are captured in the Bay of Bengal. Another area of arrest is near the Andaman Islands.

The Indian Coast Guard tries to strictly implement the MZI Act and captures Sri Lankan boats that are clearly in the Indian EEZ. Given the vastness of the ocean and the difficulty of identifying small boats, it is quite likely that only some of the boats that enter the Indian waters are actually captured by the Indian Coast Guard. The Coast Guard is, however, very strict and there is no question of their sending back the Sri Lankan boats. The boats are captured, the fishermen arrested and brought to the nearest Coast Guard base. On shore, the fishermen and boats are promptly handed over to civilian authorities. Tuticorin, on the Gulf of Mannar coast, and Cochin, on the Arabian coast, are the most common centres where the arrested

fishermen are brought. The Thermalnagar Police Station in Tuticorin and the Cochin Harbour Police Station are normally the police stations that take charge of the fishermen. After preliminary enquiries, the fishermen are produced before the designated court for MZI offences in Ramanathapuram or Cochin, as the case may be. They are then remanded until a final decision is taken. The fishermen are periodically brought to the court and remanded until the Indian authorities decide to release the fishermen or to prosecute them. Normally, the charges are for violating the MZI Act, Passport Act and Foreigners' Act.

Once in the Indian jail, it takes a long time before the authorities take a decision on the fate of the fishermen. India's federal set-up ensues that both the State and Central governments have to co-ordinate between themselves and take a decision. While it is the Home Department that takes up the matter on behalf of the State government, at the central level, the Ministries of Home, External Affairs and Agriculture are all involved in deciding the course of action. The State Government has to make the necessary enquiries about the bona fides of the fishermen and then send a report to the central government. If all the three central ministries give their 'no objection', the cases are withdrawn and the fishermen sent back home.

Despite the charges made under the various Acts, it is the MZI or the Maritime Zones of India Act of 1981 that are the most relevant acts. Seven courts have been designated all over India to handle offences under the MZI and these include the courts at Cochin and Ramanathapuram. The MZI provides for punishing the owner or the skipper of any foreign fishing vessel found illegally fishing in India's EEZ. The crew, as such, are not punishable, but the owner or skipper can be punished with a hefty fine. The boat and its contents can also be confiscated. The punishment is more severe, with provision for imprisonment in the case of vessels that are found within the territorial waters.

Until 1999, the general approach of the Government of India has been to release the fishermen and the boat without entering into a prosecution. After ascertaining that the fishermen are bona fide and no other criminal offence is involved, the State Government is advised to withdraw the cases and send the fishermen back with their boats. The fact is that India and Sri Lanka are friendly countries with an excellent bilateral relationship. This has obviously been the reason for not prosecuting the fishermen and punishing them according to the provisions of the MZI Act. This is in stark contrast to what happens on the Indo-Pakistan border, where fishermen once arrested are kept in jail for years and are strictly prosecuted as per the MZI Act.

However, the withdrawal of cases is a long, cumbersome process involving a great deal of red tape. It is rare for an arrested Sri Lankan fisherman to go back within three months. Often, the whole process can take up to a year. The Sri Lankan High Commission in India, as well as NGOs in India, have been taking up the issue with the concerned departments in an attempt to expedite the process. In Tamil Nadu, the State Government has even set up an inter-departmental committee to look into cases against foreign fishermen and expedite the cases. However, the time factor still remains a major problem on the Indian side. It is extremely unfortunate that

fishermen are held up to a year in prison on remand for offences, which are not punishable with imprisonment, or for offences that the Government of India is not ready to prosecute.

Over the last year or so, the problem has become more complicated with the Ministry of Agriculture, which deals with MZI offences, insisting on prosecuting the skippers. Earlier, all fishermen on the multi-day fishing boats were treated as a homogenous group and no distinction made between crew members and skippers. But now, one of the fishermen who is in charge of the operations, but who is otherwise no different from the others in terms of work or qualification, is prosecuted and punished. In one of the cases, the Cochin court gave orders for confiscation of the boat and the payment of a fine of Rs.1 lakh. As it was beyond the capacity of the fishermen to pay the fine, he had to undergo six months imprisonment. This has raised a number of legal issues, especially since the United Nations Convention on the Law of the Sea (UNCLOS) specifically prohibits the incarceration of fishermen who are found poaching.

Thus, the Sri Lankan fishermen who are arrested in Indian waters faces the process of a long and uncomfortable stay in India. While there are no other risks like those faced by the Indian fishermen in Sri Lanka, the time period for returning home is much longer and can lead to demoralization.

### **Efforts by NGOs**

The increasing number of arrest on both sides Has led to various NGOs concerned for fishermen welfare getting involved in the process. On the Indian side, a trade union and NGO initiative led to the formation of the Alliance for Release of Innocent Fishermen (ARIF). ARIF is a loose network of trade unions, NGOs and fishermen's associations that is equally committed to the release of bona fide fishermen from India as well as Sri Lanka. On the Sri Lankan side, there is no particular organization or network that takes up the issue. However, there are a number of actors who get involved and take effective action. While the Forum for Human Dignity gets involved in providing legal assistance to Indian fishermen, other NGOs, trade unions and fishermen's organizations get involved in providing various kinds of information and support. Since Sri Lanka is a much smaller country and most things get decided at Colombo, the Sri Lankan NGOs are more effective in getting Indian fishermen released than the Indian NGOs in getting Sri Lankan fishermen released. The last three to four years have seen considerable action from the side of NGOs and they have acquired considerable knowledge and information about the nature of the problem. Both the governments have recognized the useful role played by the NGOs and often use their help. The governments have their own limitations in getting involved in court cases against their nationals in other countries. They also do not have much capacity for providing humanitarian assistance when their nationals are in the jails of other countries. Thus, the NGOs come in handy even for the governments, in many situations.

#### **4. Short-term and long-term solutions for the problem**

It is very clear that the fishermen of both sides have various compulsions to cross over and fish in the waters of the neighbouring country. It can be even argued that, in the case of the Palk Bay, the fishermen have been unjustly deprived of fishing rights they have traditionally enjoyed. The arrest of fishermen leads to considerable suffering for the affected households and also has significant local political repercussions in both India and Sri Lanka. It is, therefore, essential that both the governments evolve creative solutions to tackle this particular problem.

A major hurdle for finding solutions is the lack of understanding of the causes for border crossing at the policy-making levels of both countries. Officially, both countries seem to subscribe to the myth that fishermen are crossing the border at sea due to ignorance or due to accident. That there are strong fisheries compulsions to cross the borders is not appreciated sufficiently. Moreover, it needs to be understood that these fisheries compulsions are, in turn, the result of the fisheries development policies pursued by both the governments. Only if this reality is squarely faced can realistic solutions emerge.

There are a number of options to solve the problem associated with border crossing by the fishermen of both countries. Which option is preferable depends on the policy that appeals to the two countries. The following are some of the options that can be considered:

##### **Option 1: Free access**

This option is discussed first as it has been proposed by many fishermen's organizations like the National Fishermen's Forum (NFF) and the World Forum of Fishworkers (WFF). The idea is that fishermen of South Asia should have the freedom to fish in each other's waters. Most fishermen's groups are ready for such a solution, as there seems to be very little animosity between fishermen across borders. The small fishermen of Tamil Nadu and Kerala who encounter the multi-day fishing boats of Sri Lanka in the Arabian Sea do not see them as outsiders, but even exchange rations with them. In fact, the same small boats might be ready to capture and burn an Indian trawler, as the fishing method is considered harmful to the interest of the small fishermen.

On the Sri Lankan side, such a free-access policy actually exists in the Palk Bay. Close linguistic and ethnic ties between fishermen on both sides ensure that such an open-access policy is not a big problem. It should, however, be understood that the Sri Lankan fishermen in the Palk Bay are currently unable to properly fish on account of the civil war. They are, in fact, unhappy with the large-scale trawling that is done in their waters by Indian vessels. It is possible that if fishing restrictions on Sri Lankan fishermen are removed, there may be a clash of interest between the Indian and Sri Lankan vessels.

A major objection to this option is that it can endanger the fish resources if no restriction is placed on number of units or type of fishing gear. Also, the

governments may not feel comfortable, given the security concerns that exist in South Asia.

### **Option 2: Returning fishermen without any litigation**

This is perhaps not much different from the first option, except that it does not involve the formal legalisation of border crossing by fishermen. It is also close to the actual position that both governments have been taking in most cases. Sri Lanka has sent back many groups of fishermen without charging them in a court of law. India, until recently, has been routinely sending back Sri Lankan fishermen without actually prosecuting them. What both governments seem to be mainly interested is to know whether the concerned fishermen are genuine fishermen and whether there are any other security-related problems. If this is so, then this can be formalized, and mechanisms developed for quick release and return of the fishermen. All that is needed is that local police ensure that the fishermen are bona fide, and seek permission to return the fishermen from one nodal agency or authority in the country. Fishermen could be sent back within a week or two if this can be agreed upon, substantially reducing the loss of income and other suffering they have to otherwise undergo.

This solution also has the defect that it does not consider the possible dangers to the fish resources. However, it is something that can be useful in the short term, until better approaches can be worked out. If resource monitoring is done simultaneously, the governments can step in with appropriate regulations at the right time.

### **Option 3: Strict enforcement, but with a humane approach**

If the governments are unwilling to allow resource exploitation by the fishermen of the neighbouring country, and wish to be strict in enforcing the laws regarding poaching, it can be done in a lot more simple and humane manner. For example, the following could be a typical scenario in this option:

Once a group of fishermen is brought to shore for poaching, the local police should establish that the group was only involved in fishing and is made up of bona fide fishermen. Once this is established, the crew, against whom no punishment is possible in the national as well as international laws, should be repatriated without any delay. This whole process should not take more than a week or two at the most. Subsequently, the skipper is charged and presented in a court of law. If he pleads guilty, no elaborate trial is called for and a clear set of graded fines can be enforced. For a first-time offence, the fine could be Rs20,000. For a second offence, it could be Rs50,000 and, in the case of the third time, the boat may be confiscated. In the case of the first- and second-time offences, the boat may be confiscated only if the fine is not paid. In no case should the skipper be punished with imprisonment, as the skippers are only ordinary fishermen.

This is an eminently practical solution, but whether this requires changes in the laws of the two countries needs to be carefully studied. However, a problem is that this solution may result in an unequal situation. While the Indian Coast Guard may be able to apprehend the poachers and take the necessary action, the Sri Lankan

Navy may not be in a position to enforce its law in the Palk Bay, where poaching by Indian vessels normally takes place. For one, the civil war is its priority rather than protection of fish resources. Secondly, the large-scale incursion of Indian vessels makes enforcement tricky and the political fallout in Tamil Nadu and the consequent impact on Indo-Sri Lankan relationships unpredictable. Let us not forget that public opinion in Tamil Nadu has considerable influence on Indo-Sri Lankan relationship and the Sri Lankan Government may be loath to spoil the relationship with India for the sake of fish resources in the Palk Bay, as long as the civil war is in progress.

#### **Option 4: Reciprocal access**

Given the reality of the Palk Bay situation and the virtual impossibility of enforcing any rules in the current situation, Sri Lanka could formally allow Indian vessels to fish on its side of the Palk Bay, making a virtue of necessity. It could, in turn, ask for reciprocal access to its multi-day fishing boats in the Arabian Sea, the Gulf of Mannar and perhaps the Bay of Bengal. The formula could be that if 500 Rameswaram boats are regularly fishing in the Palk Bay, Sri Lanka could also be allowed to send around 500 multi-day fishing boats into Indian waters. The actual ratio will have to be thrashed out, if this concept is acceptable. This option will involve some kind of licensing or accreditation to fish (without charging a sizeable fee), after the numbers of boats have been fixed for both sides.

This option is a serious one and could be the basis of a workable arrangement. It may be of particular interest to the State of Tamil Nadu on the Indian side, as its problems will get solved. For the Sri Lankans, it is a reasonable solution, at least until peace returns to its north and northeast. Sri Lanka's problems may not be fully solved if most of its 1,500 strong multi-day fishing fleet is not accredited as part of the reciprocal arrangement. The part of the fleet that fails to get accommodated may be forced to continue as "poachers". Some amount of fleet control will have to be exercised by both India and Sri Lanka.

#### **Option 5: Separate management regime for each ecosystem**

From a purely fisheries perspective, it makes little sense in having the same approach to the four different seas: the Palk Bay, the Gulf of Mannar, the Bay of Bengal and the Arabian Sea. There are differences in fish resources and their levels of exploitation. The Palk Bay is more or less a shallow sea with a practically closed ecosystem. The fishing is entirely restricted to the continental shelf. Shrimp and other demersal species are the main targets, and trawl is the dominant gear. In the other seas, the situation varies according to the depth and region. It is, therefore, meaningful to have separate management regimes for each sea, taking into account the specificities of resources, their current exploitation, technological options, fishermen interests, etc.

In the Palk Bay, the narrowness of the sea makes separate resource management by India and Sri Lanka, on their respective side of the IBL, an impossibility. From a pure resource management perspective (ignoring the civil war and politics), only a joint management by India and Sri Lanka can ensure proper exploitation and conservation. A joint system of regulation and management is called for, including

restrictions on fleet size, gear regulations, etc. Solutions, like each country's fleet fishing on alternate days, need to be considered. However, all this is perhaps meaningless at the moment and will have to wait for peace to return to Sri Lanka. Until then, the status quo may have to be maintained (i.e. freedom for the Indian fleet to fish in the Bay).

In the other seas, the distances are vast and despite oceanic tunas and sharks being a common resource, independent management regimes are practical. In any case, it is the Indians who will have to open up their seas to the Sri Lankans, at least until a deep-sea fleet emerges in India. India could enter into an agreement with Sri Lanka providing licences to specified number of multi-day fishing boats in each sea, taking into account the resources available and India's scope for exploiting them. It needs to be understood that, with the exception of the Thoothoor fishermen of Tamil Nadu's Kanyakumari District, India does not have the skill to tap the resources beyond the continental shelf, unlike the Sri Lankans. India has always looked towards large-scale technologies from distant countries (European countries, Taiwan, Thailand, etc.) for exploiting its deep-sea resources and has, time and again, run into resistance from its own fishermen for such policies. It needs to look at the relatively small-scale and passive technology developed by Sri Lanka as a better alternative that will cause less harm to its resources and arouse less anger from its fishermen. India could safely provide licences to the Sri Lankan fleet without endangering its resources. A reasonable fee of Rs.1-2 lakhs could be charged per year per boat for fishing in Indian waters.

India could even promote joint ventures (JVs) between fishermen of both countries as alternative to the JVs that are usually between large corporations. Some of the adventurous fishermen in India could learn many things from the Sri Lankans and lay the foundation for India's own deep-sea fleet with appropriate indigenous technology.

## **5. Conclusion**

The problem of fishermen crossing borders is a serious problem on the Indo-Sri Lankan maritime border. It has led to great deal of suffering among the fisherfolk on both sides. Both governments are treating the problem without acknowledging the real causes behind the problem. The problems need to be squarely faced and creative solutions found so that national interests are protected as well as fishermen's livelihoods.