

# Whose Waters Are These Anyway?

Transborder fishing by small-scale fishermen in the waters of other nations is a complex issue that calls for an equitable and humanitarian approach

At the recent Global Conference on Small-scale Fisheries, titled “Securing Sustainability in Small-scale Fisheries” (4SSF), organized by the Food and Agriculture Organization of the United Nations (FAO) and the Department of Fisheries, Thailand, and held in Bangkok in October 2008, an important talking point was the issue of transborder fishing by small-scale fishermen. For many participants at the plenary session group discussion reporting on the topic, it was revealing to learn that transborder fishing by small-scale fishermen is so widespread and complex a phenomenon that neither can it be ignored or just lumped together with the broader category of illegal, unreported and unregulated fishing, nor seen as merely an issue of enforcement of fisheries or maritime zones’ legislation.

There is enough anecdotal evidence to suggest that transborder fishing is an issue in different parts of the world. It seems to be most intractable on the India-Pakistan border. The maritime border between the provinces of Gujarat in India and Sindh in Pakistan remains unsettled, and fishermen on both sides are often caught for fishing in each other’s waters. They are then invariably imprisoned, and there are instances of fishermen having spent up to a decade in prison for being caught in foreign territorial waters.

The India-Sri Lanka border, especially in the narrow Palk Bay, is another hotspot. Historically, the fishermen on both sides of the Palk Bay

are ethnically linked and have freely fished all over the Bay. The Indo-Sri Lankan maritime border agreement of 1974 created a boundary, which was largely ignored by the fishermen on both sides. However, with the start of the civil war in Sri Lanka in 1983, the borders became a matter of concern for the governments of both India and Sri Lanka. Since then, there have been hundreds of incidents of arrests and detention of Indian fishermen by Sri

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Lankan authorities. At times, fishermen caught in the crossfire have been killed. Sri Lankan fishermen fishing for tuna on multi-day vessels within the Indian exclusive economic zone (EEZ) also face the possibility of arrest and detention by Indian authorities.

In the case of Bangladeshi fishermen, their crossings into India’s territorial waters seem to be motivated more by the higher prices obtained in Indian markets than by the desire to poach on fish resources.

Turning to Southeast Asia—an intricate mosaic of countries with many borders within easy reach of small-scale fishermen—we find it is common for small-scale fishermen in the region to engage in transborder fishing. However, most governments of Southeast Asian

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Sri Lankan boats seized in India. Boats confiscated for transborder fishing are sometimes returned after months, often beyond salvage

30

countries seem to prefer to turn a blind eye to the presence of small-scale artisanal boats in national waters.

The artisanal fishing boats of Indonesia and Papua New Guinea, however, have a serious problem with Australia, while the small motorized boats of Aceh province of Indonesia regularly get into trouble in Indian waters. The Aceh coast is just a three-hour distance from India's Nicobar Islands, and fishermen from Aceh have been fishing in these waters long before India declared its EEZ.

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The Eritrea-Yemen border on the Red Sea also witnesses transboundary crossings by fishermen. Yemeni fishermen have long followed the fish shoals, and camped in Eritrea for some time of the year as part of their fishing voyages. The civil war and the formation of the modern Eritrean State have, however, created conditions whereby Yemeni fishermen are no longer welcome and are often arrested and treated harshly. Yemen has since closed its border

to Eritrean fishermen in retaliation for the harassment of their fishermen.

West Africa is another area where fishermen chasing rich shoals of pelagic fish have traditionally crossed borders regularly and routinely. Gabon, which does not have an indigenous fishing tradition, used to be hospitable to fishermen from neighbouring Ghana, but now the Ghanaian fishers' camps are being burnt and they are chased away from Gabon's shores. Mauritania, which has fishing agreements with the European Union, can be very harsh with fishing vessels from neighbouring countries caught in its waters.

These examples give us some insight into why small-scale fishermen cross borders to fish in the waters of neighbouring States. Where borders are close by and small-scale fishing boats are not equipped with global positioning system (GPS) or other navigation equipment, it is but natural that the borders are crossed accidentally. It is also common for engines to fail and boats to drift into neighbouring waters. However, most coast guard vessels can distinguish between such accidental crossings and deliberate illegal fishing.

Much of today's transborder fishing continue practices set well before the 1982 United Nations Convention on the Law of the Sea (UNCLOS). As fish shoals move across borders, the natural tendency of fishermen who depend on these shoals and have specialized in catching them, is to follow them without regard for national boundaries. Such movement is likely to be seasonal and even predictable.

The introduction of powerful outboard motors for fishing vessels has dramatically increased the range of small boats. Small boats can nowadays be found covering considerable distances. The availability of hand-held GPS units and cheap communication devices like mobile phones also encourages such movement.

### **Multi-day fishing**

The coming of 'multi-day' fishing boats has revolutionized fishing in many countries. Depending on a combination of modern technologies and the innate

skills of the traditional fishermen, these boats are difficult to contain within the marine spaces of countries. The enhanced capacity of the artisanal sector, as a result of these changes, is an important cause for transborder fishing.

In many countries, poor fisheries management—the failure to protect small-scale fisheries from larger vessels and the failure to manage capacity in the small-scale sector itself—has made fishing within national waters unprofitable. In some cases, fishermen cross borders to sell their catches for a better price or to acquire inputs (nets, fuel) of better quality or lower price.

Unfortunately, it is also true that, in some cases, fishermen get mixed up with nefarious activities like smuggling and trafficking of humans. Authorities are often harsher with fishermen who are suspected of involvement in such illegal activities. As a result, innocent fishermen also suffer for the misdeeds of a few.

The response of authorities to transborder fishing by small-scale artisanal boats varies. Where the local fishermen do not object, many a government is willing to ignore transborder fishing by fishermen from neighbouring countries. In many instances, the coast guard or navy just chases away the vessels that cross the borders and send them back home without attempting to arrest or detain them.

The next level of action is to put the arrested fishermen through the legal process. The periods of detention can vary considerably, depending on the commencement of legal action. If the fishermen are found guilty, they are fined. However, they are normally placed on remand until the court case is over, which can take months, if not years. The provision for bail is not very useful as fishermen caught in a foreign nation cannot be let loose.

### Long spells in prison

Thus, legal action inevitably means long spells in prison, loss of livelihood, and great distress for the families involved. Many countries confiscate the boats, and the fishermen may lose their entire savings. Some of the boats

that are returned after months are often beyond salvage. In countries like the Maldives, the fine for recovery of a boat can be so prohibitively high that the fishermen may just opt to leave the boat behind. Repatriation has its own problems associated with the issue of temporary passports and flight tickets.

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involved. Many of the actions are in violation of the spirit of Article 73 of UNCLOS, which states that no fisherman may be punished with imprisonment for fishing in the EEZ of another country. Specifically, it notes:

1. The Coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and



Pakistani fishers released from an Indian jail arriving in Karachi. Fishermen on both sides of the Indo-Pak maritime border are often caught for fishing in each other's waters

### Countries need to enter into bilateral agreements that address the root causes of transborder fishing...

- judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention.
2. Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security.
  3. Coastal State penalties for violation of fisheries laws and regulations in the exclusive economic zone may not include imprisonment in the absence of agreements to the contrary by the States concerned or any other form of corporal punishment.
  4. In cases of arrest or detention of foreign vessels, the coastal State shall promptly notify the flag State through appropriate channels, of the action and of any penalties subsequently imposed.


Many a time, the families of the arrested fishermen do not get timely information on their whereabouts, and so undergo severe stress. Arrested fishermen have little local support, as a result of which very little accountability is demanded of enforcement agencies. To strengthen their case against the fishermen, law enforcement authorities often hoist on them a variety of other charges, in addition to the charge of illegal fishing, which is normally dealt with leniently by courts.

Ways and means should be found to protect fishermen from long periods of detention; there should also be a lenient approach to small-scale fishermen who are arrested in territorial waters rather than in the EEZ. National laws dealing with illegal fishing need to be reviewed to see if issues pertaining to small-scale fishermen are dealt with specifically and fairly. The United Nations (UN) needs to consider the possibility of some international supervision to establish the fairness of treatment of fishermen

arrested for transborder fishing within the territorial waters as well as the EEZs of non-flag States.

Countries need to enter into bilateral agreements that address the root causes of transborder fishing, and resolve the issue with an emphasis on equity and humanitarian considerations, and taking into account the traditional fishing practices of small-scale and indigenous fishers from adjacent maritime States. Countries need to improve fisheries management within their own borders to reduce pressure on small boats to fish beyond borders.

Administratively, mechanisms should be set up for the timely provision of information to families of arrested families. Also needed are channels for direct communication at lower levels of administration across borders. Mechanisms to distinguish genuine, bona fide fishermen from others—like identity cards and boat registers—are needed, as is legal assistance for arrested fishermen. Fishermen should also be educated about the consequences of undertaking illegal fishing in the waters of other States.

Organizations like the UN and FAO ought to document transborder fishing by small-scale fishermen to flag the key issues and suggest context-specific solutions. Regional consultations and workshops involving key stakeholders can sensitize officials and fishermen about transborder small-scale fishing. 

#### For more



[arrest-fishers.icsf.net](http://arrest-fishers.icsf.net)

#### **Arrest and Detention of Fishers**

[icsf.net/icsf2006/jspFiles/forgingUnity/docs/presentation/vivek.pdf](http://icsf.net/icsf2006/jspFiles/forgingUnity/docs/presentation/vivek.pdf)

#### **Indian Ocean Conference paper**

[www.icsf.net/icsf2006/uploads/publications/proceeding/pdf/english/issue\\_11/ALL.pdf](http://www.icsf.net/icsf2006/uploads/publications/proceeding/pdf/english/issue_11/ALL.pdf)

#### **Indian Ocean Conference Proceedings**