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Fishing trespasses: A legal insight for better economics

The protracted dispute over fishing in the Palk Bay has been a feature of Indo-Lanka relations for decades. Both India and Sri Lanka regularly arrest fishermen for violating the International Maritime Boundary Line (IMBL). An estimated 2,000 Indian mechanised bottom trawlers enter Sri Lankan waters each day on at least three days of the week. Currently, there are two proposals under consideration to solve the problem. The first is to better police the IMBL and the second is to introduce a licensing regime. This analysis explains why neither proposal actually solves the problem, and introduces a better alternative: imposing a total ban on mechanised bottom trawling.

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Background to bottom trawling

State-driven modernisation of the fisheries sector in India during the 1950s and '60s created a massive fleet of mechanised bottom trawlers. This fleet overexploited resources in Indian waters, which led to the depletion of fish stocks. Eventually, the trawlers began to move beyond the Indian side of the IMBL in search of a profitable catch. Fishermen in the north of Sri Lanka claim that the continuous incursion of Indian trawlers denies them a sustainable livelihood. While such a cost is indeed grave, there is also a much larger and

longer term cost that is not being recognised: the economic cost that fishermen and the economy will face from the environmental impact of mechanised bottom trawling.

Environmental impact

The marine ecosystem in Sri Lanka is incredibly rich in resources. It consists of a wide range of marine life, and important habitats including rare coral reefs, barrier reefs and sea grass beds. Bottom trawlers use large nets with heavy weights, and are designed to catch species on or near the bottom of the sea by digging through the seabed. This practice is destructive and unsustainable for two reasons:

1. It destroys marine habitats: According to a study in 2008 by JALA (an advocacy network for North Sumatran fisher folk) and Environmental Justice Foundation (based in the United Kingdom), trawling damages seafloor habitats that marine species use for spawning, shelter and protection. Moreover, the continuous use of trawlers leaves no opportunity for the restoration of these habitats.

2. It is indiscriminate and wasteful: Often, 80 to 90% of a 'catch' is thrown back, mostly dead, into the sea. According to Dr. Steve Creech, a fishery biologist with decades of experience working on small-scale fisheries, for every pound of shrimp caught by bottom trawlers, between four and 10 pounds of marine resources are discarded as 'by-catch'. The 'by-catch' also mainly consists of juvenile fish, crabs, prawns and cuttlefish species, which when caught and discarded, are prevented from reaching maturity. Countries including Indonesia, New Zealand, Belize and the United States have recognised the destructive and unsustainable nature of mechanised bottom trawling and have banned the practice. It is also banned in Hong Kong and in certain states in India, such as Kerala. As long as Indian vessels resort to mechanised bottom trawling, the incursion will impose serious costs on the fisheries sector and the Sri Lankan economy due to the environmental degradation.

Traditional rights cannot extend to non-traditional methods

There is an ongoing debate on whether Indian fishermen have 'traditional rights' to fish in Sri Lankan waters surrounding the Katchatheevu Island. The claim is based on a 1974 Agreement between Sri Lanka and India.¹ Under the treaty, Indian and Sri Lankan vessels retain the 'traditional rights' they have enjoyed in each other's waters. Even if one was to interpret 'traditional rights' to include fishing activities, it is difficult to maintain that such rights include mechanised bottom trawling. The practice was introduced just two decades before the treaties came into force. Moreover, it is clearly distinguished from traditional fishing activities, which includes 'gill netting', 'hand line fishing', and 'stilt fishing'. Incidentally, the main opposition to mechanised bottom trawling comes from groups of

traditional fishermen. Hence the traditional rights debate has little relevance to the practice in question.

Why banning is a better solution

Mechanised bottom trawling in Sri Lankan waters is not actually a banned activity. Both foreign and local vessels may obtain licenses to carry out trawling. In the case of foreign vessels, a permit could be obtained under the Regulation of Fishing Boats Act of 1979. Local fishermen could obtain a special license needed for 'trawl nets' under the Fisheries and Aquatic Resources Act of 1996. Additional restrictions were later imposed under the Fishing (Import and Export) Regulations of 2010, which prohibits the import or export of fish caught through trawling. There are at least two compelling reasons why a total ban on mechanised bottom trawling is a better alternative to policing the IMBL or introducing a licensing regime: 1. Moral case: Regulating or preventing the entry of Indian fishing vessels may only serve to delay the long-term environmental impact of mechanised bottom trawling. In the absence of Indian vessels, mechanised bottom trawling by Sri Lankan fishing vessels is likely to escalate, thereby placing a tremendous strain on fishing resources and depriving traditional fishermen of their livelihood. 2. Strategic case: A diplomatic crisis has emerged as a result of Indian and Sri Lankan vessels crossing the IMBL. Negotiations have ended in deadlock—with no agreement reached on how to deal with the encroachment. One impediment to reaching a settlement is the confusion and ambiguity over claims to traditional fishing rights. However, the issue of encroachment and the debate on traditional fishing rights become effectively inconsequential if mechanised bottom trawling is completely banned. Since the vast majority of Indian vessels that enter Sri Lankan waters are mechanised bottom trawlers, banning the practice has virtually the same effect as banning the entry of Indian vessels. The main difference—and a crucial difference—is that a total ban does not undermine any moral claims traditional Indian fishermen might have to fish in Sri Lankan waters. Moreover, a total ban appears more equitable, as Sri Lankan fishermen will also be prohibited from engaging in the destructive practice. A licensing regime may thereafter be considered to regulate vessels crossing the IMBL to engage in sustainable fishing activities. A total ban on mechanised bottom trawling in Sri Lanka is both morally and strategically desirable. There are clear economic benefits in pursuing this approach. First, traditional fishermen—both Sri Lankan and Indian—could continue uninterrupted in their fishing activities. Second, the fisheries sector and the Sri Lankan economy stand to gain, as fishing grounds become more sustainable in the long-term. Meanwhile, the government of Sri Lanka could resolve the matter once and for all without losing diplomatic face.

Footnotes 1 See Agreement on the Boundary in Historic Waters between the two Countries and Related Matters. However, a subsequent Agreement in 1976 (on the Maritime Boundary between the two Countries in the Gulf of Mannar and the Bay of Bengal and Related Matters) mentions that each party would have sovereignty and exclusive jurisdiction over the historic waters and territorial sea, and islands falling on its side of the boundary. Thus the two treaties do not explicitly support the Indian claim to traditional fishing rights.