


Torn Between Territorialism and Tradition: A Case for Recognition of Rights of Tamil Transboundary Fishing Communities

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Sanya Darakhshan Kishwar and Vasatika Saraswat

Introduction

Every year, [dozens of Tamil fishermen](#) are detained while casting their nets in waters where they have fished for generations. These waters now straddle the contested maritime boundary between India and Sri Lanka. On 29th June 2025, Sri Lankan authorities [arrested eight Indian fishermen](#) from Tamil Nadu for allegedly surpassing territorial limitations. Earlier, in March, [eleven Indian-Tamil fishermen](#) were detained by the Sri Lankan Navy on charges of poaching in the Palk Bay area. Unfortunately, such transgressions are not isolated instances in Palk Bay. Fishermen from both India and Sri Lanka are [arrested frequently](#) for inadvertently trespassing into each other's waters. The hostility is substantially aggravated due to the scarcity of catch in the Palk Bay area for Tamil fishermen on both sides, and thus, such instances of trespassing are met with violent takedowns and arrests. These incidents are not merely border disputes; they are demonstrative symptomatic of a deeper issue affecting

transboundary communities whose lives are rooted in shared cultural and livelihood practices across national borderlines. [Transboundary communities](#) are groups of individuals who share cultural, spiritual, livelihood, and/or familial ties that bind them to the territory of two or more states. The location of these ties requires transboundary communities to frequently cross international borders in order to exercise their cultural, spiritual, livelihood, and familial rights. This blog delves into a South Asian case study that illustrates the challenges faced by the Tamil fishing community, a transboundary community residing across maritime borders of India and Sri Lanka. The authors discuss the underlying international legal framework and recommendations for the enhanced safeguarding of transboundary rights of Tamil fishing communities. The issue underscores the importance of a clear definition of maritime boundaries under the United Nations Convention on the Law of the Sea ([UNCLOS](#)) and collaborative mechanisms for sharing resources.

India and Sri Lanka share [maritime margins](#) of more than 400 kilometres, which extend across three different seas: the Bay of Bengal in the north, the Palk Bay in the centre and the Gulf of Mannar in the south. Until the beginning of the 20th century, fisherfolk communities and their lived realities were fluid, allowing them to coexist. The Bay presented itself as customary fishing grounds where fishing communities from both countries flourished.^[1] Tamil fishing communities have [historically engaged](#) in transboundary fishing across the Palk Strait and the Gulf of Mannar. These communities share profound societal connections rooted in a common language, culture, and kinship, deriving their cultural and environmental identity from the sea, as exemplified by instances of Indian fishermen [smuggling](#) Sri Lankan refugees to safety due to human rights abuses by the authoritarian government in Sri Lanka. Due to their shared linguistic, ethnic and familial bonds, these communities have often regarded each other as “[Thoppul kodi uravu](#)” (umbilical cord brethren). Concerning commonalities, both groups predominantly rely on the same fishing grounds for their livelihoods. Additionally, both groups of fishers share an ethnic Tamil identity and a long-standing history of solidarity, which has fostered informal cooperation and mutual respect across the maritime boundary, particularly in their shared use of the Bay’s fishing grounds.

Legal Frameworks Governing Transboundary Traditional Communities

The plight of Tamil transboundary fishing communities straddling India and Sri Lanka’s maritime boundary must be understood within the broader context of international law. The UNCLOS provides foundational principles governing territorial seas, exclusive economic zones (EEZs), and the rights of coastal states, but it also emphasises the need to prevent illegal, unregulated, and unreported (IUU) fishing and to respect traditional livelihoods. However, the rigid application of maritime boundaries often clashes with the lived realities of transboundary communities. For instance, the [Torres Strait Treaty](#) between Australia and Papua New Guinea offers a compelling precedent. It allows traditional inhabitants to move freely across borders for customary activities like fishing and ceremonies, without passports or visas, within the Torres Strait Protected Zone. Similarly, the [Sámi people](#) in the Nordic region exercise cross-border reindeer herding rights under cooperative frameworks that blend customary law with international human rights instruments such as the UN Declaration on the Rights of Indigenous Peoples ([UNDRIP](#)). These examples demonstrate that international law

can accommodate transboundary cultural and livelihood rights and suggest that India and Sri Lanka could adopt a bilateral framework grounded in UNCLOS and human rights law to safeguard the rights of Tamil fishing communities.

A. Revisiting the 1974 Bilateral Treaty from the lens of Human Rights

The Bay fisheries have historically remained frontiers of cooperation, and regular crossing of the strait was very much embedded in the social fabric of Tamil fisherfolk. Throughout British colonial rule, the early formation of independent nation-states of India in 1947 and Ceylon in 1948, the Palk Bay region had de facto [open-access regimes](#) in the waters. The development of exclusive maritime zones is nascent, and well into the 1960s, fishermen [used to cross](#) the strait regularly. However, in the 1970s, the geopolitical considerations of security and sovereignty prompted the need for a formal delimitation of boundaries. In 1974, the countries [signed an agreement](#). As part of this agreement, both sides provided political assurance that Indian fisherfolk could continue drying nets on Kachchatheevu and attend its annual St. Anthony's festival [without visa restrictions](#), while recognizing Sri Lankan sovereignty over the culturally and religiously significant island. The situation was further exacerbated by the Sri Lankan civil war of 1983, during which the northern Sri Lankan coast was effectively [locked down](#), and severe restrictions were placed on fishing, removing Tamil Sri Lankan fishers from their own waters.

The Katchatheevu conflict involves international law on matters of sovereignty, treaty rights, and naval rights. India transferred the island to Sri Lanka through the 1974 treaty but concerns over access to fishing fuel the dispute over the interpretation of the treaty. Politicisation of territorial issues threatens to undermine the existing legal order and bilateral tensions without answering the fundamental question of sustainable fishing. The [Inter-American Court of Human Rights](#), in its 2017 Advisory Opinion on the Environment and Human Rights, affirmed that states can incur extraterritorial obligations to protect individuals from transboundary environmental harm, particularly when such harm affects rights to life, health, and livelihood. While this opinion is not binding in South Asia, it offers a persuasive precedent for interpreting international human rights law in contexts where domestic actions have cross-border consequences. In the case of Katchatheevu, both Sri Lanka's enforcement practices and India's fishing policies produce cross-border impacts on communities to trigger such obligations and attract similar interpretation. However, it is the lack of a regional human rights mechanism in the South Asian region that facilitates the continuation of the current situation. However, the absence of a regional human rights safeguard mechanism in South Asia, unlike the ASEAN Intergovernmental Commission on Human Rights, which at least provides a platform for dialogue, has contributed to the persistence of these issues. The institutional gap in the South Asian region underscores the need for a cooperative framework that recognises and protects the rights of transboundary communities affected by state actions.

B. The 1976 Delineation and UNCLOS

In 1976, the delineation of the Gulf of Mannar and surrounding maritime areas was undertaken to align with emerging principles under international law, particularly in anticipation of the UNCLOS. This culminated in the formation of the International Maritime Boundary Line ([IMBL](#)) that expressly removed any explicit protections for cross-border fishing, thereby formalising a boundary that had previously been fluid and informally shared by Tamil fishing communities. It is important to note that fisherfolk were not consulted during the negotiation of the 1974 and 1976 maritime boundary agreements between India and Sri Lanka, placing innumerable coastal livelihoods at risk. By failing to accommodate the primordial, continual, and traditional practices of cross-border fishing by Tamil communities, these agreements effectively extinguished customary rights and disrupted long-standing socio-economic patterns. This raises concerns under the principle of equity embedded in the UNCLOS, particularly Articles [74](#) and [83](#), which govern the delimitation of EEZs and continental shelves between states with opposite or adjacent coasts. These provisions require that any delimitation be based on an equitable solution, taking into account relevant circumstances such as historical usage, economic dependence, and the interests of affected communities. Although the 1974 and 1976 agreements predate the widespread ratification of UNCLOS, India ratified in 1995 and Sri Lanka in 1994, the principles of equity and good faith reflected in UNCLOS have since crystallised into customary international law. The agreements' failure to provide provisional arrangements or safeguards for traditional fishing practices, as required under Articles 74(3) and 83(3), undermines the equitable balancing of interests. In this light, the rigid enforcement of the IMBL without regard for historical and cultural ties may be viewed as inconsistent with the evolving legal standards governing maritime delimitation.

C. Assessing the Restriction of Tamil fishing communities through the lens of UNDRIP

Such a restriction on the movement of the Tamil fishing communities also contradicts the [UNDRIP](#). Although UNDRIP is not a binding treaty, its provisions, especially [Article 25](#), which recognises the right of indigenous people to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources. This obligates states to recognise the cultural and subsistence-based relationship that indigenous and tribal people have with their traditional occupations. Therefore, this would also include transboundary maritime zones when defined by ancient patterns of usage. Furthermore, [Article 27](#) recognises the right of indigenous peoples to participate in the process through which states recognise the laws, traditions, customs and land tenure systems of indigenous peoples. Therefore, a more equitable and culturally sensitive approach must be adopted, where the states must revisit these agreements and amend them to include community-based access rights. The states should take consolidated efforts to establish joint management zones or cooperative fishing regimes. It is important that both states ensure that their maritime governance ensures that customary and indigenous rights are not violated.

Several jurisdictions have developed innovative legal frameworks to protect the rights of transboundary indigenous or traditional communities in maritime contexts. The [Torres Strait Treaty](#) between Australia and Papua New Guinea allows traditional inhabitants to move freely across borders for fishing, ceremonies, and social gatherings within the Torres Strait Protected

Zone, without the need for passports or visas. Similarly, in the Nordic region, [Sámi reindeer herders](#) exercise cross-border grazing rights across Norway, Sweden, and Finland, supported by customary law, regional cooperation, and international instruments such as the UNDRIP. These examples illustrate how states can reconcile territorial sovereignty with the cultural and livelihood needs of transboundary communities, offering valuable models for safeguarding the rights of Tamil fishing communities across the India–Sri Lanka maritime boundary.

[Scholars](#) advocate for a transnational interpretation of international human rights law that is capable of accommodating cross-border cooperation and negative transboundary impacts from within-state policies. This strategy advocates for the recognition of the rights of fishing communities on both sides of the maritime boundary, although they are resident in different states. The principles of non-discrimination and participation in international human rights law serve as pillars and the most accepted principles throughout the most important legal instruments. Article 2 of the Universal Declaration of Human Rights ([UDHR](#)) guarantees that all people have the right to and freedoms on an equal basis, regardless of any distinction such as race, religion, or social origin. Article 26 of the International Covenant on Civil and Political Rights ([ICCPR](#)) also prohibits discrimination and highlights the fact that some aspects of this right are non-derogable under times of emergency. Expanding on these principles, the obligation of states to ensure inclusive decision-making, particularly for communities whose livelihoods and environments are directly impacted, is emphasized in [resources](#) which outline how equality must be upheld not only in law but also in practice. Taken together, these legal principles underscore the urgent need for India and Sri Lanka to adopt a cooperative, rights-based approach that ensures Tamil transboundary fishing communities are not excluded from decision-making processes that directly impact their cultural and economic survival.

Conclusion

The post-conflict dynamics have ultimately created a [divide](#) between two Tamil communities, sharing language, religion, and familial bonds, whose relationship has been undermined by external political structures. Moreover, framing the dispute solely in terms of sovereignty and territorial trespass has arguably [exacerbated](#) the situation by criminalising economically marginalised fishermen, intensifying ethnic and nationalist tensions, and diverting attention from the mutual ecological concerns vital to both nations. In essence, the politicisation of territorial boundaries has proved to be an oversimplified approach, neglecting the complex socio-ecological interdependencies that characterise the region. To put it simply, the resolution of the Palk Bay conflict hinges largely upon the recognition of Tamil fishing communities as transboundary actors. Their common culture, family ties, and ecological relationship supersede all national boundaries and hence demand governance that transcends territorial politics. Recognition of the communities' rights and interdependence would enable sustainable fishing practices with an emphatic decline of conflict and enhancement of trust-building measures. Only when a transboundary and inclusive framework is laid out can either of the nations assure reparation for victims, ecological justice, and peaceful coexistence for its coastal populations.

[1] Kurien, John (2001) *People and the Sea: A 'Tropical Majority' World Perspective*. Amsterdam: SISWU, Netherlands Institute for Social Sciences.



Author

Sanya Darakhshan Kishwar is an assistant professor at Jindal Global Law School, O.P. Jindal Global University, Sonapat, India. She is enrolled as a doctoral candidate at National Law University, Delhi, where she is researching the topic of rising digital antifeminism in the Global South. Sanya has also worked as a senior research associate at the Centre for Women's Rights and Child Rights Clinic at the Jindal Global Law School.



Author

Vasatika Saraswat is a third-year law student at Jindal Global Law School, O.P. Jindal Global University, Sonipat, India. Her research focuses on the intersection of international public law, environmental law, and human rights. She is particularly interested in legal frameworks that advance global justice and sustainability policy.