Volume: 01, Issue 0I, 2023 Peer Reviewed | Biannual | ISSN : 3021-6184 Page 11 -25

INDO – SRI LANKA MARITIME ISSUES AND SOLUTIONS

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Abstract

The countries in the Indian Ocean Region face many maritime security challenges. India has maritime issues with many of her neighbors, including Sri Lanka, such as the fisheries issue, maritime piracy, trafficking of illicit drugs and people, etc. With reference to these maritime issues, the study inquires about the relationship between India and Sri Lanka, the reasons for the maritime issues, the solutions available, and the legal aspect of these issues. Identification and analysis of maritime issues and finding better solutions for preventive mechanisms are the focus of this research. To analyze maritime issues from a theoretical perspective, Alfred Mayan's Sea Power Theory and deterrence theory have been used. Some recommendations have been given as strategies for the current maritime issues. In this study, the main consideration is the identification and analysis of the still ongoing maritime issues between India and Sri Lanka. The objectives of this study are to examine maritime issues between India and Sri Lanka, assess the reasons for prevailing maritime issues, and determine solutions to these issues. The methodology is based on a qualitative analysis of secondary data. This is descriptive and theoretical academic research. Although quantitative data will be used, this research heavily relies on qualitative analysis. It has been identified that issues are addressed on an international basis by applying legal frameworks. The 1982 United Nations Convention on the Law of the Sea plays a major role in ensuring maritime security. Also, the International Maritime Organization is an effective part of maritime security. Since it is evident that a nation cannot find solutions for maritime issues alone, it needs to join efforts. Rather than using strategies individually, it is better to develop cooperation

between two countries and put efforts into solving problems to gain benefits for both countries.

Key Words: Maritime issues, fisheries disputes, Palk Strait, UNCLOS

1.0 Introduction

Maritime security is one of the latest issues in international relations. Major actors have started to include maritime security in their mandate or reframe their work in such terms. Maritime security is a term that draws attention to new challenges and rallies support for tackling them. Yet, no international consensus over the definition of maritime security has emerged. These, however, also face the constant risk that disagreements and political conflict will be camouflaged. Since there are few prospects of defining maritime security once, frameworks by which one can identify commonalities and disagreements are needed. India is Sri Lanka's immediate neighbor. Although the island is considered a small state, it has played an important role in regional affairs since ancient times. Indo-Lanka relations date back to pre-historic times. The narrow strip of ocean between the two countries, known as the Palk Strait, has been a crucial factor in determining relations between them. Inevitably, this characteristic of the Palk Strait has created administrative, logistical, and security problems for both India and Sri Lanka.

Legally there are already plenty of international instruments, conventions, and bilateral and regional agreements to deal with maritime issues, in particular conventional issues. Among those, the 1982 United Nations Convention on the Law of the Sea (UNCLOS) played a vital role in the establishment of a new legal order at sea. This is the international agreement that resulted from the third United Nations Conference on the Law of the Sea. This took place between 1973 and 1982. The Law of the Sea Convention defines the rights and responsibilities of nations with respect to their use of the world's oceans, establishing guidelines for businesses, the environment, and the management of marine natural resources. The scope of the convention, often referred to as the "Constitution of the Sea," covers all sea and ocean spaces with their resources, living and non-living; all users of ocean spaces and their resources; all legal activities, including navigation and overflight; laying cable and

pipeline; obligations for fighting against illegal activities such as terrorism, hijackings, the smuggling of arms; illegal fishing and dumping; and the illegal discharge of pollutants. The Convention also provides for a binding and comprehensive system for the settlement of disputes.

Maritime issues between India and Sri Lanka are a prevailing issue that is still going on. There are certain defining features of the maritime environment that both countries need to exploit. The ocean, unlike the land, is not politically controlled. It provides free access to any land mass. Maritime forces, therefore, are the only instruments of power that can be deployed almost anywhere in the world without any accusation of intervention. The importance of the navy rests on its ability to influence events on land through its control over the sea.

2.0 Methodology

This research is entirely based on secondary data collected through previously conducted research, journals, books, articles, and web-based academic publications. So this research is completed mainly on the basis of theoretical academic research. In addition to that, referring to the latest information and resources and using various means of illustration can be done. Figures, tables, and diagrams are used in the research for better illustration of some facts as well as for a summary. The methodology is qualitative, which is based on content analysis. In this research, I have paid more attention to content than numerical data. Also, this research is based on referring to a case study in discussing issues and challenges.

3.0 Literature Review

Many recent studies have focused on the problem of maritime issues from different perspectives. Most researchers have covered maritime security, maritime cooperation, maritime trilateralism, etc. In this thesis, I hope to cover maritime issues between India and Sri Lanka, an ongoing issue.

"To be secure on land, we must be supreme at sea." Jawharlal Nehru (R.C. Wijegunarathne's article on "Maritime security concerns in the Indian Ocean: Sri Lanka's perception of overcoming challenges.") In this article, he has discussed the importance of high seas for South Asia in economic and political affairs, an introduction to the Indian Ocean, the importance of the Indian

Ocean and its resources, Sri Lanka's geographical location, and its significance in the Indian Ocean Region. Also, it emphasizes the globalization and criticality of Indian Ocean Sea lanes for trade and energy security, the economic importance of the Indian Ocean Region, Sri Lanka's Ocean wealth, security concerns of the Indian Ocean Region, the development of ports in the Indian Ocean Region, and finally Sri Lanka's perception of overcoming challenges. He has organized the article well, step by step, with examples. This article has not covered the maritime issues between India and Sri Lanka.

4.0 Data Presentation and Analysis

India–Sri Lanka Maritime boundary agreements between India and Sri Lanka were signed in 1974 and 1976 to define the international maritime boundary between the two countries. Maritime boundary treaties were needed to facilitate law enforcement and resource management and to avoid conflict in the waters since both countries were closely located in the Indian Ocean, especially in the Palk Strait. The first agreement covered the territorial waters border between Adam's Bridge and the Palk Strait, which came into force on July 8, 1974. This is about the boundary in historic waters between the two countries and related matters. This agreement has eight articles. Some of these articles relate to the maritime issues discussed in the previous section.

This agreement has given solutions to a major problem that India and Sri Lanka had determining the boundary line in the historic waters between Sri Lanka and India. This has been fair and equitable for both countries. Now the boundary between the two countries is clear, and it is easy to settle the matters they had before. The delimitation reflects a selective application of the equidistance principle, i.e., modification. The maritime boundary, as noted, divides the historic waters and the Palk Bay seabed. Traditional fishing rights are, however, preserved by both parties. In addition, the boundary agreement serves to settle the Kachchitivu island dispute peacefully and to delimit the boundary between India and Sri Lanka in the Adams Bridge region. It is understood that further negotiations between the two states have begun to extend the maritime boundary eastwards through the Bay of Bengal and southwards through the Mannar Gulf; India and Sri Lanka both find the latter's waters "cultural."

1976 Agreement

India–Sri Lanka Maritime Boundary Agreements have been signed to establish the two countries international maritime boundaries. Maritime boundary treaties were required to facilitate law enforcement and resource management and to avoid conflict in the waters since both countries were closely located in the Indian Ocean, particularly in the Palk Strait. The second agreement, signed on March 23 and entered into force on May 10, 1976, established the maritime boundaries in the Gulf of Mannar and the Bay of Bengal. In July 1976, India, Sri Lanka, and the Maldives signed another agreement to decide the point of the tri-junction in the Gulf of Mannar. India and Sri Lanka signed another agreement later in November to stretch the maritime boundary in the Gulf of Mannar. So according to this, the first agreement was signed on March 22, 1976, between Sri Lanka and India on the maritime boundary between the two countries in the Gulf of Mannar and the Bay of Bengal and related matters.

United Nations: First, we have the United Nations with its "International Maritime Organization" (IMO). 33 The IMO has extensive experience in negotiating local, regional, and global agreements and treaties and has adopted a number of resolutions and conventions for this purpose. Resolution A.545 measures to avoid acts of piracy and armed robbery against ships, for example—was signed in 1983. IMO Resolution A.584—measures to prevent unlawful acts that threaten the safety of ships and the security of passengers (this was later replaced with IMO Resolution A.924 in November 2001)came into effect in 1985. MSC/circ. 443: Measures to prevent unlawful acts against passengers and crew on board ships were approved by the IMO in 1986. In 1988, the Convention for the suppression of unlawful acts against the safety of maritime navigation (SUA) treaties aimed at ensuring that appropriate judicial action is taken against persons who commit unlawful acts against ships. Unlawful actions would include the capture by force of vessels, acts of violence against individuals on board vessels, and placing equipment on board a vessel.

UNCLOS: UNCLOS is an acronym for the Convention on the Law of the Sea of the United Nations. The convention is also sometimes called the Sea Convention Law or the Sea Treaty Law. UNCLOS came into effect as a sea law and came into force on November 16, 1982. UNCLOS enshrines

definitions, guidelines, and procedures for the use of maritime resources. However, the first time such a proposal was announced before the United Nations was in 1973. Over the course of nine years, with representations from over 160 countries coming forward, UNCLOS came into existence. When UNCLOS' nautical rule came into force, a school of thought known as freedom of the seas existed. During the 17th century, this theory was first put into practice. According to this law, there were no limitations or restrictions set for the marine sector or commercial dimension.

IMO, the International Maritime Organization IMO has a mandate as a global statutory body under the United Nations Convention on the Law of the Sea to further govern maritime issues on the basis of many of its provisions. IMO has two educational institutions. They are the International Maritime Law Institute (IMLI) in Malta and the World Maritime University (WMU) in Sweden. The UN Convention on the Law of the Sea, also known as UNCLOS, is widely acknowledged as the general legal structure within which all ocean and sea operations must be carried out. Although IMO is explicitly mentioned in only one of the articles of UNCLOS (article 2 of Annex VIII), several provisions in the Convention refer to the "competent international organization" in connection with the adoption of international shipping rules and standards in matters concerning maritime safety, efficiency of navigation, and the prevention and control of marine pollution from vessels and by dumping.

In such situations, when used in the singular in UNCLOS, the term "competent international organization" applies exclusively to IMO, bearing in mind the organization's global mandate as a specialized agency within the United Nations framework defined by the International Maritime Organization Convention: the "IMO Convention." Article 1 of the IMO Convention sets out the global scope of IMO security and pollution prevention activities. It also refers to other tasks such as promoting navigation efficiency and providing shipping services based on the shipping freedom of all flags to participate in international trade without discrimination.

The following facts indicate the strong adoption and unquestioned validity of the Universal Mandate of IMO under international law:
170 sovereign states representing all regions of the world are at

resent arties to the IMO Convention and accordingly members of IMO:

- All members may participate in meetings of the IMO bodies responsible for drafting and adopting recommendations containing safety and anti-pollution standards. These rules and standards are normally adopted by consensus.
- iii. All states, whether or not they are members of the IMO or the United States, are invited to participate in the IMO conferences responsible for adopting new IMO conventions.
- iv. Most IMO treaties are in force and very well ratified.

Part XV of UNCLOS provides for the settlement of disputes between States Parties concerning the interpretation or application of the Convention. To this end, Article 279 requires States Parties to settle any disputes concerning the interpretation or application of this Convention by peaceful means. Section 2 of Part XV of UNCLOS also provides a compulsory procedure entailing binding decisions for the resolution of disputes when no settlement has been reached by the parties. Disputes arising under UNCLOS can be submitted to the International Tribunal for the Law of the Sea established under the Convention, the International Court of Justice, or arbitration, pursuant to Article 287 of UNCLOS. Conciliation is also available, and submission to it would be compulsory in certain circumstances.

Solutions for the Maritime Issues

There are many solutions that can be taken to solve the maritime issues discussed in the previous chapter. The legal aspects can also be taken as solutions and mechanisms to solve the maritime issues. Other than these legal aspects, there are more methods as solutions. They are discussed below.

Negotiations: The most effective and peaceful way of settling any bilateral or multilateral conflict is negotiation. The delimitation of maritime borders is no exception to this. There are some benefits to following the agreement in the case of boundary delimitation. The parties to the dispute are free to shape the negotiations according to their own needs, and no party is compelled to engage in a negotiation. The parties shall be free to accept or reject the results of the

negotiations and may withdraw during the process at any time. There is no third-party interference between the parties during the negotiation. Therefore, a decision on the conflict over maritime boundary delimitation is easy to reach. One problem is that the case often carries risks for the parties before the court, and the tribunal's legal rules are more stringent than the opportunities open to the negotiators. In a judicial settlement, the parties are trapped before the tribunal and the court within a specific legal structure that is restrictive and opposed to considering the needs of all the parties. Nevertheless, the parties follow a process of joint progress in the maritime zones during negotiations and are able to concentrate on realistic actions to safeguard the core objective of every party.

Mediation: Mediation is listed as an alternative means of international dispute settlement in Article 33 of the Charter of the United Nations (UN Charter, 1945); while mediation is a highly successful method of resolving international conflicts, states seldom resort to mediation or good offices in the event of a dispute over maritime boundary delimitation. The 2015 OAS Mediation Border Dispute between Belize and Guatemala, for example, did not resolve the conflict and prompted the parties to take the matter before the ICJ.

Conciliation: Conciliation is another non-judicial process for the peaceful settlement of maritime boundary boundaries set out in Article 284 (Part XV) of the LOS Convention, and the conciliation method is discussed in Annex 5. There is very little conciliation rate in maritime boundary conflicts. Most states do not want to resolve their dispute. Conciliation is thus essentially never used by governments. The Iceland/Norway Continental Shelf Dispute of 1981 involving Jay Mayen Island has been one of a few conciliations so far (UN 1981). In conciliation, the parties to the conflict must relinquish their power over the dispute to the third party and require the third party to make a formal judgment that is binding upon the parties by the journal of international maritime safety, environmental affairs, and shipping. The parties are therefore afraid to resolve their conflict through conciliation because no one wants to lose in this process. Arbitration is more advantageous for them to have reasons to set aside the award instead of losing conciliation, and they have no legal basis to set aside the decision.

Arbitration: After the adoption of the LOS Convention in 1994, arbitration has become the most popular and successful means of resolving the maritime boundary conflict. Under Annex VII of the Law of the Sea Convention, the Arbitral Tribunal is composed of five arbitrators. The parties involved in the conflict appoint an arbitrator, and the remaining three are collectively appointed by both sides. In this respect, the President of IT LS is serving as the appointing authority. Arbitration is one of maritime boundary delimitation's mandatory processes. When the conflicting parties fail to resolve the dispute but need to resolve it in order to explore marine resources, they instead turn to mandatory dispute settlement. Via arbitration, several coastal states have settled their long-standing disputes over maritime borders. In 2014, Bangladesh and India resolved their 40-year-long dispute over maritime boundaries that began in 1974 (PCA 2014).

The International Tribunal for the Law of the Sea (ITLOS) is one of the notable inventions of the Law of the Sea Convention for the settlement of different types of maritime disputes. The tribunal office is located in Hamburg, Germany. It can hear all kinds of cases, whether contentious or non-contentious, concerning maritime disputes. The Tribunal has a total of 21 serving magistrates chosen by the state parties for nine years. Up to two candidates can be nominated by each involved party. There is a mechanism for ensuring equitable distribution among the judges, and every three years, the term of one-third of them expires. ITLOS is entitled to hear cases of prompt release' that arise on an expedited basis when a coastal state has detained a foreign vessel and its crew in its maritime areas.

The International Court of Justice (ICJ) is the head of the United Nations judicial body and is an integral part of the UN. It is clear that the ICJ is the number one venue for states seeking judicial arbitration on the Law of the Sea. It is the world's largest judicial body and is called the World Court. The ICJ is not only limited to matters relating to the Law of the Sea but can also rule on questions of maritime law and sovereignty. The ICJ shall have the right to exercise its jurisdiction over any dispute concerning the interpretation or application of the LOS Convention referred to it pursuant to Article 287 and Article 288 (UNCLOS 1982). There are certain judgments listed in the following concerning the maritime boundary dispute mentioned here that were proclaimed by the ICJ after the 1994 implementation of the LOS Convention.

The following maritime boundary delimitation cases are currently on the pending list before the ICJ:

i) Question of the delimitation of the continental shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast

ii) Maritime delimitation in the Caribbean Sea and the Pacific Ocean

iii)Maritime delimitation in the Indian Ocean

Commission on the Limits of the Continental Shelf

CLCS was developed in compliance with Annex 2 of the LOS Convention. The Commission is composed of 21 members, including geology and physics experts (UNCLOS 1982). Generally speaking, each state claims its continental shelf up to 200 nm but sometimes claims its continental shelf beyond 200 nm, which creates boundary disputes between coastal states. The LOS Convention has formed the Continental Shelf Commission to hear the arguments of the parties to the dispute in support of their position in this respect. This commission's opinion or recommendation is binding for all parties to the Convention on the Law of the Sea. Seventy-seven states have already submitted their submissions to seek recommendations before the Commission, and so far, 29 recommendations have been issued (UN, Ocean Affairs Division, and Sea Law).

Involvement of the International Community in Solving Maritime Issues

USA: A National Maritime Security Strategy has been published by the United States of America as a joint effort by the Navy, the Coast Guard, and the Marine Corps, a document that is ambitious as a national document but also has a strong outlook for international cooperation. The United States Government has not yet signed UNCLOS but is a long and strong supporter of IMO and acts in accordance with UNCLOS and the documents that preceded UNCLOS. The strategic viewpoint here is combined with organizational and tactical skills, which are essential to the compliance of nearly all maritime safety elements. The Navy, Coast Guard, and Marine Corps provide all the required resources for project power: mission and will, sufficient commitment level, policy, doctrines, and naval capabilities. The US is therefore projecting

military power, ensuring maritime security through the Coast Guard, and assuming its function as a law enforcement agency along with the Navy and the Marine Corps whenever the situation demands it.

NATO: The third party to be involved is NATO. NATO has a "Maritime Strategy" and works with considerable consistency and effectiveness in several maritime security operations, owing to its long-standing operational and tactical expertise. Alliance member states own all naval and maritime operational capabilities needed to achieve and maintain maritime protection. The roles supply a spectrum of strategic options, including:

- 1. Deterrence and collective defense
- 2. Crisis management
- 3. Cooperative security: outreach through partnerships

The operating criteria are tailored to serve the entire range of tasks: ranging from humanitarian assistance to training and maritime warfare capabilities.

All these capacities are available and intrinsic in Frigate-sized naval vessels on and above. We may name it "operational art," which is the mixture of knowledge, intelligence, judgment, imagination, intuition, and education. It takes time and patience to find the right balance. The experience of NATO consists of its knowledge acquired from the building up of its "Standing Naval Forces and its related technological and operational requirements, which are applied with common sense. Command and control, placing great emphasis on communication and intelligence, surveillance, and reconnaissance, are common achievements that in US, NATO, and EU maritime operations like anti-piracy operations serve as the tools for coordination and cooperation. Communications and information and knowledge sharing are the most important operational requirements for international collaboration, which are needed to ensure the effective execution of operations.

European Union: The European Union (EU) is the fourth maritime stakeholder. It is a union of states with a political mandate and maritime aspirations of its own. Member States are responsible for being much larger than their combined landmass, and their economic interests are global; in this sense, trade and wealth are the key words. For the European Union and its member states, "Highways of the Sea" and the newly explored seabed

resources are of vital interest. The EU has announced the mechanism and its willingness to assume its obligations in Europe and beyond with the "European Security Strategy." But protection aspects, especially maritime safety aspects, are missing in this strategy. The EU's military personnel and the European Defense Agency deal with security and defense problems. To date, almost all EU maritime programs deal with a broad spectrum of the maritime environment, but they do not include security and safety in their well-developed strategies, such as the' Integrated Maritime Strategy.

African Union: In some areas, threats to operational requirements in the field of maritime safety are rising more than in other sections of the global maritime domain; such an area is all of Africa. Several regions, including East Africa, the Horn of Africa, and West Africa-Gulf of Guinea, obviously face severe maritime security challenges combined with poor operational and technical expertise.

Non-aligned Nations: Last but not least, it seems extremely important to draw attention to some non-aligned nations and their increasing maritime ambitions: Brazil has taken the lead in the first maritime security operation of the United Nations, UNIFIL, in the Mediterranean Sea. That is a reference to international shipping liability. Russia has been involved as an individual party in the war against piracy in various types of maritime security operations in the Baltic Sea, the Mediterranean Sea, the Norwegian Sea, and the Indian Ocean. India has an ambitious naval and maritime plan aimed at maintaining and becoming a global maritime force. And India will have its own presence in the international arena on maritime security issues. Since several years, China's naval and maritime aspirations have been clear, and its operational capabilities are already of high professional standard. China 54, for the first time in centuries, is engaged in an international effort to achieve maritime safety by being an active participant in maritime security operations in the Gulf of Aden and the Indian Ocean. Although this does not mean cooperation yet, it is certainly a form of co-coordinating operational capability in a very pragmatic way.

5.0 Conclusion and Recommendations

Maritime security is one of the latest issues in international relations. In South Asia, states are mostly Indo-centric, and the consequences of maritime claims may be more serious. India shares its maritime borders with many countries, and India has maritime issues with seven countries, including Sri Lanka. India is Sri Lanka's only neighbor and shares a maritime border. The narrow strip of ocean between the two countries, known as the Palk Strait, has been a crucial factor in determining relations between them. Inevitably, this characteristic of the Palk Strait has created administrative, logistical, and security problems for both India and Sri Lanka. Maritime issues between India and Sri Lanka have a long history. Sri Lanka is India's closest maritime neighbor and is just 30 nautical miles away from the territorial boundary. India and Sri Lanka have problems demarcating their maritime boundaries in the Palk Strait. This research examines the maritime issues between India and Sri Lanka.

Based on the findings of the study, the following recommendations are worth considering:

i. Ensuring maritime security requires strong and enduring partnerships between civilian and military authorities.

This collaboration will build on separate programs that are already in place and on the respective strengths of relevant maritime security actors. Enhanced maritime domain cooperation is in the immediate interest of any actor involved in maritime trade and safety. Capacity is either already in existence or can be built up in an international cooperative way.

ii. Finding new fishing areas

The Indian government's will and support and the satellite government of Tamil Nadu are essential to solving this problem. Tamil Nadu's government must reduce excess trawlers in the bay and find alternative economic activities or rich fishing grounds for fishermen engaged in poaching in Sri Lankan waters. One choice is to create a fishing fleet in the deep sea and engage these fishermen in deep-sea fishing. Another measure may be to begin sea ranching and introduce strict resource management measures on their side of the bay to restore the deleted fish stocks.

iii. Active police and security services

To reduce the appeal of piracy, police and security forces will vigorously counter all international crime groups involved in piracy at the earliest possible time.

iv. Establish new rules.

The Rules of Engagement of naval units tasked with protecting trade routes need to be coordinated and agreed upon. Furthermore, a close look needs to be taken at the kind of naval vessels that might be required to combat piracy more cost-effectively.

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