

Right of Innocent Passage for Fishing Vessels: Issues and Challenges

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There have been a few recent arrests of Sri Lankan vessels by the Indian Coast Guard while returning after fishing in international waters. Twenty nine fishermen with the vessels were also arrested on 27 April 2017 by Pakistan Maritime Security Agency on charges of trespassing [see](#). Such arrests of fishers from Pakistan, Bangladesh, Sri Lanka and India by the respective maritime security agencies is a regular feature as fishers continue to seek fishing grounds irrespective of the maritime boundaries.

On 04 April, Kaveesha Putha a 48-foot multi-day fishing vessel with seven fishermen was returning after a month at sea and was arrested by the Indian Coast Guard. The Coast Guard escorted the vessel and the crew to Thootukodi. The vessel and crew were released by the Magistrate after due process of trial. However, the Sri Lankan fishermen claimed that their catch of some 2.2 metric tonnes worth 4.4 million rupees was auctioned off in Tamil Nadu at a much lower price of Rs. 2,00,000 as reported by the Sunday Guardian on 23 Apr 2017 [here](#). As per this report, some 141 Indian mechanised trawlers are in the custody of Sri Lanka and 18 multi-day vessels of Sri Lanka are in the custody of India.

This and other acts of arrest by the Indian Coast Guard has been contested by Sri Lanka, which has brought the attention of India to the provisions of UNCLOS which allow for such passage through the waters of another country. The right to innocent passage is enshrined in article 17 of UNCLOS 1982. Both India and Sri Lanka are signatories to the UNCLOS. The article quoted explicitly allows fishing vessels of both coastal states and even land locked countries to transit through the territorial waters of another country to reach international waters (High Seas) for fishing as long as the act is not prejudicial to good order, peace or security of the coastal state.

Article 27 of UNCLOS is explicit that “The criminal jurisdiction of the coastal state should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed on board the ship during its passage, save only if the consequences of the crime extend to the coastal state,”

From the Indian point of view, regulating the fishing by foreign vessels has been covered by the MZI Act of 1981 and amplifying orders for foreign fishing vessels with specific reference to licensed foreign vessels was issued in 1982 based on the powers conferred in Section 25 of the MZI Act of 1981.

Section 7 of the MZI Act of 1981 is quite clear about the code of conduct for vessels which are not permitted to fish in the Indian EEZ. According to section 7, the fishing gear of such vessels which are transiting the Indian waters should always be stowed in the prescribed manner. There are exceptions for fishing for scientific purposes by foreign vessels as per clause 8 wherein, such vessel could be permitted in writing by the Government of India.

It appears that the clauses applicable in section 9 of the said act may have been used by the Coast Guard in the instances quoted above. This clause specifically allows for inspection by a Coast Guard Officer or another authorized officer of the vessel, the catch the fishing gear and the documents to determine if there have been violations in the maritime zones of India. If it is proved that an offence has been committed, the master of the vessel and the crew could be charged and produced in front of a magistrate. The penalties could be up to ten lakhs under section 10 of the said clause. This is in addition to the cost that could be recovered by auctioning the fish catch and deposited in the Government treasury.

From the analysis of the relevant provisions of the UNCLOS and also the Maritime Zones of India Act (1981) it is clear that Sri Lankan vessels or for that matter any fishing vessel of a coastal or a land locked state is authorized to transit through the territorial waters as far as it is clear that the passage is for reaching the fishing grounds in international waters and returning to the port of origin. The Indian Coast Guard is authorized to ensure that the provisions of the UNCLOS are not being violated and this can be done by physical inspection. In the reported incident, since the Sri Lankan vessels were released by the court, it is inferred that they were using the territorial waters of India

only for transit and were not fishing in the Indian. The Sri Lankan official has averred that this has been the practice for many years and expressed surprise that the Indian Coast Guard has apprehended the vessel.

While the fishing issues in the Palk Bay have different dimensions, the issue of multi-day fishing vessels which use the territorial waters for accessing the global commons needs to be managed in a more efficient manner by all the nations in India's neighbourhood. A list of all the multi-day fishing vessels need be exchanged and their schedules shared with the Coast Guards. Continuous tracking of such vessels till they leave the maritime zones of India both to and from the fishing grounds by the MDA architecture will ensure that these deviations are spotted. Also, since the orders are very specific as to the processes by which, the Coast Guard as an inspecting agency can determine whether or not a vessel transiting the Indian waters has violated the provisions of the MZI Act 1981, the occasions on which legitimate multi-day fishing vessels are apprehended should be more an exception than a rule. It appears that this case reported was an exception and the incident should allow the coast guards and the government agencies on both sides to hold further discussions to ensure that such incidents are managed better.

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