

Sharing Maritime Boundary with India: Sri Lankan Experience

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Introduction

India is Sri Lanka's immediate neighbor. Although the Island is considered a small state it has played an important role in regional affairs from ancient times. Indo – Lanka relations runs 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.

Despite the fact that the *Palk Strait* divides the two countries, there are strong cultural links that bind the people of Southern Indian state of *Tamil Nadu* with those of the North and North-Eastern parts of Sri Lanka. However due to the insurgency that prevailed during the past thirty years in these areas, Indo- Sri Lanka maritime boundary and the *Palk Strait* became an increasing trouble spot. Successive Governments in both Sri Lanka and India have so far resolved these issues in a spirit of compromise and understanding. This paper aims at outlining the major issues that are faced by the two countries owing to sharing of a common maritime boundary.

The Indio – Sri Lanka maritime boundary

Palk Strait is named after *Robert Palk*, governor of Madras presidency from 1755 to 1763. Narrower than the *English Channel*, it separates the Northern coast of Sri Lanka from the Southeast coast of India. The maritime boundary between Sri Lanka and India is divided at three different sea areas; *Bay of Bengal* in the North, the *Palk Straits* in the Middle, and the *Gulf of Mannar* in the South. The average distance between Sri Lanka and India through the *Palk Straits* is about 32 KMs. Both countries have signed bilateral

agreements on the maritime boundary as per the United Nations Convention on the Law of the Sea (UNCLOS)



Source: http://encarta.msn.com/map_701515504/Palk_Strait.html

Palk Strait

Sri Lanka has exercised maritime jurisdiction over its ports and the adjoining sea, with regard to the access of ships to ports, long before the concept of territorial waters began to be operational in the International law arena. In 1702, during the *Dutch* colonial times, Sri Lanka maintained a three mile *Territorial Sea* which is within reach of cannon shot.

The issues on the boundary between the two countries were in rhetoric for some time. On 04th September 1918 authorities of Madras proposed to the Government of India (then ruled by the British) that the existing three mile limit of Indian territorial

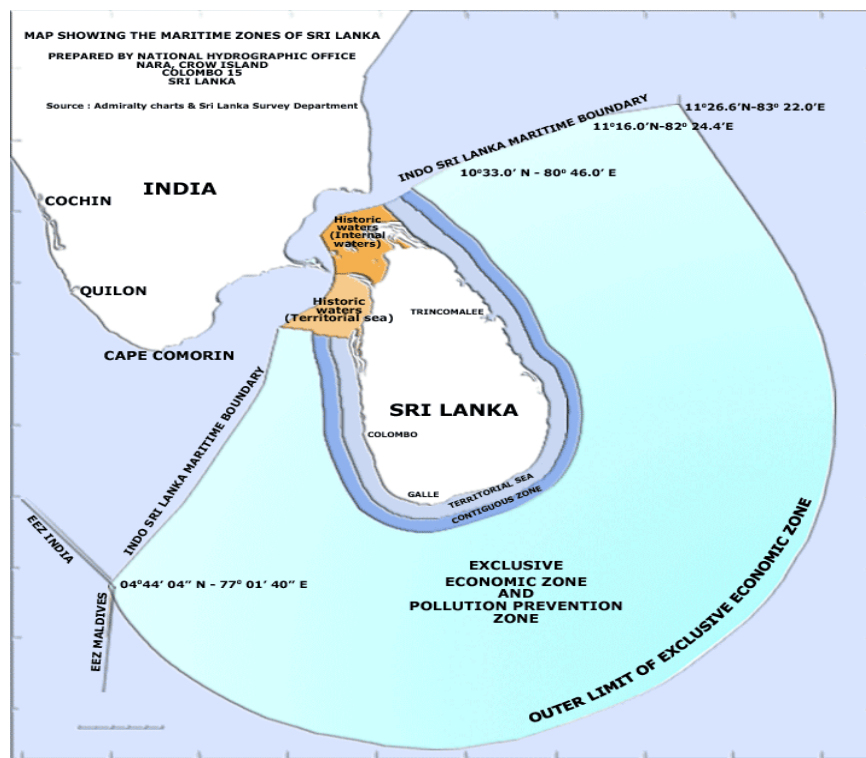
waters should be extended to twelve miles for safeguarding their fisheries. The Madras authorities also suggested that the *Gulf of Mannar* and the *Palk Strait* should be declared *mare clausum* (Open Waters) and that the waters should be delimited between India and Sri Lanka. However the Government of India in its report to *London* did not support this proposal. The British authorities who ruled India at that time considered the respective waters as an integral part of *His Majesty's* domain in any case. In September 1920 the under- secretary of State, was informed by the Foreign Office that the proposed delimitation of the area was acceptable to *Whitehall* but not the proposal to declare *mere calusum*.

In the same year the *Madras* authorities suggested to Sri Lankan Government to hold a conference in order to discuss the issue of delimiting maritime boundaries between the two countries. There was some public interest on the issue and several newspapers carried articles on the issue. In October 1918 Madras authorities sent a delegation of four officials to Sri Lanka to participate in this conference. Delimitation of Palk bay was accepted by both sides under the international Law of the Sea principles of *Equidistance* and *Median line*. But an issue had been raised when delimiting the area near the barren islet called *Kachchativu*. However at the discussion on delimiting *Kachchativu*; the officials agreed to deviate from the principle of *Equidistance* due to practical difficulties that had arisen.

The delegation which participated in the conference produced a report on this issue in the year 1921. According to the final demarcation by the officials, the Island of *Kachchativu* was left to Sri Lanka's jurisdiction with a belt of sea to its west with a stretch three miles which was considered the *Territorial Sea*. This pattern of demarcation left Sri Lanka with a slightly larger area of territorial sea. This was not acceptable to the Indian side, as such a demarcation, gave Sri Lanka a wider area for its fisheries and narrowed the areas of operations for the Indian fishermen. Therefore India was not agreeable to the 1921 proposals.

In 1957 Sri Lanka proclaimed her sovereign rights over the continental shelf in order to take conservation measures and to regulate fishing in the sea within her territorial waters. Then onwards we can identify a period of silent relationship till 1970

1970's was a significant landmark period since Sri Lanka resolved her maritime boundary disputes with India during this time. The Government of Prime Minister *Sirimavo Bandaranaike* pointed out the need of delimiting the waters of the *Gulf of Mannar*, *the Palk Bay*, and *Palk Strait* to the Government of Mrs. *Indira Gandhi* of India. Both countries agreed to the proposition that in order to regulate the activities between the two countries there should be a formal demarcation of the maritime boundary that is acceptable to each other. On the other hand the over exploitation of resources in the *Palk Strait* was also a concern highlighted by both governments. After a few round of talks the two governments agreed to recognize the territorial waters as defined by the maritime legislation enacted by Sri Lanka and India in 1974 and 1976. On 15th January 1977 the Sri Lankan government formally declared Sri Lanka's side of maritime boundary. Katchchativu Island was left to Sri Lankan ownership as a result of this agreement.



Source: Sri Lanka Survey Department

Maritime Boundary of Sri Lanka

Maritime boundary Issues

Dr. Pattabhi Sitaramaya, one time president of the *Indian National Congress* once emphasized the strategic importance of Sri Lanka to Indian National Security.

“India and Ceylon must have a common strategy and common defense strength and resources. It can not be that Ceylon is in friendship with a group with which India is not friendly- not that Ceylon has no rights to make its own alignments and declare its own affiliations-but if there are two hostile groups in the world Ceylon and India are with one or the other of them and not with the same group it will be a bad day for both”¹

The above statement shows that Sri Lanka is an integral part of the Indian National Security. Therefore the common boundary that the two countries share is a major part of both countries’ security concerns. In this paper the author proposes to briefly touch upon a few areas of the maritime boundary- related issues between Sri Lanka and India. They are Refugee Problem, *Kachchativu*, Cross Border Terrorism, Poaching of fishermen & Smuggling and the *Sethu Samudram* canal project.

Refugee Problem

Sri Lanka has three categories of refugees owing to the thirty year conflict. 1) Internally displaced from Northern and Eastern provinces, 2) Those who ventured in to India. 3) Tamils migrated to Western Countries as refugees. Sri Lanka has now started the resettlement of IDPs as assured to a team of 10 MPs from Tamil Nadu who visited the islands IDP camps after concluding the war. As the initial step 58,000 Sri Lankan Tamils who lived in fenced-off camps had been resettled in their homes. The second phase was more successful than the first phase that the government was able to resettle all refugees before the beginning of 2010. In this paper the author intends to consider the second category of refugees.

¹ Interview with *Ceylon Daily News* 23rd April 1949

Although the *Palk Strait* geographically divides Sri Lanka and India; the communities living besides the strait share many characteristics in common. Therefore this narrow stretch of water has facilitated significant refugee influx from North of Sri Lanka to South India.

The movement of Sri Lankan Tamils living in the Northern parts of Sri Lanka to *Tamil Nadu* was mainly due to escalating violence between the *Sri Lankan Armed Forces* and the *LTTE*. This situation created advantages for *LTTE* terror strategy. Every time when there was an increase in tension between two communities some members of the Tamil community made a move towards northward to South India. Owing to this, the *LTTE* announced the world that the South of Sri Lanka, governed by so called “*Sinhala Buddhist Government*” is *anti-Tamil*. This myth compelled the Tamil Nadu public to sympathize with the *LTTE*. In return the *LTTE* expected *Tamil Nadu* politicians to exert pressure on Sri Lankan Government through Central Government of India.

Sri Lankan refugees reached Tamil Nadu on four waves. The first influx began in 1983 after July anti-Tamil Riots. The second was in 1987 and the third in 1989. The last influx of refugees was during 2008-2009 *Wanni Humanitarian* operation. Most of these refugees took the *Talaimnnar Rameshwaram* route and there were instances of some boats drowned during this hazardous journey.

The receiving of refugees by Tamil Nadu was initially very accommodating. However after the assassination of Prime Minister Rajiv Gandhi by the *LTTE*, the occupants of *Tamil Nadu* refugee camps were suspected of criminal activities in the *Tamil Nadu* state itself. More than two thousand refugees were detained and questioned by the state authorities immediately after the assassination. As a result the *LTTE* global propaganda network started blaming the *Tamil Nadu* authorities about the poor conditions of the refugee camps.

There are 115 Refugee camps in Tamil Nadu with over hundred thousand of refugees. Chief Minister M. Karunanidhi has recently appointed a committee to examine the conditions of these refugee camps. Ministers appointed by him are advised to visit the

camps and submit their report. The two Governments (India and Sri Lanka) are expected to work out the modalities of spending the finances allocated towards the maximum benefit of the refugees. By such efforts the authorities of two governments try to simplify the process of repatriating refugees.

Tamil Nadu State was generous to accept the Sri Lankan refugees and keep them in the camps. Tamil Nadu Chief Minister M. Karunanidhi has recently said that he would take steps to ensure the central government grants the citizenship to more than hundred thousand Sri Lankan Tamil refugees living in the State if they desired so. Many refugees prefer to stay in Tamil Nadu for various reasons. For instance at the moment, facilities for education in the Tamil Nadu are much better than the facilities in Northern and Eastern parts of Sri Lanka. However the resettlement process that is taking place at present will be a good tool to build understanding between two governments in future.

Kachchativu Island

Kachchativu is an islet that lies about 15 miles North-East of *Rameshwaran* and approximately 14 miles South-West of *Delft Islands* within the territorial waters of Sri Lanka. There are no permanent inhabitants or any permanent structures on the Island other than a Roman Catholic Church, administered by the bishop of Jaffna. As historical evidence show *Kachchativu* Island has been under the jurisdiction of Sri Lanka since the time of the *Portuguese*, *Dutch* and later the *British* rulers of Sri Lanka. (*then Ceylon*). Government of Sri Lanka had always maintained a consistent policy based on historical facts on the issue of the ownership of *Kachchativu*. The issue of deciding Indian and Sri Lankan claims to *Kachchativu* was closely connected with determining the boundary line between India and Sri Lanka in the waters of Palk Bay.

Government of India and Sri Lanka reached a settlement on the boundary by considering the historical evidence and the famous Non Align Movement (NAM) principle of *Peaceful Coexistence*. The issue has been concluded under the agreements signed by the government of India and Sri Lanka in 1974 and 1976.

The current debate on *Kachchativu* has arisen mainly because *Tamil Nadu* politicians desire to extend their fishing area. They claim that security measures taken by the Sri Lankan Navy to counter the disguised LTTE activists have restricted the fishing rights of the Tamil Nadu fishermen. A case has been filed recently by the Opposition Leader of *Tamil Nadu Ms. Jayalalitha Jayaram* before the Indian Supreme Court requesting it to reconsider ownership of *Kachchativu*. It is evident that from time to time in history such claims have been orchestrated by Tamil Nadu politicians prior to election campaigns

The 1976 Agreement and the exchange of letters between the two countries have clearly laid down the fishing rights of both countries. On several occasions, the Sri Lankan Navy has been accused of alleged attacks on Indian fishing vessels near *Kachchativu* Island. But these allegations have been categorically denied by the Sri Lankan Navy.

It is well known that the LTTE cadres such as *Black Sea Tiger Suicide Squad* members have engaged in dangerous cross border terrorist activities around *Kachchativu*. Allowing unidentified fishermen to operate in this zone posed a serious threat to the Sri Lanka Navy. The recent terror attacks in *Mumbai* also clearly shows the dangers of unprotected coasts. Therefore, safeguarding this maritime boarder is a prime concern of Sri Lankan Government in order to maintained sovereignty of the country.

Cross Border Terrorism

Any ship that sails through the *Indian Ocean* has two options. One is to go through the *Palk Strait* and the other is to sail around Sri Lanka. Since *Palk Strait* is very shallow all the large vessels have to route around *Dondra Head* of Sri Lanka. Both routes were very much vulnerable to terrorist attacks owing the presence of LTTE Sea Tigers in the region. More than a century ago US Rear Admiral *Alfred Tiller Mahan* said

“Whoever controls the Indian Ocean dominates Asia. This ocean is the key to the seven seas in the twenty-first century, the destiny of the world will be decided in these waters.”

The Indian Ocean was mainly vulnerable to two of the world’s most dangerous sea criminals. One is the *LTTE* and the other is *Somali pirates*. *LTTE* has been involved in human, cargo smuggling, illicit drug and narcotics operations, smuggling of arms to

generate funds for their outfit. Activities of the *LTTE* have highly destabilized the peaceful nature of the Indian Ocean at *macro level* and the Palk Bay at *micro level*. The *LTTE* was the foremost terrorist organization which possessed a navel wing.

A considerable portion of Northern and Eastern coasts of Sri Lanka came under the *de facto* control of the *LTTE* in the recent past. Since the use and import of certain goods to the conflict areas had been prohibited by the government of Sri Lanka; the *LTTE* secured those goods from *Tamil Nadu* using the Palk Strait. This act of smuggling has a lot to do with the geography of the area. Owing to the difficulties of guarding the maritime boundary the smugglers who crossed the boarder could use the *Kachchativu Island* for their illegal activities, especially during the feast of the St. Anthony's church which is the only permanent building in *Kachchartivu*. The total control of *Kachchartivu* is now under Sri Lankan Navy.

The Sri Lankan Navy has successfully guarded the coastal areas during the recently concluded *Wanni Humanitarian Operation*. These operations were conducted with the help of underwater scooters and improvised submarines destined of *LTTE* captured by the Sri Lankan Government forces and the ships of Sri Lanka Navy. This clearly portrayed the vulnerability of maritime territory in and around Indo- Sri Lanka

To avoid such security risks in the future, both the Governments of Sri Lanka and India have taken joint measures. The Navies of the two countries are now carrying out coordinated patrols in the area. In this kind of patrolling both Navies patrol in their respective territorial waters and communicate vital information to each other.

India has installed many security mechanisms on its southern boundaries. There is a fast-breeder reactor complex at *Kalpakam* near Chennai and the Russian-aided *Koodankulam* nuclear power reactor complex in southern Tamil Nadu and some space experimental establishments in *Kerala*. Therefore, safeguarding the maritime boundary from terrorist activities is of the paramount importance's to both India and Sri Lanka.

It is a commonly known fact that the *LTTE* was involved in drug trafficking by using their shipping fleet. The *LTTE* use of tactics of transporting timber, sugar and other commercial items to camouflage their movement of drugs is now been revealed. These ships had transported drugs from *Myanmar to Turkey*. They also provided protection and

courier services to the sea-borne drug shipments from *Myanmar* to various countries around the world, mainly *Europe* and the *U.S.* The drug money was then channeled into arms purchases for continuing the Sri Lankan insurgency.

The containment of the LTTE by the Sri Lankan government has directly influenced the downfall of the narcotic supply in the Indian Ocean region. It is a significant fact that the price of heroine has gone down in countries as Afghanistan.

The symbiotic relationship between gun running and drug trafficking of any terrorist organization is significant. There are clear links between the narcotics and the illegal light weapons trade. It is difficult to control one without controlling the other. Gun running by sea is so far the safest means for transferring arms and ammunition around the world, while drug trafficking is most profitable.

It is common knowledge that the *LTTE* arms mostly originated in *Cambodia*, and were later loaded into small fishing trawlers from the port of *Ranong* in Southern *Thailand*. This arms cargo was then transferred to bigger ships (often in mid-ocean), which transported them to Sri Lanka. The seizure in a boat yard in *Singapore* of an incomplete submersible vessel bound for the *LTTE* territory displayed the extent of arms that were being transported illegally.² Destruction of *LTTE* ships by the Sri Lankan Navy reduced considerable amount of small arms flow in to the South Asia Region.

When we look at *LTTE*'s terrorist activities in the Indian Ocean it is needless to add that their strength lay in the areas of Indo- Sri Lankan border. Due to the annihilation of *LTTE*, India got an assurance that there will not be any further border intrusions on *Tamil Nadu*.

Poaching of Fishermen

Sri Lankan ethnic conflict had substantially contributed to the existing fishing dispute between India and Sri Lanka which had forced the Sri Lankan Navy to safeguard the

² Stimson, "Pragmatic Issues for global security", *Proceedings of the Meeting on Ocean Maritime Security Issues*, October 2008

boundary of Sri Lankan waters in the *Palk-Straits*. The Chief Minister of Tamil Nadu *M. Karunanidhi* had, at a meeting of District Collectors held in Chennai on 19th June 2008, discussed the issues pertaining to Tamil Nadu fishermen. He had stated that the area comprising the Gulf of *Mannar* and Palk Strait up to *Trincomalee*, have been declared as a *Militarized zone* and that the Tamil Nadu Government based on the information received from the Indian Ministries of External Affairs and Defense, had advised the Tamil Nadu fishermen to refrain from crossing the *IMBL* and entering Sri Lanka³. However Sri Lanka managed to overcome the *LTTE* problem, but the poaching of fishermen continues.

In any analysis of the problem of fisherman in the region, it must be pointed out that fishermen through out the world are no respecters of man made boundaries. They view the boundaries as a post independence phenomenon.⁴ Tamil Nadu is one of India's leading maritime fish producers. The marine fisheries potential of the state is 719,000 tonnes. Over 700000 people in Sri Lanka depend on fisheries as their livelihood. There are close ties between fishermen and the sea where we could identify the similarities in economy and culture of the peoples of northern coastal regions of Sri Lanka and peoples in Tamil Nadu. Therefore solving the issue of poaching by fishermen in both countries is a vital issue in maintaining good Indo – Lanka Relations.

It is well known that the *LTTE* was carrying out most of their maritime activities disguised as fishermen. The Sri Lankan Navy faced many difficulties to obtain accurate facts about movements of real fishing boats and disguised *LTTE* boats. This created an uncomfortable situation to both Indian and Sri Lankan governments. Both Navies were left with the challenging tasks of identifying innocent civilians from the disguised *LTTE* terrorists.

³ Colombo, 08 July, *Asiantribune.com* www.asiantibune.com accessed on 23rd August 2009.

⁴ V. Suryanarayan, *Conflict over fisheries in the Palk Bay Region*, (Centre for Security Analysis, Chennai, 2005) p.5

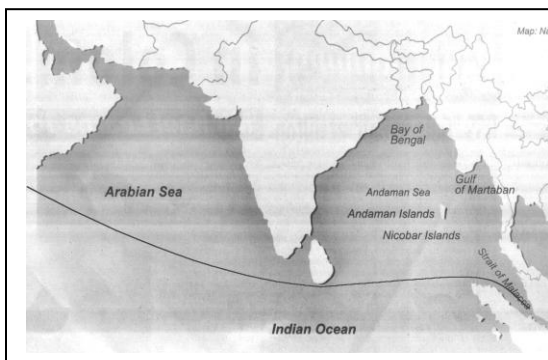
Fishing is one of the major occupations of the Tamil Civilians residing in the Northern parts of Sri Lanka. During the conflict period the fishermen in the north were compelled to stop fishing owing to insecurity at sea.

The *LTTE* is now defeated. Tamil Nadu fishermen are now politically lobbying to obtain of fishing rights in the Sri Lankan territorial waters. This is due to the richness of fisheries in Sri Lankan side of the sea. In this context some political parties in Tamil Nadu are attempting to capitalize on this issue by pressurizing the Central Government of India to exert pressure on the Government of Sri Lanka in matters related to maritime border, which have already been resolved by two nations.

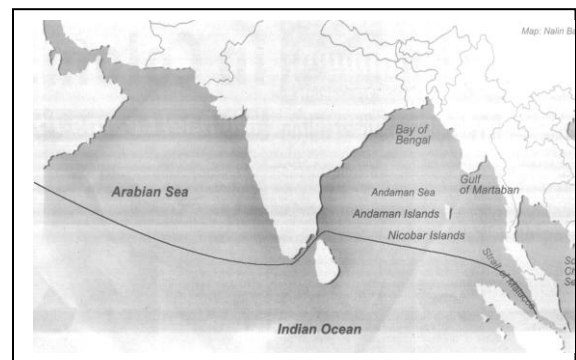
Sethu Samudram Canal Project

Sri Lanka's geographical proximity to India makes her an essential part of Indian Security Strategy In his posthumously published book "Domestic Politics and Diplomacy" Prof. Shelton Kodikara states.

"The location factor and Sri Lanka's strategic situation in relation to India is, then the independent variable in Indo-Lanka relations. And to this is related the vast asymmetry in the size, population and power of the two countries, making the dyadic relationship essentially that between a big power and a small power"⁵



Navigation; before Sethu Samudram Project



Navigation; After Sethu Samudram project

Source: http://encarta.msn.com/map_701515408/sethusamudram.html

⁵ Shelton U. Kodikara, (2008) *Domestic Politics and Diplomacy*, Colombo: Bandaranaike Centre for International Studies, p.85

As mentioned earlier, India does not have a continuous navigable route around the peninsula within her own territorial waters due to the presence of a shallow (1.5 to 3.5 m depth) ridge called *Adam's Bridge* between *Pamban* Island on South-eastern coast of India and *Talaimannar* of Sri Lanka. Consequently, the ships calling at ports on the East Coast of India have to go around Sri Lanka entailing an additional distance of more than 400 nautical miles and 36 hours of ship time⁶.

The *Sethu Samudram* Project is a project to construct a navigation channel between India and Sri Lanka through the Palk Strait. This will facilitate the Indian interests on coastal security, reducing shipping time and the cost. *Sethu Samudram* will also allow more flexibility to large southern Indian fishing fleet and will make easier for them to do oil exploration in the Palk Bay.

Sri Lanka understands and respects that circumnavigation between East & West Coast of India exclusively within Indian territorial waters has its defense implications. However; this project has impacts on Sri Lanka as well. Therefore, Sri Lankans experts raise concerns over many issues over this project. A few of them are as follows.

1. Lack of cooperative dialogue between India and Sri Lanka on this issue.
2. A possible canal design which is environmentally safe. The proposed dumping areas for dredge spoil are very close to the maritime boundary almost guaranteeing that an impact will be felt within Sri Lanka waters
3. To initiate a collaborative defense strategy for the Palk Bay area.
4. Concerns over impact on the commercial hub-status of the port of Colombo.
5. The dangers of spilling oil in case of leaks from ships.

Sri Lanka does not intend to deteriorate her relationship with India on wild assumptions and baseless accusations on issues like *Sethu Samudram*. It prefers to engage in a dialogue with India that would result in a joint approach to an environmentally and economically sound design which will yield benefits to both countries.

⁶ S. Gurumurthy, *Sethusamudram Project in troubled waters*, Business line 27, November 2002.

Conclusion

The Governments that share maritime boundaries have a prime obligation in maintaining good governance at sea to manage the risks posed by the terrorists. No individual country will have sufficient power at its disposal to deal with all cross border evils. Therefore, cooperation between countries that share maritime borders must also address the boundary challenges whilst safeguarding their national interests. In this maritime boundary issue both India and Sri Lanka have acted in a friendly and cooperative manner by resolving problems through diplomatic channels. This is an example set by both countries to the world by showing that countries should keep their respective differences aside, and come together to resolve border disputes to ensure each ones national security and a pleasant relationship with neighbours.

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