

The Maritime Zones Act 2019: A New Dimension of Blue Economy?

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Maritime resources are vital to the future development of Bangladesh. The sustainable management of Marine resources is necessary to achieve the goal of reaching high-income status by 2041. The Father of the Nation, Bangabandhu Sheikh Mujibur Rahman understood the significance of oceans in the national development. Under his leadership, Bangladesh enacted the first Territorial Waters and Maritime Zones Act in 1974 which demarcated the nation's maritime zones and territorial limits. However, there has been a paradigm shift in the legal and political discourses of Maritime jurisprudence afterward. The most significant legal change occurred after the introduction of the United Nations Convention on the Laws of the Sea (UNCLOS) in 1982. UNCLOS presented a new set of provisions and legal axioms regarding the management, maintenance, and governance of the maritime domain and resources. The convention also set new legal definitions regarding Territorial Sea, Exclusive Economic Zone (EEZ), Contiguous Zone, Continental Shelf, etc. The convention created a legal framework to demarcate the sovereign domains of Nation-states in the oceans and outlined the rights and responsibilities of Nation-states in the high seas. It also established an arbitration platform to settle territorial disputes legally. Bangladesh settled its disputes with Myanmar and India respectively in 2012 and 2014 through an arbitration process based on the principles outlined in the UNCLOS. This new development requires the amendment of the existing legal framework outlined in the Maritime Zones Act of 1974. Keeping such consideration in mind, the Bangladesh Government has taken measures to introduce a new act to modify the current legal provisions related to maritime issues. The Bangladesh Government had tasked the Legislative and Parliamentary Affairs Division and the Ministry of Foreign Affairs to draft a new law replacing the previous one. The draft of the legislation named 'Maritime Zones Act 2019' was approved by the Cabinet on 25 November, 2019.

The 'Maritime Zones Act 2019' in a Nutshell

The 'Maritime Zones Act 2019' is a comprehensive piece of legal architecture that contains core maritime issues ranging from setting the territorial limits of the nation to outlining laws of criminal incidents. The act follows a similar structure to that of UNCLOS. It has adopted a holistic approach by covering various aspects of maritime governance such as terrorism, piracy, armed robbery, and marine pollution, etc. In delimiting Bangladesh's territorial waters and EEZ, the law follows principles enshrined in UNCLOS. In the law, Bangladesh's territorial sea has been set at 12 nautical miles (nm), the contiguous zone has been defined in terms of 24 nm while the EEZ has been extended to 200 nm based on the UNCLOS. The law contains the rights

of foreign-flagged ships in partaking innocent passage and related matters regarding the regulation of innocent passage by the Bangladesh Government. The law affirmed the exclusive rights of Bangladesh Government in managing and exploiting marine resources of EEZ by following statement in article 42 (2), “Bangladesh shall exercise its sovereign rights to explore, exploit, conserve, and manage the living resources in the EEZ and take such legal measures as appropriate for ensuring compliance with the laws and regulations adopted by Bangladesh in the EEZ”.

Illegal, Unreported and Unregulated Fishing (IUU)

The Act contains provisions to prevent, deter and eliminate illegal, unreported and unregulated fishing. It defined legal grounds of taking measures against Illegal, Unreported and Unregulated Fishing (IUU). It also set penalties for involvement in IUU fishing ‘which may extend to one year or with fine which may extend up to taka eight million, or with both’.

Maritime Law Enforcement

The Zone Act 2019 set forth a comprehensive legal framework to enforce maritime laws in Bangladesh’s territorial waters and EEZ. The draft document recognized five principles of International law as the basis of maritime law enforcement capacity of the Bangladesh Government: Territorial Principle, Nationality Principle, Under Passive Personality Principle, Protective Principle and Universal Principle. Under these principles, the Bangladesh Government might take enforcement actions against foreign-flagged vessels in Bangladesh’s sovereign domain.

Environmental Protection and Marine Pollution

The act put forward several mechanisms to deal with the environmental degradation and marine pollution in Bangladesh’s coastal region and High Sea. It affirmed the necessity of protecting the environment and marine ecosystem from pollution to “promote of sustainable economic and social development”. It also contains a provision for the Bangladesh Government to “formulate a national plan for the protection of marine environment”. The act directs the Bangladesh Government to establish cooperation mechanisms with other littoral states to address the problems of cross-boundary marine pollution.

Marine Scientific Research

The concept of Marine Scientific research has also been included in the act. The document outlined the relevant issues such as permission for research works, ‘hydrographic survey’, ‘Military survey’ and the use of equipment in oceans for research purposes. It created a regulatory mechanism to govern scientific activities in oceans following domestic and international law.

Piracy, Maritime Terrorism, Theft and Unlawful Act Against Maritime Navigation

The act also included the pressing issues of maritime terrorism, piracy, and unlawful act in oceans in a comprehensive manner. It provided a sophisticated definition for each particular act of legal violations such as piracy, maritime terrorism, and theft. The draft document also outlined a firm contrast between piracy and armed robbery at the sea.

A legal provision to establish the “Maritime Zones Tribunal” has also been included in the draft document. Under the current draft, the tribunal would have jurisdiction over all ships apprehended by coast guards for engaging illegal activities, any person actively engaged in piracy or armed robbery or offense committed by any foreign-flagged ship. The tribunal would also have the legal capacity to “try a proclaimed offender in absentia”.

One interesting aspect of the law is that it allows Bangladesh Navy to even seize pirate ships or ships under the control of pirates in the high sea where national jurisdiction usually does not apply. Article 106 (1) instructed that Bangladesh Government may “seize a pirate ship or aircraft, or a ship or aircraft were taken by piracy and under the control of pirates, and arrest the persons and seize the property on board”.

The law banned the ships from carrying Biological, Chemical, or Nuclear (BCN) weapons or materials to ensure safe maritime navigation. It also prohibited the carrying of dangerous chemical substances in the oceans.

The act also offers a regime of punishment to suppress unlawful activities including piracy, terrorism and armed robbery at sea. It kept a provision to punish individuals or groups engaged in maritime piracy and terrorism. The law proclaimed that “an attempt to commit piracy, maritime terrorism or any unlawful attempt intended to aid, abet, counsel or procure for the commission of an offense of piracy shall also constitute an offense”. In case of an attempt, the draft included a provision of “imprisonment for a term which may extend to fourteen years and shall also be liable to fine of taka twenty million and with both”. Under the law, an accomplice in an act of piracy and terrorism might face “imprisonment for a term which may extend to fourteen years and shall also be liable to fine of taka twenty million and with both”.

In case of armed robbery, the individual or groups committing such crimes “shall be punishable with rigorous imprisonment for a term which may extend to ten years, and shall be liable to fine or with both”. The law also took measures to punish crimes in case of hostage-taking, transnational organized crime related to piracy, maritime terrorism and other offenses against the safety of maritime navigation. According to the draft, “Person or groups might face imprisonment for a life time or for a term which may extend to 20 (twenty) years but not less than 5(five) years or with fine which may extend to taka four thousand million or with both”.

Ocean Governance, Blue Economy and Maritime Cooperation

The draft includes a definition of the term ocean governance and directed the government to take measures to protect the 'common heritage of mankind' and 'commercial exploitation of deep-sea mineral resources'. It also aims at guarding against any destruction of marine habitats.

The concept of 'Blue Economy' is also included in the draft document. The law directs the Government to "enforce and adopt and enforce laws and regulations and take other measures necessary to formulate a cooperative mechanism for the determination of the 'allowable catch' of the fisheries, their 'capacity to harvest'". There is also a provision to share 'surplus fishing resources' in the EEZ with other countries.

Protocols of Armed Conflict at Sea

The draft law also outlined a rule-based framework for a military engagement at High Sea, Territorial Sea, and Exclusive Economic Zones. The draft law guarantees Bangladesh Armed forces the right to self-defense based on the principles enshrined in the UN charter and especially in article 51. The law exempts civil vessels and objects from any type of military attack. The law also established a precedent of exempting 'rare or fragile ecosystems' and the 'habitat of depleted, threatened or endangered species or other forms of marine life' from armed conflict.

"The Maritime Zones Act 2019" is an important legal addition to manage and govern the oceans more efficiently. The act sheds light on the importance of key issues such as IUU fishing, non-traditional threats, and Maritime interstate co-operation. Definitely, the credit goes to the Bangladesh government for coming up with such a robust and comprehensive legal framework to reach the targets of 'Blue Economy'. However, the success of the act lies in its implementation mechanism and efficient application in the ground. In this regard, all the stakeholders must come together to operationalize the provisions of the Maritime Zones Act.