

Legal and Policy Framework of Ocean Governance

Md Minarul Hoque



Introduction

The ocean is the source of abundant economic resources and mankind has relied on the ocean for centuries. The growing importance of the ocean has facilitated the reach of marine living resources, seabed minerals and energy resources with the advent of marine technologies. According to the UN, the world population has exceeded 8 billion in 2022 and is projected to reach 9.8 billion in 2050 and 11.2 billion in 2100. As land resources are depleting rapidly, human pressure on the ocean is likely to increase exponentially in the near future. The value of the ocean is not limited to food, resources, or livelihood; it also plays a critical role in maintaining the biosphere of our planet earth. It regulates Earth's climate and helps us to breathe. In consequence, dependency of mankind on the oceans, climate change and degradation of the ocean environment and biodiversity generated the concept of Ocean Governance.

Bangladesh has a keen interest in the ocean as the new frontier of economic emancipation. We have a sea enriched with enormous resources and the potential to develop the economy and livelihood of the coastal population. The verdicts of the International Tribunal for the Law of the Sea (ITLOS) and Permanent Court of Arbitration (PCA) have unveiled new opportunities as the country now has 1,18,813 sq. km of maritime area. The Government of Bangladesh (GoB) has embraced the Blue Economy concept to tap the oceanic resources for the country's development. Subsequently, the use of the ocean is increasing, which in turn threatens the ocean's biodiversity and ecosystem. As the ocean is regarded as the last frontier on earth, we must preserve ocean health for the survival of mankind. Multiple stressors like ocean pollution, oil-gas extraction and

overfishing worldwide have already endangered the ocean. Climate Change is another threat to our blue planet. So, we need a proper science-based Ocean Governance, providing a legal & policy framework of the ocean for our country's sustainable development and the preservation and conservation of ocean health.

Concept

Considering the immense importance of the oceans, maritime nations have always intended to expand their sovereignty, dominance and control over the sea from ancient times. To avert the tension between nations, many local, unwritten, customary rules & regulations were practiced. The two most well-known concepts over the ocean were the Portuguese notion of *Mare Clausum* and the Dutch notion of *Mare Liberum*, dating back to the Seventeenth century. However, Hugo Grotius, the Dutch jurist and philosopher wrote *Mare Liberum* (The Freedom of the Seas) in 1609 and is considered the father of international law and the law of the sea.

One of the greatest achievements of the UN is the negotiation and ratification of the United Nations Convention on the Law of the Sea 1982 (UNCLOS III), which is a comprehensive framework for the governance of the world's oceans and seas. UNCLOS III plays a critical role in setting the scene and promoting ocean governance and other national and international laws of a country. UNCLOS III clarified the various zones, their breadth and the jurisdiction of the coastal states, including the relevant duties. It also specified the regulations in the areas beyond the national jurisdiction and declared it the "common heritage of mankind". However, Father of the Nation, Bangabandhu Sheikh Mujibur Rahman, enacted Territorial Water and Maritime Zones Act 1974 far ahead of UNCLOS adaptation, which is a testament to his prudence. It was the foundation of our ocean governance in Bangladesh. Later, under the stewardship of Bangabandhu's daughter, Honorable Prime Minister Sheikh Hasina, Territorial Waters and Maritime Zones (Amendment) Act, 2021 was formulated and passed in the National Parliament. Apart from these acts, Bangladesh has formulated a substantial number of acts and policies for better ocean governance.

Law & Policy Dimension

A number of conventions, agreements, acts and policies at the international and national levels persist for the management of the ocean.

- **International and Regional Conventions**

International and regional conventions, treaties, or agreements play an important role in ocean management because of the common nature of the ocean, where no single nation can control the transnational movement of resources, pollution or ships. So, an international or at least a regional approach is essential for ocean management. But these laws or conventions are normally customary law for the nations where these conventions act as the base of their laws. Like Bangladesh has no constitutional or statutory binding provision on the status of these treaties and international laws in the legal system. Also, there is no procedure as to how these would be implemented in our domestic jurisdiction. Bangladesh's Government is taking steps to introduce

new acts to address all the issues in accordance with international conventions and national legislation. Territorial Waters and Maritime Zones (Amendment) Act, 2021 is the new law in line with UNCLOS III. The IMO Convention Act is under process, which will act as a single uniform policy and law concerning the maritime shipping of the IMO Convention. Some of the international conventions or agreements related to ocean governance are enumerated in Table 1.

Sl	List of Convention/Treaties	Related Organization	Number of Parties	Bangladesh Ratified /Agreed
Maritime Delimitation and Ocean Governance				
1	United Nations Convention on the Law of the Sea (UNCLOS), 1982	UN (DOALOS)	168 (As of Feb 2021)	27 Jul 2001
Trade				
2	Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).	UNEP	184	18 Feb 1982
Pollution				
3	Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (The Basel Convention)	UNEP	190	01 Apr 1993
4	International Convention for the Prevention of Pollution from Ships, 1973/78 (MARPOL Convention)	IMO	159	04 Nov 2002
5	International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990 (OPRC)	IMO	112	23 Jul 2004
6	United Nations Framework Convention on Climate Change (UNFCCC) & Paris Agreement	UN Climate Change	197	21 Sep 2016
7	International Convention for the Control and Management of Ships' Ballast Water and Sediments (BWM Convention)	IMO	81	07 Sep 2018
Fisheries				
8	Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UN Fish Stocks Agreement)	UN (DOALOS)	91	5 Nov 2012
9	Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA)	FAO	74	20 Dec 2019
Conservation				
10	Convention Concerning the Protection of the World Cultural and Natural Heritage	UNESCO	194	03 Nov 1983
11	Convention of Biological Diversity (CBD)	UNEP	196	20 Mar 1994
12	Convention on the Conservation of Migratory Species of Wild Animals (CMS)	UNEP	131	01 Dec 2005
Shipping				
13	Convention on International Maritime Organization, 1948	IMO	171	27 May 1976
14	Convention on the International Regulations for Prevention Collisions at Sea, 1972 (COLREGs)	IMO	-	10 May 1978
15	International Convention for the Safety of Life at Sea, 1974 (SOLAS), 1974	IMO	167	06 Feb 1982
16	The International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001	IMO	81	07 Sep 2018

Source: Compiled by Author from Open sources

Table 1: List of major International Conventions and Agreements related to Ocean Governance

- **National Acts, Policies, Rules & Regulations**

The government of Bangladesh has adopted various legislative and regulatory policies for ocean governance. Experts opined that many acts and policies were adopted long ago and

needed to be amended to represent current circumstances. The socioeconomic scenario of Bangladesh has changed significantly and the legal framework now appears insufficient to address new maritime challenges. However, many Ministries and Divisions have initiated the process of making new laws or amendments to replace the old ones. Like, the Maritime Affairs Unit (MAU) of the Ministry of Foreign Affairs (MoFA) has initiated the amendment of the “Territorial Waters and Maritime Zones Act, 1974” known as “Territorial Waters and Maritime Zones (Amendment) Act, 2021” recently. Table 2 lists some of the major laws and policies related to ocean governance at the national level.

Sl	List of Act/Policy	Related Ministry/Division/ Organization	Came into Force
Maritime Delimitation and Ocean Governance			
1	The Territorial Waters and Maritime Zones (Amendment) Act, 2021	MoFA/ MAU	07 Dec 2021
Maritime Transportation, Port and Shipping			
2	Ports Act, 1908	MoS	18 Dec 1908
3	Pilotage Ordinance, 1969	MoS	06 Jun 1969
4	The Inland Shipping Ordinance, 1976 & The Inland Shipping (Amendment) Act, 2005	MoS, BIWTA	21 Sep 1976 15 Mar 2005
5	The Bangladesh Merchant Shipping Ordinance, 1983	MoS	30 Jun 1983
6	National Shipping Policy 2000	MoS	Oct 2000
7	The Admiralty Court Act, 2000	Legislative and Parliamentary Affairs Division (MoLJPA)	27 Nov 2000
8	The Payra Port Authority Act, 2013	MoS, PPA	10 Nov 2013
9	Bangladesh Flag Vessels (Protection) Act, 2019	MoS	18 Nov 2019
10	The Chittagong Port Authority Act, 2022	MoS, CPA	13 Apr 2022
11	The Mongla Port Authority Act, 2022	MoS, MPA	13 Apr 2022
Marine Fisheries			
12	National Fisheries Policy, 1998	MoFL	1998
13	Marine Fisheries Act, 2020	MoFL	26 Nov 2020
14	Marine Fisheries Policy, 2022	MoFL	06 Sep 2022
Marine Pollution and Environment			
15	National Water Policy 1999	MoWR	1999
16	National Energy Policy 2004	MoPEMR	May 2004
17	Coastal Zone Policy 2005	MoWR	2005
18	Bangladesh Environment Protection (Amendment) Act, 2010	MoEFCC	05 Oct 2010
19	Bangladesh Water Act, 2013	MoWR, WARPO	02 May 2013
20	Bangladesh Biodiversity Act, 2017	MoEFCC	19 Feb 2017

Source: Compiled by Author from Open sources

Table 2: List of major National Laws and Policies related to Ocean Governance

Challenges

Bangladesh, as a developing nation with a population of approximately 165 million, depends heavily on the sea. The nation vows to become a developed nation by 2041, which will further increase the use of our ocean and blue economy-based activities in the future.

The objective of ocean governance is the management of the ocean by the government, local communities, industries and other stakeholders with the help of international or national laws, conventions and customs for the sustainable use of the ocean. The major challenge of ocean governance is the integration of various laws and policies. Our only sea is the Bay of Bengal, which is threatened by climate change, natural disasters, environmental degradation, depletion of

fisheries, loss of biodiversity and pollution. We lack effective supervision of our ocean spaces which fades all other positive initiatives. Successful ocean management needs an institutional and legal framework with implementation tools. An institutional framework embodies the administrative mechanism, legal frameworks form the binding provision for the management process and implementation tools ensure the proper execution of activities and programs. An integrated approach to these three components can only ensure good governance in the Bay of Bengal.

Management Approach

Bangladesh's approach to ocean use is mostly sector based. The main sectors, which include shipping, fishing, offshore energy, marine tourism, etc., are dealt with by different ministries or departments separately. Though the government conceived the concept of Blue Economy and has taken many initiatives, the absence of institutionalization of these activities under a single umbrella yields suboptimal benefits. It must be kept in the mind of the policymakers that we have very limited maritime area. Hence, a holistic and integrated approach is essential to avoid anthropogenic disasters in the ocean. For example, some of the implementation tools are very useful for an integrated approach to ocean management, like Marine Spatial Planning (MSP), Integrated Coastal Zone Management (ICZM), Ecosystem-Based Management (EBM), Marine Protected Area (MPA) or Ecologically Sensitive Sea Area (ESSA), etc.

MSP is a critical tool for improving decision-making and an ecosystem-based approach to regulating all activities in the marine environment. MSP implementation can ensure effective ocean planning and management systems, striking a balance between economic development and environmental conservation. MPAs are widely used management tools for biodiversity conservation in marine and coastal ecosystems worldwide. So far, Bangladesh has declared a total of 7367 sq. km area as MPA, which is 8.8% of our EEZ. However, as per SDG 14.5 target, at least a total of 10% of the coastal and marine area is to be conserved as a protected marine area by 2020.

Finally, it must be remembered that ocean management cannot be successful with national initiatives only. To avoid a fragmented management process, international and especially regional coordination and cooperation must be considered to achieve the desired goal of ocean management.

Conclusion

Bangladesh is one of the fastest growing economies in Asia with a huge population. To support this huge population and sustain the economic growth, use of the ocean is increasing rapidly. Therefore, we need effective ocean management to ensure sustainable ocean use and foster blue growth.

While there is considerable interest in economic, political, and development programs in Bangladesh, environmental sustainability policies often get less preferences. Integration of different laws and regulations is the main difficulty in ocean governance. Besides, Bangladesh needs to enact various maritime and ocean-related laws in line with international conventions and national needs. Hence a holistic and integrated approach is essential for ocean management.

Effective implementation tools like MSP, EBM, ICZM, and MPA with necessary legal and policy frameworks need to be promulgated immediately. A coordinated regional approach is the key to the success of effective ocean management. Achieving sustainable development through the blue economy initiatives would not be possible without an integrated Legal and Policy Framework. Thus, creating the appropriate legislative framework is fundamental to the effective implementation of Ocean Governance.

***Writer: Captain M Minarul Hoque, (H), BCGM, psc, BN is the Director General of BIMRAD.
Email: minar71@gmail.com***

The article was published in [PAAL Magazine](#), Volume 05, Issue 03, December 2022