

# The United Nations Convention on the Law of the Sea: The State of Compliance in Bangladesh

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## Abstract

*The United Nations Convention on the Law of the Sea (UNCLOS) is considered as the constitution of the ocean. Every member state is under an obligation to comply obligations of UNCLOS. Bangladesh ratified the UNCLOS to undertake an extensive review of present national laws and regulations in order to make them consistent with the provisions of the Convention. Bangladesh has also taken noteworthy initiatives to incorporate the obligations of UNCLOS in the domestic laws. Recently Bangladesh enacted the Territorial Waters and Maritime Zones (Amendment) Act, 2021. It has amended previous the Territorial Waters and Maritime Zones Act of 1974 which was enacted far way ahead of the existence of UNCLOS. The amendment was necessary to make the previous Act a more time-befitting one by reflecting the rights and obligations of UNCLOS so that evolving issues can be dealt properly. This paper analyses the difference between the Act of 1974 and the new amendment Act. The study finds that the new Act is not comprehensive enough and the Rules under this Act should be adopted as soon as possible with specific provisions for monitoring and enforcement mechanisms. The article recommends the ways to accelerate its maritime growth and achieve blue economic objectives.*

**Keywords:** Law of the Sea, Coastal State, Convention, Maritime Zones, Maritime Law.

## 1. Introduction

The United Nations Convention on the Law of the Sea (UNCLOS) was adopted in 1982. It provides rules governing all uses of the oceans and their resources. It simultaneously introduced new legal concepts, regimes and addresses new concerns.

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Recognising its importance, Bangladesh ratified the UNCLOS on 27 July 2001 to undertake an extensive review of existing national laws and regulations aiming to making them consistent with the requirements of the UNCLOS. After 20 years since its ratification, it is essential to analyse how far Bangladesh is successful to review the existing national laws and regulations to harmonize them with UNCLOS.

The doctrine of the absolute freedom of the sea prevailed from the seventeenth to nineteenth centuries (Rothwell and Stephens 2010). Later, even though the concepts of some maritime regimes started to arise, state practice was different. Apart from that, over fishing by zar Bangladesh has complied with UNCLOS and also recommends necessary initiative to comply with UNCLOS obligations to achieve the objectives of the blue economy of Bangladesh i.e., promoting sustainable and inclusive growth and employment opportunities in its maritime economic activities in the short, medium and long-term time frames. This article will be helpful to the students of maritime laws, ocean practitioners, and government representatives, business community, civil society and international organizations dealing with maritime issues. Moreover, it will assist our policy makers to focus on the weakness of existing laws and draft laws to reflect the obligations under UNCLOS.

## **2. Principal Features of UNCLOS**

UNCLOS is a comprehensive convention with 320 Articles, nine annexes and seventeen parts. It introduced multilateralism in law of the sea i.e., internal waters, territorial sea, the EEZ, continental shelf, the high sea and the area. It resolved breadth of the territorial sea and the continental shelf. Moreover, it introduced another resource oriented zone known as the EEZ. Both the CS and the EEZ allow coastal states to assert certain rights of resource sovereignty up to 200 nm, but in some cases an extended continental shelf can be claimed. The ocean surface and the water column beyond the EEZ are known as the high seas and the ocean bottom and resources beyond national jurisdiction is stated to be the “Common Heritage of the Mankind” (Article 136). UNCLOS provides peaceful settlement of international disputes related to its implementation. It has provisions for protection of the marine environment. It focuses on the protection of marine living resources introducing some significant principles of law and via cooperation among the states. Detailed provisions concerning marine scientific research by the coastal and third states are also provided in Part XIII of UNCLOS.

## **3. Related Major Domestic Laws**

The Constitution of Bangladesh empowered Parliament to determine the territorial boundary, the territorial waters and the continental shelf of Bangladesh by law (Article

2, 143). There are many laws in Bangladesh that harmonise with UNCLOS to some extent. This paper will analyse following important and contentious laws only. They are:

### **3.1 The Territorial Waters and Maritime Zones Act, 1974 and Rules, 1977:**

After the independence of Bangladesh, the Act was enacted to claim maritime zones in 1974. Still, this law is in force. Just after three years from promulgating the Act, the Territorial Waters and Maritime Zones (TWMZ) Rules, 1977 are adopted to implement the Act.

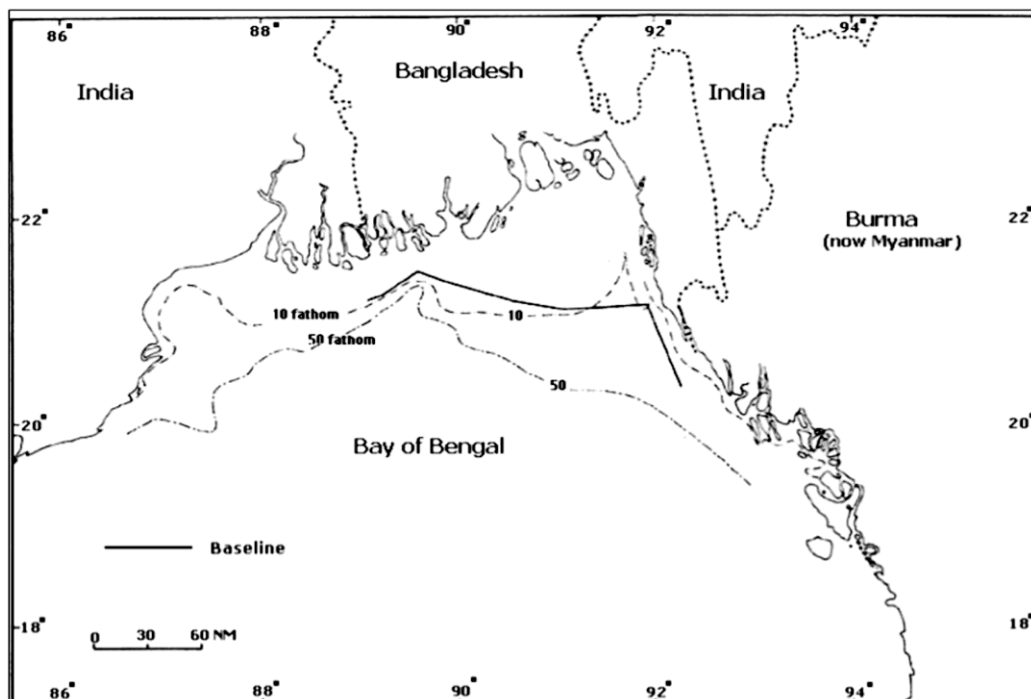
### **3.2 The Territorial Waters and Maritime Zones (Amendment) Act, 2021:**

To keep pace with time, the Bangladesh government realized the importance of the promulgating new law in line with the law of the sea. So, a draft was prepared which was known as the Maritime Zones Act, 2018 (Draft). Various meetings and discussions have been held with concerned stakeholders for enacting a new law. Later it was decided to amend law of 1974. It did not repeal the TWMZ Act, 1974 rather it is an amendment of the Act. Article 2A of the new Amendment Act provides that notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall prevail. So all provisions of TWMZ Act and Rules which are not inconsistent with this amendment are relevant for this study.

## **4. The State of Compliance of UNCLOS Bangladesh**

### **4.1 Baseline**

The low water line from which all maritime zones are measured is called baseline. A system of straight lines connecting definite or distinct points on the low-water line, is known as straight baseline. The UNCLOS article 7 has specified that when a coast is highly unstable due to having deeply cut into the costal indentation, then the coastal state can apply straight baseline following the general direction of the indented coast. To establish the straight baseline, under the section 3(1) of TWMZ Act, 1974, the Ministry of Foreign Affairs of Bangladesh published a gazette notification (No. LT - 1/3/74, 1974) and declared its baselines as shown in the map below:



*Figure 1: Straight baselines of Bangladesh (Source: Atlas of Straight Baselines, Part 1, Edited by Francalanci et al)*

In September 1974, India opposed against the Bangladesh's baseline claiming that the Bangladesh's baseline extended beyond 21 nm into Indian waters and Myanmar also protested the Bangladesh's baseline later. The problem arises due to the complex configuration of Bangladesh's coastline, which is concave but her neighbours have a convex feature of the shore inward to the sea (Belal 2013). However, in 2015 after the delimitation of maritime boundary with India and Myanmar, Bangladesh issued a gazette notification (SRO NO.328-Law/2015/MOFA/UNCLOS/113/2) declaring new baseline where straight baseline has been drawn in the southern part joining the following four points: Land Terminus Point, Putni Island, Dakhin Bashan Char and Coxes Bazar. Whereas, in the eastern coast of Bangladesh normal baseline has been drawn following the low water line from Coxes Bazar to Teknaf as shown in the map below:

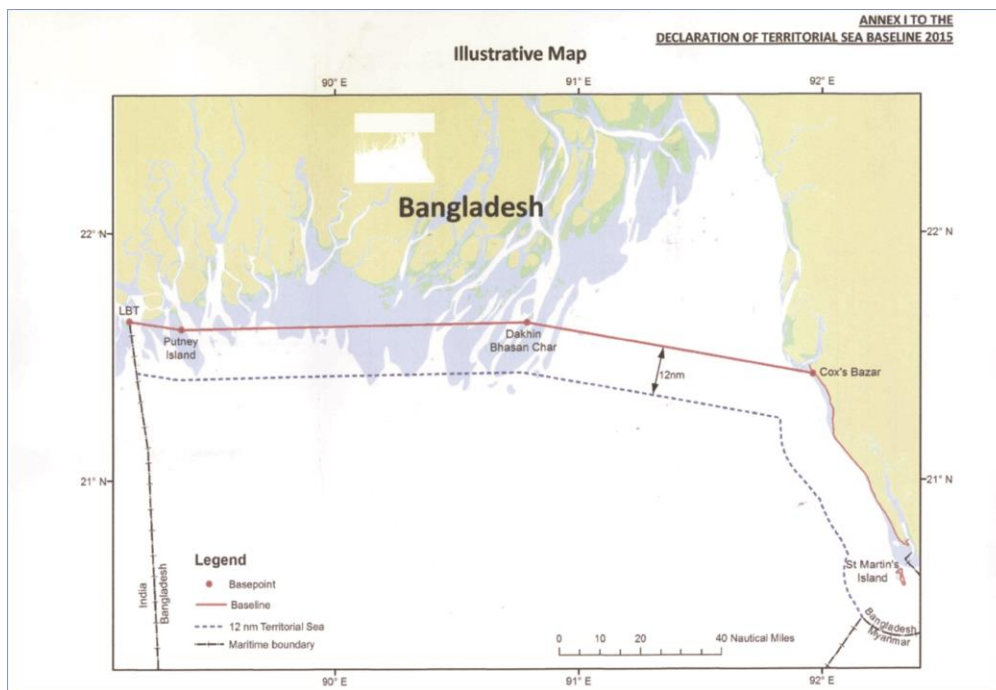


Figure 2: The illustrative map of designated baseline (The Declaration 2015 ) (Source: Bangladesh Gezette, SRO 328)

This baseline has been drawn following the ‘Low Tide Elevation with lighthouses or similar installations’ as prescribed in UNCLOS. Article 2C of the new amendment Act also empowers the government to determine baseline by notification in the official gazette, but it renamed the baseline as “Territorial Sea Baseline” (TWMZ Amendment Act 2021). As Bangladesh’s coast is highly unstable due to presence of delta and having deeply cut into the costal indentation, Bangladesh drew straight baseline following general direction of the coast that is sufficiently closely linked to the land domain and it does not cut off the territorial sea of another State from the high seas or an exclusive economic zone. So drawing of Bangladesh’s baseline is fully consistent with the UNCLOS.

### 5. Maritime zones

Maritime zones mentioned in the TWMZ Act are analysed and compared with the obligations of UNCLOS. They are:

- a) Internal Water – Bangladesh declared internal waters where it exercises full sovereignty. This TWMZ Act, 1974 mentioned that landward waters of the territorial waters are called internal waters of Bangladesh which is consistent to UNCLOS. The

new amendment Act specifies that sovereignty extends to the water column, the seabed and its subsoil and the air space over the Internal Waters like UNCLOS.

b) Territorial Waters - This TWMZ Act empowers the government to declare the breadth of territorial waters and hence the gazette notification (Notification No. LT-1-3-7, 1974) by the Ministry of Foreign Affairs provides the breadth of the territorial sea measured 12 nm. Article 3 of the new amended Act specifically provides the limit of territorial sea as not exceeding 12 nm from the territorial sea baseline. Bangladesh proclaims sovereignty over the territorial sea as well as to the airspace over that and the bed and subsoil of the territorial waters which is similar to UNCLOS Article 3. The TWMZ Act also provides that no foreign ships pass the territorial waters of Bangladesh unless it enjoys right of innocent passage. All foreign ships shall observe the laws of Bangladesh and will not be allowed to do anything prejudicial to the peace, good order and security of Bangladesh during exercise of innocent passage right (Sec. 3A of TWMZ Amendment Act, 2021).

Article 3 of the TWMZ Act empowered the government to take necessary steps against any ship with no right of innocent passage or violates any law of the land or does anything prejudicial to the state but this Act does not elaborately provide activities that will be considered to be prejudicial to the coastal state unlike article 19 of UNCLOS. Furthermore, the Section 3 of the TWMZ Rules and Art. 15 of the TWMZ Amendment Act prescribe an exhaustive list of few prejudicial activities i.e., any threat or use of force or weapons, act of propaganda, use of military device, pollution, fishing, research, interfering communication system, that are considered to be threat to the state while UNCLOS provides a non-exhaustive list that may cover many new unforeseen activities. The TWMZ amendment Act provides punishment (5 years imprisonment and/or 10-40 crore fine) for violation of innocent passage. It provides provisions related to criminal and civil jurisdiction of Bangladesh over foreign ship. It further provides prior notice requirement for foreign warship before entering territorial sea (Article 3A of the TWMZ Amendment Act, 2021). In short, the new amended Act reflects the obligations of UNCLOS regarding Territorial Sea to a great extent .

c) Contiguous Zone - Like UNCLOS, this Act declares a regime named contiguous zone adjacent to the territorial sea to prevent and punish violation of immigration, sanitary, custom and fiscal laws. On the contrary, the TWMZ Act provides a limit of 18nm but new Amendment Act declares 24 nm (Sec. 4) limit for this regime in accordance with UNCLOS where Bangladesh Government can prevent and punish violation of security, immigration, sanitary, custom and fiscal laws.

d) EEZ – Beyond territorial water, the TWMZ Act introduced the economic zone where all living and non-living natural resources within the water column, seabed and subsoil shall vest exclusively to the republic (Sec.5). The TWMZ Act did not mention other state's right in the EEZ. Now Bangladesh claimed 200 nm EEZ (The TWMZ Amendment Act 2021) which is compatible with UNCLOS. In article 58, UNCLOS

created a balance between the rights of the coastal states and other states by recognizing the rights of the other states in the EEZ of coastal state stating that all states have rights of navigation, overflight, laying submarine cables and pipeline and other lawful uses of the sea related to these freedoms. But new amendment Act mentions only that other states shall enjoy internationally lawful uses of the sea except military exercise in the EEZ {(Article 5(3)}. Though it does not mention about laying submarine cable and pipeline in the EEZ provision, it mentions in the Continental shelf provisions. So, it can be said that the new Act tries to incorporate all associated activities of laying submarine cable and pipeline in the term “internationally lawful uses” which is also consistent with UNCLOS. UNCLOS provides that coastal state shall exercise their rights with due regard to the rights and duties of other States (Article 56) and vice versa (Article 58). But the new Act does not provide for the due regard provision in the exercise of right of coastal and third state in the EEZ unlike UNCLOS.

e) Continental Shelf - Like the UNCLOS Article 76, the TWMZ Amendment Act provides that the continental shelf consists the seabed and subsoil of the submarine areas beyond territorial waters throughout the natural prolongation of its land territory to the outer edge of the continental margin (Sec.7). It also provides provisions for claiming continental shelf more than 200 nm where outer edge of the continental margin extends beyond that in accordance with UNCLOS. Like UNCLOS article 77 this Act contains rights of coastal states to construct, maintain, or operate installations and other devices within the continental shelf for the exploration and exploitation of resources of this regime (Sec. 7A), it also mentions rights of other states in this zone.

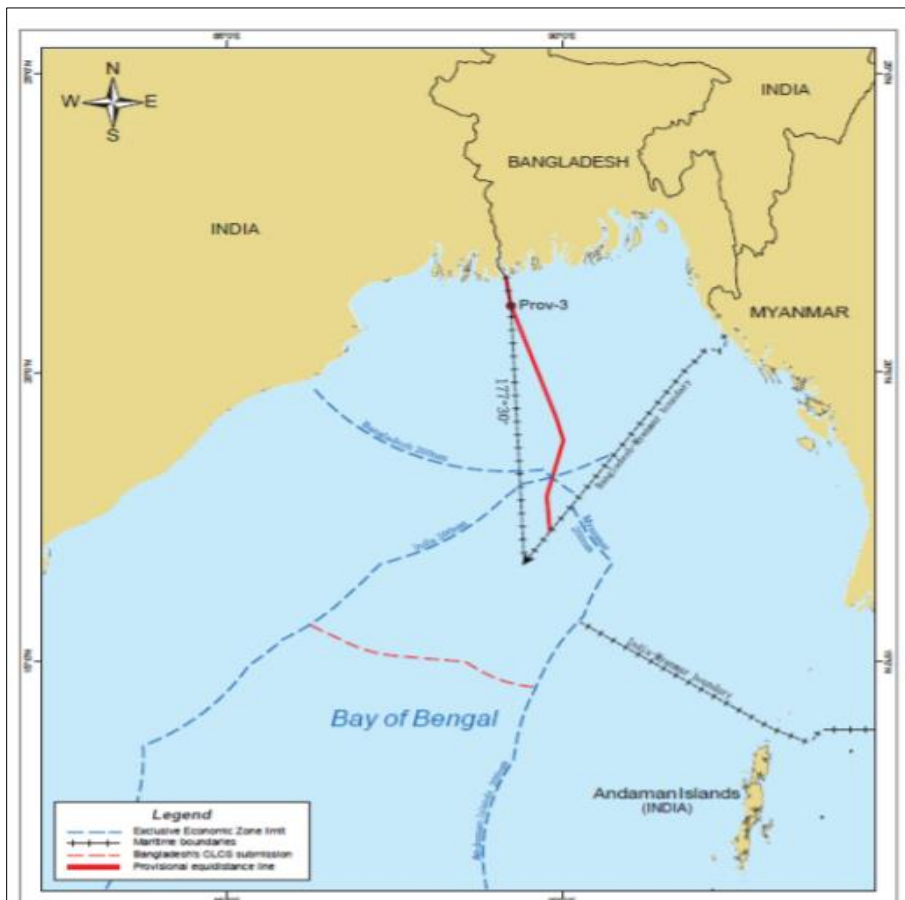
In 2011, Bangladesh filed a submission (CLCS.55.2011.LOS) to the Commission under Article 76 of the UNCLOS to determine the limits of the continental shelf beyond 200 nautical miles from the baseline. Later, the maritime boundary of Bangladesh was delineated up to the limits of the Continental Shelf by International Tribunal for Law of the Sea (ITLOS) in Bangladesh and Myanmar’s dispute in 2012 and Permanent Court of Arbitration (PCA) in Bangladesh and India’s maritime boundary arbitration in 2014. So, the Ministry of Foreign Affairs filed a revised submission (CLCS.55.2011.LOS.Add.1) to the CLCS which superseded the earlier submission.

f) The High Sea and the Area – The TWMZ Act does not contain any provision regarding rights and obligations of coastal or flag state in the High Sea and the Area. But TWMZ Amendment Act provides adequate provisions for the High Sea and the Area. Like UNCLOS, the amended Act recognizes all rights of the flag state i.e., freedom of navigation, over, flight, lay submarine cable, marine scientific research, constructing artificial island etc. It also provides for ensuring genuine link, absolute jurisdiction of the flag state, rescue provision etc. Like UNCLOS article 136, the TWMZ Amendment Act recognizes the resources of the Area as common heritage of mankind (Section 7D). It specifies the resources of the Area. Section 7D also provides

that the government may make rules with regard to activities, exploration and method of exploration and participation of Bangladesh in International Seabed Authority (ISA). So, now Bangladesh should enact rules regarding method of exploration and participation in ISA.

## 6. Maritime delimitation

Maritime boundary delimitation issues arise when the maritime zones of neighboring States overlap. Articles 15, 74, and 83 of the UNCLOS deals with delimitation of maritime boundaries between opposite and adjacent coastal States. According to these provisions, the delimitation has to resolve by agreement, and following international law with considerable flexibility so long as neighbouring states consider the outcome an “equitable” one.



Source: PCA’s award of the maritime boundary of Bangladesh (PCA Website)



Though no provision of TWMZ Act and Amendment Act deal regarding maritime delimitation, Bangladesh wanted to delimit the Maritime Boundary based on 'equity' considering peculiarities and the concave nature of the coast. Following UNCLOS obligation, Bangladesh took the initiative to negotiate with the neighbouring states that led to settlements of maritime boundary disputes in 2012 and 2014 respectively through ITLOS and PCA.

The territorial sea, the exclusive economic zone, and the continental shelf within and beyond 200 nm in the Bay of Bengal were delimited in these disputes (Perm. Ct. Arb. 2014). Thus, the verdicts of ITLOS & PCA brought equitable solutions. After these settlements, we got 105,496 sq km area that has been added with our 13,317 sq km internal sea and now becomes 118,813 sq km area (MOFA, MAU).

On the other hand, the ITLOS and PCA's verdict created a "Gray Area". Bangladesh acquired a notable entitlement to an extended continental shelf but did not get any prerogatives of EEZ in the water column over the extended continental shelf. Without determining the specific rights of the parties in this area, the tribunal stimulated the parties to launch a cooperative plan (Mark E. Rosen & Douglas Jackson 2017). But no cooperative arrangement has been introduced since then. India is still claiming that Bangladesh determined the continental shelf which is a part of the continental shelf of India due to error in baseline of Bangladesh. (Ejaz 2021).

## **7. Conservation of Marine Living Resources**

UNCLOS provides an explicit obligation to conserve marine living resources on the coastal state. UNCLOS has given right to coastal States for optimum utilization (Article 62) and duty to conserve, ensure maximum sustainable yield i.e., keeping the stocks at the level producing maximum growth without affecting them and not to endanger fisheries of this zone by over exploitation (Article 61). It also imposes an obligation on the coastal state under article 61 to determine the total allowable catch (TAC) of the living resources. Coastal state will determine its capacity to harvest the living resources. Coastal state is obliged to allow other states access to any surplus, when it is unable to harvest TAC of EEZ provided in article 62 of UNCLOS. It's implementing agreement i.e., the Fish Stocks Agreement (FSA), 1995 requires all member states to comply with Ecosystem Approach (5g of FSA) and the Precautionary Approach under section 6 (1) of FSA. Ecosystem Approach is an integrated and holistic approach that takes account all the components of an ecosystem, interaction among them and all activities that could affect them. On the other hand, Precautionary Approach calls for action in case of threats of serious or irreversible damage, even there is lack of scientific certainty about the degree of risk regarding environmental harm.

UNCLOS provides for sustainable and optimum utilization of living resources by the coastal state. It also imposed an obligation to determine TAC. To implement these obligations, a coastal state should conduct stock assessment. Without knowing the stock, no state can determine TAC. TAC determination is important for sustainable and optimum utilization of marine fisheries. Though TWMZ Amendment Act empowers the government to make rules for determining TAC (Section 5), it does not contain provision for stock assessment and any access to surplus fisheries.

Though the TWMZ Act and amendment Act do not contain any provision for optimum utilization, the Bangladesh government started to take initiatives. But the Bangladesh government's measures to ensure optimum utilization of marine fisheries through introducing deep sea fishing by some national firms was not successful. These firms did not start deep sea fishing yet. Without exploiting deep sea, sustainable and optimum utilization of marine fisheries can never be possible, rather over-exploitation of reachable areas will affect our marine bio-diversity.

The TWMZ Act does not contain any obligatory term like "shall" to impose the obligation on government to conserve marine living resources in the maritime zones unlike UNCLOS. It does not refer to any principle regarding the protection of resources, although Sec.09, 10, 11, 15, 16 of the TWMZ Rule provides for the closed season for fishing, prohibition of dynamiting and poisoning fishing methods and enforcement jurisdiction in the economic zone. The TWMZ Amendment Act does not contain any provision for conservation of natural resources, but it states in article 7F that the government may take appropriate measures for sustainable use of natural resources.

## **8. Marine Environment**

Marine environment means the environment of the sea which includes all components and interaction between biotic and abiotic factors that determine the productivity of the marine ecosystem. UNCLOS confers upon member States to take all the measures consistent with UNCLOS to prevent, reduce and control pollution of the marine environment from any sources mentioned in this convention. The TWMZ Act does not take into consideration the overall marine environment to protect and conserve like UNCLOS. Under sec 3 of the TWMZ Rules, 1977, any act of wilful or serious marine pollution in the territorial sea will be considered as prejudicial to the security of the state. The TWMZ Amendment Act omits the word "serious". Article 15 states that any wilful pollution in exercising right of innocent passage is punishable offence. In other maritime zones, the government is empowered to make rules to prevent, reduce and

control pollution. The TWMZ Amendment Act prescribes punishment for negligence to take measures to prevent pollution and for pollution as well (Section 22 & 23).

## **9. Conclusion and Recommendations:**

To improve food security, eradicate poverty, and delivering shared prosperity, along with the health of oceans we need to focus on how the resources of the sea could be utilized for economic emancipation. UNCLOS consists most of the norms and rules relating to the law of the sea (Churchill 1999), so the compliance of its obligations by Bangladesh can accelerate our prosperity in the oceanic sector. Measurable steps towards internationally agreed norms and rules should be taken through domestic laws (Alam 2018). The TWMZ Amendment Act added only 36 articles. This Act provides various provisions to make Rules by the government. So, Bangladesh Government should take initiatives to pass Rules as soon as possible which will regulate all regimes of the ocean with specific obligations of the flag, coastal and flag states, regional cooperation. This amendment Act mostly reiterate the wording of the UNCLOS which is not enough. As UNCLOS is a framework convention, in many cases it calls upon states to comply with general obligations. Domestic laws should be more detail oriented, contextual and oriented to problem solving and above all relevant to the national concern. So, the new Amendment Act should not only iterate the wording of UNCLOS, rather should prescribe rules of universal standards focusing on stringent enforcement and monitoring explicitly. Because without enforcement mechanism, compliance of UNCLOS obligations via national legislation can never be successful.

In addition to this, the contribution of our marine fisheries to the national economy has been static in the last 10 years, even after attaining the huge maritime zone after the dispute settlement with Myanmar and India due to unsustainable fishing in reachable areas and untapped fisheries of deep sea. The UNCLOS provides for sustainable and optimum utilization of marine fisheries. Under these obligations, Bangladesh should take initiatives for ensuring sustainable fisheries and to ensure optimum utilization of untapped fisheries of deep sea. So the TWMZ Amendment Act should have addressed it.

Furthermore, as maritime sector is emerging exponentially, there will be huge development projects in upcoming days. These projects can be disastrous for marine environment, if it is unchecked. In this regard, compliance of international principles mentioned earlier i.e., precautionary approach, ecosystem approach, environmental impact assessment, etc can help to protect the environment as a whole. The zonal approach is not sufficient enough to resolve the problems faced by the coastal states in the management of ocean space. The UNCLOS's preamble states that world's oceans are connected and problems of these oceans are also closely interrelated and should be

addressed as a whole. So, to ensure a healthy, productive and resilient ocean, Bangladesh should focus on the integrated management approach.

After considering above discussion, it is recommended that:

The TWMZ Amendment Act has few provisions only which is not sufficient enough to regulate all claims related to the law of the sea. The Government need to enact Rules as soon as possible. The Rules should focus on the following provisions:

- a. Without fish stock assessment, the obligation from UNCLOS regarding determination of total allowable catch for EEZ fisheries cannot be performed. So, the new law should contain specific provisions for conducting stock assessment.
- b. Precautionary and ecosystem approach for natural resources should be introduced with proper enforcement mechanisms.
- c. Deep sea fishing will make our marine fisheries more sustainable and attributable to the national economy. So, the new law should provide necessary provisions for deep sea fishing and it should be national and international investment friendly.
- d. The new law should contain provisions for an integrated approach to conserve marine environment with reference to the international environmental law principles.

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