

# Non-Conventional Threats to Maritime Security: Challenges for Bangladeshi Legal Regime

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**Abstract:** The issue of maritime security is an integral part of the national security of a country, and it must be integrated into the nation's overall security plan. Bangladesh, as a coastal country, faces a range of non-conventional threats to its maritime security. As such, the country requires a strong and effective legal regime about maritime security to ensure economic stability, resource protection, national security, environmental preservation, regional cooperation, and the promotion of tourism and infrastructure development in coastal areas. This study will investigate the concerned legal regime of Bangladesh with a view to understanding the extent to which it is responding to the non-conventional threats to maritime security such as piracy, trafficking, illegal fishing, maritime terrorism, and marine environmental pollution. Bangladeshi laws and policies regarding marine security and governance will be the object of inquiry. Doctrinal research methodology is followed to analyse the objects. It is found that a range of challenges about illegal fishing, pollution, piracy, trafficking of human, arms and drug, hijacking, marine environmental pollution, and maritime terrorism exist in the concerned legal framework of Bangladesh. The essay concluded that to protect interests in the evolving global maritime landscape, Bangladesh must prioritise capacity in building regulatory frameworks, institutional structures, human resources, technology, infrastructure, and maritime diplomacy.

## 1. Introduction

Maritime security is a major concern for countries, such as Bangladesh, which are located near to oceans, bays, gulfs, or other international bodies of water.<sup>1</sup> The issue of maritime security is an integral part of the national security of a country, and it must be integrated into the nation's overall security plan. Bangladesh requires a strong and effective legal regime about maritime security to ensure economic stability, resource protection, national security, environmental preservation, regional cooperation, and the promotion of tourism and infrastructure development in coastal areas. Ensuring maritime security is important for Bangladesh to continue the current economic growth and trade relationships since around 90% of external trade relying on sea routes.<sup>2</sup> Again, protecting valuable marine resources such as hydrocarbon deposits, fisheries,

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<sup>1</sup> Christian Bueger and Timothy Edmunds, 'Beyond Sea Blindness: A New Agenda for Maritime Security Studies' (2017) 93(6) International Affairs 1293.

<sup>2</sup> Rear Admiral Md. Khurshed Alam (Retd.), *Blue Economy: Development of Sea Resources for Bangladesh* (Ministry of Foreign Affairs, 31 October 2019) <<https://mofa.gov.bd/site/page/8c5b2a3f-9873-4f27-8761-2737db83c2ec>> accessed on 10 July, 2023.

and potential mineral reserves is crucial for preserving Bangladesh's economic interests. Effective maritime security measures are essential to prevent illegal activities like smuggling, human trafficking, arms trafficking, and piracy, thereby safeguarding national security.<sup>3</sup> By maintaining maritime security, environmental hazards such as oil spills, illegal waste dumping, and overfishing can be minimized, preserving marine ecosystems and coastal communities. Finally, maritime security promotes regional cooperation, peaceful relations, and joint efforts to combat transnational crime and illegal fishing.<sup>4</sup> It also contributes to the development of tourism and coastal infrastructure, attracting visitors and encouraging investments.

Maritime security law had been significantly changed globally in the last two decades. It previously focused on avoiding naval warfare, but now promoting cooperation among countries to achieve common maritime security goals.<sup>5</sup> The United Nations Security Council and the International Maritime Organization (IMO) play active roles in promoting security in the maritime commons.<sup>6</sup> As a member of IMO, Bangladesh has implemented various measures to enhance its maritime security in recent times. There were several areas where no laws existed, such as marine pollution, collision, maritime crimes, and marine insurance. Additionally, the maritime sector struggled with unenforced, vague laws that were outdated.

It is underscored Bangladesh faces risks about non-conventional threats to maritime security.<sup>7</sup> These risks include activities such as illegal fishing, poaching, unauthorised exploration of oil and gas, mineral extraction, deliberate pollution of the marine environment, theft, armed robbery, piracy, illicit trafficking of arms, drugs, and humans, hijacking, sabotage, terrorism, mercenary activities, maritime insurgency operations, and illegal trade of ozone-depleting chlorofluorocarbons (CFCs).<sup>8</sup> To face the challenges, the country makes laws and policies. However, there are substantive limitations in them. The absence of a comprehensive legal maritime security framework of Bangladesh hinders the effective address of these evolving threats in maritime security in the Bay of Bengal.

This paper investigates Bangladesh's maritime security law regime to expose the challenges it faces about the contemporary non-conventional threats to maritime security. In developing arguments, the first section of this paper exposes the concepts of maritime security and non-traditional threats to maritime security. The second

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<sup>3</sup> Aleeze Moseley, 'The Implementation of International Maritime Security Instruments in CARICOM States' (Thesis, Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, The United Nations New York 2009) 13.

<sup>4</sup> *ibid* 14.

<sup>5</sup> James J Kraska, 'Grasping the Influence of Law on Sea Power' (2009) 62(3) *Naval War College Review* 9.

<sup>6</sup> Bueger (n 1).

<sup>7</sup> Abul Kalam Azad, 'Security of Bangladesh: Facing the Challenges of Non-Traditional Threats' (Seminar on Maritime Security of Bangladesh, BIIS, Dhaka, 12th February 2009). <<http://boblme-bangladesh.org/publications/reports/Maritime%20security.pdf>> accessed 10 July 2023.

<sup>8</sup> *ibid*.

section analyses the existing legal framework regarding maritime security of Bangladesh with a comprehensive discussion of latest and recently amended laws. Finally, the article, in its most substantive section, sheds light on the increasing challenges posed by non-conventional threats to maritime security in Bangladesh legal regime.

## **2. Understanding Maritime Security and Its Non-Conventional Threats**

There are several understandings of the concept of maritime security. Again, it has different blurring dichotomies. Consequently, this section focuses upon the meaning of maritime security and non-conventional threats to maritime security as they are used in this paper.

### **2.1. The Concept of Maritime Security**

The term maritime security is one of the latest accumulation in the arena of international security which was devised in 1990s and received raising attention since 2000 due to the intensification of maritime terrorism.<sup>9</sup> Most of the states and international organisations placed maritime security on high attention in their concern security agenda and strategies.<sup>10</sup> Maritime security is a complex concept that involves both national and international laws, and it must be viewed from a broader geopolitical perspective. Maritime security is defined as “a complex set of issues, including both public and private activities, sometimes with diametrically opposed interests.<sup>11</sup> Maritime security is otherwise signified as “the prevention of illicit activities in the maritime domain. It could be linked directly to the national security efforts of a specific country, or it could cover regional and international efforts to enforce maritime security”<sup>12</sup> Some maritime strategists adopt a broader perspective in defining maritime security.<sup>13</sup> They argue that maritime security is a multidisciplinary concept encompassing military science, police science, domestic and international laws, and geopolitics of the relevant area. They identified five interconnected aspects of maritime security: security of the sea itself, ocean governance, maritime border protection, military activities at sea, and security regulation of the maritime transportation system.<sup>14</sup>

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<sup>9</sup> Bueger (n 1).

<sup>10</sup> *ibid.*

<sup>11</sup> T. Kelly, ‘Maritime Security, Sea Power and Trade’ (*U.S. Department of State*, 24 June 2015) <<http://www.state.gov/t/pm/rls/rm/2014/223921.htm>> accessed 5 June 2015.

<sup>12</sup> T. Potgieter, ‘Maritime Security in the Indian Ocean: Strategic Setting and Features’ (2012) 236 *Institute for Security Studies* 3 <<https://issafrica.s3.amazonaws.com/site/uploads/Paper236.pdf>> accessed 11 July 2023.

<sup>13</sup> K. T. Zaman, ‘ITLOS verdict and maritime security of Bangladesh’ *The Daily Star* (Dhaka, 19 March 2016).

<sup>14</sup> *ibid.*

## 2.2. Non-Conventional Aspects of Maritime Security

Recently, the concept of maritime security has expanded to include both conventional and non-conventional threats (also known as traditional and non-traditional threats) and has incorporated considerations of global and regional geopolitics.<sup>15</sup>

Unlike traditional maritime security threats that originate from military sources such as arms race or inter-state rivalry, non traditional security threats have originate from the human security-development nexus.<sup>16</sup>Traditional threats are military in nature, arising from other nations or state, and have adverse impacts on a nation's sovereignty, national integrity, and trade; however, non-traditional threats are more wide-ranging, affecting not only the state but also individuals and humanity as a whole.<sup>17</sup> Non-traditional threats have widespread consequences on future generations' existence and well-being.<sup>18</sup>

With regard to traditional threats it is argued that discourses around security have predominantly emphasised military and political dimensions, which were state-centric and overlooked environmental and ecological concerns as non-security issues. The non-traditional concerns were considered less urgent and non-lethal, but their significance is now recognized increasingly.<sup>19</sup> Moreover, traditional security threats are state-centric, focusing on the nation's security, while non-traditional security threats are human-centric, affecting individuals and communities.

The identification and acknowledgment of non-traditional security issues are challenging because they transcend national borders and have a broader impact on physical and political arena.<sup>20</sup> The on-traditional dimension of maritime security has often been overlooked, leading to a lack of concern in Bay of Bengal for coastal countries.

Non-traditional threats to maritime security, such as piracy, maritime terrorism, disasters, calamities, and pollution, are now perpetrated by non-government groups like small-scale pirates, radical religious organizations, and multinational criminal entities.<sup>21</sup>

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<sup>15</sup> Azad (n 7).

<sup>16</sup> Sreeparna Banerjee, and Pratinashree Basu, 'Strengthening Partnerships to Counter Non-Traditional Security Threats in the Indo-Pacific' (*SUFIP Development Network*, 03 Mar 2022). <<https://www.orfonline.org/research/strengthening-partnerships-to-counter-non-traditional-security-threats-in-the-indo-pacific/>> accessed 5 July 2023.

<sup>17</sup> D. Divine, 'Traditional and Non-Traditional Threats Of Maritime Security' *The India times* (Mumbai, 11 June 2023) <<https://www.indiatimes.com/explainers/news/explained-traditional-and-non-traditional-threats-of-maritime-security-604842.html>> Accessed on 20 July, 2023.

<sup>18</sup> R. Aswani, 'Non-Traditional maritime security threats in the Indian Ocean Region: Policy alternatives' (2020) 22(2) *J Public Affairs* <<https://doi.org/10.1002/pa.2456>> accessed on 10 July 2023.

<sup>19</sup> Barry Buzan, Ole Waver and Jaap De, *Security: A New Framework for Analysis* (Lynne Rienner Publishers 1998).

<sup>20</sup> *ibid.*

<sup>21</sup> Lim Kyunghan, 'Non-traditional Maritime Security Threats in Northeast Asia: Implications for Regional Cooperation' (2015) 22(2) *Journal of International and Area Studies* 135-146.

Generally, if we summarize, the sources of non-conventional threats originate from Natural occurrences (Natural disasters and climate), Non-state actors,<sup>22</sup> Military development,<sup>23</sup> Piracy, Maritime terrorism, Climate change, Drug trafficking, Illegal Unregulated and Unreported (IUU) fishing.<sup>24</sup>

But non-conventional threats in the context of developing countries like Bangladesh in the Bay of Bengal region are characterized as low-intensity conflicts with international implications. These crimes often have links with the shore, necessitating cooperation and interaction between enforcement agencies on land and at sea to combat them.

Maritime low intensity conflicts can be divided into four broad categories.<sup>25</sup> The first involves unauthorized exploitation of national resources, with illegal fishing being a prominent example. The second pertains to intentional pollution that causes ecological damage which is not from accidents or natural calamities. The third category encompasses threats to life and property on board ships or structures near the shore, extending from theft to armed robbery, which are now paralleled with piracy. The fourth category is associated with threats to national peace and security, including illegal arms and drug trafficking, human trafficking, hijacking, and hostage-taking, often linked to terrorism or insurgency.<sup>26</sup>

Bangladesh and certain countries in the Bay of Bengal region, such as India, the Maldives, Myanmar, and Sri Lanka and some Southeast Asian states are also special targets for these threats and experiencing similar challenges.<sup>27</sup>

### 3. Bangladeshi Maritime Security Laws and Policies in Bangladesh

The Bangladeshi maritime law regime comprises several statutory laws, policies, and strategies. The government passed a new law in 2021 to gain better control over the maritime boundary, ensure maritime security, and preserve marine resources.<sup>28</sup> This new legislation amends the provisions of the Territorial Waters and Maritime Zones Act of 1974 and includes significant changes. The government has made a radical move to revise, update and repeal old statutes and instruments in maritime law regime by passing new laws such as the *Marine Fisheries Act 2020*, *Bangladesh Lighthouse Act 2020*, *Bangladesh Flag Vessels (Protection of Interest) Act 2019*, *Bangladesh Shipping Corporation*

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<sup>22</sup> Means criminal activities like environmental contamination, drug trafficking, illegal fishing, religious extremism, and terrorism pose significant threats.

<sup>23</sup> Means Government participation in great power competition attracts unwanted attention and threatens state security.

<sup>24</sup> Zaman (n 13).

<sup>25</sup> K.R. Singh, 'Regional Cooperation in the Bay of Bengal: Non-Conventional Threats-Maritime Dimension, Strategic Analysis' (2001) XXIV(12) A Monthly Journal of the IDSA <[https://ciaotest.cc.columbia.edu/olj/sa/sa\\_mar01sik01.html](https://ciaotest.cc.columbia.edu/olj/sa/sa_mar01sik01.html)> accessed on 20<sup>th</sup> July 2023.

<sup>26</sup> *ibid.*

<sup>27</sup> *ibid.*

<sup>28</sup> Territorial Waters and Maritime Zones (Amendment) Act 2021.

Act 2017.<sup>29</sup> Besides, to ensure security in ocean and for maritime governance, Bangladesh government adopted the Port Act 2006, Coastal Zone Policy 2005, Coastal Development Strategy 2006, Arbitration Act 2016, Merchant Ship Ordinance 1983, Flag Ordinance Convention 1982, Inland Shipping Ordinance 1976, Protection and Conservation of Fish Act of 1950, Marine Fisheries Ordinance and Rules 1983, Bangladesh Water Act-2013.<sup>30</sup> Furthermore, Bangladesh Navy and the Ministry of Foreign Affairs developed a maritime strategy document called the "National Maritime Strategy (NMS) 2018-2030, in consultation with various stakeholders and international experts.<sup>31</sup> The key objectives of the NMS include enhancing maritime security in priority basis, improving maritime governance and management, promoting economic growth through the development of the blue economy, and strengthening international cooperation and partnership.<sup>32</sup> The Bangladesh Coast Guard (BCG) is the maritime law enforcement force of Bangladesh, under the jurisdiction of the Ministry of Home Affairs was established in 1995 by the Coast Guard Act 1994 later which was replaced by the Coast Guard Act, 2016<sup>33</sup> to ensure the safety and security of Bangladesh's waters and coastal areas.

Bangladesh has ratified several maritime treaties at the international level, including UNCLOS (ratified in 2001), the UN Convention against Transnational Organized Crime (ratified in July 2011), the International Labour Organization Maritime Labour Convention (ILO-MLC, ratified in November 2014), International Convention for the Safety of Life at Sea (SOLAS, accession in November 1981), which have increased its status in maritime law protocols.<sup>34</sup> It is worth noting that ratification of international treaties is less meaningful in Bangladesh unless there is any corresponding law at the national level. Among the various laws, policies, and strategies, this paper addresses five legislations to understand how they are responding to tackle non-traditional threats to maritime security.

### **3.1. Territorial Waters and Maritime Zones (Amendment) Act 2021**

The Government of Bangladesh has enacted the Territorial Waters and Maritime Zones (Amendment) Act 2021, with the aim of extending its sovereignty over territorial

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<sup>29</sup> These Acts repealed the acts or ordinance accordingly Marine Fisheries Ordinance, 1983 (Ordinance No. XXXV of 1983), *Lighthouse Act, 1927* (Act No. XVII of 1927), Bangladesh Flag Vessels (Protection) Ordinance, 1982 (Ordinance No. XIV of 1982, Bangladesh Shipping Corporation Order, 1972 (President's Order No. 10 of 1972). The Appellate Division of the Supreme Court of Bangladesh declared Martial Law invalid, and this decision was upheld by the Constitution (Seventh Amendment) Act, 1986 (Act No.1 of 1986) and the Constitution (Fifteenth Amendment) Act, 2011 (Act No. XIV of 2011), which led to the repeal of related these ordinances.

<sup>30</sup> Mohammad Mahmudul Islam and Md Shamsuddoha, 'Coastal and Marine Conservation Strategy for Bangladesh in the Context of Achieving Blue Growth and Sustainable Development Goals (SDGs)' (2018) 87 *Environmental Science and Policy* 45-54.

<sup>31</sup> Abul Kalam, *Bangladesh's Maritime Policy: Entwining Challenges* (1st edn, Routledge 2020) 2.

<sup>32</sup> *ibid.*

<sup>33</sup> Act No. 9 of 2016.

<sup>34</sup> Deniece M. Aiken, 'Maritime Governance Contextual Factors affecting Implementation of IMO Instruments' (PhD Thesis, World Maritime University August 2023) 66.

waters, Contiguous Zone, Exclusive Economic Zone (EEZ) and Continental Shelf. The main objective of this legislation is to bring coherence between the provisions of the preceding Territorial Waters and Maritime Zones Act of 1974 and the principles laid out in the United Nations Convention on the Law of the Sea (UNCLOS) of 1982. Prior to this amendment, the 1974 Act's provisions were not entirely aligned with UNCLOS, which prompted the need for adjustments to ensure compliance with the international legal framework. The enactment of the new law empowers Bangladesh to have better control over its maritime boundaries and reinforces its ability to sustain, protect, and conserve marine resources within its territorial waters and exclusive economic zone.

The law has made provision to tackle non-conventional threats to maritime security. To illustrate, the Act recognises piracy<sup>35</sup> as a punishable offense with imprisonment for life and fines, and forfeiture of vessels or property involved.<sup>36</sup> Bangladesh is also a signatory to UNCLOS, which recognises piracy as a crime under international law and provides for universal jurisdiction over piracy offenses. Arrested offenders in a multinational anti-piracy operation in the high seas must be brought before Bangladeshi courts for prosecution<sup>37</sup> which may not meet internationally acceptable standards and this deficiency not only limits the effectiveness of cooperative efforts but also weakens the effort to establish a regional reputation as a competent maritime power.

The amending Act of 2021 has given power to the government to establish one or more Maritime Tribunals, with the jurisdiction determined in the notification. A District Judge or Additional District Judge appointed by the government in consultation with the Supreme Court will conduct the duties of the Maritime Tribunal, in addition to his own duties.<sup>38</sup> This is very difficult and not practically feasible to perform additional duties of Maritime tribunal because of the overburdened duties and responsibilities of the regular court. Moreover, the judges of the tribunal have to face the challenges to conduct different kinds of facts and offences occurred in the maritime waters. The access of the tribunal is limited since the tribunal shall take into cognizance of an offence of which is made by the government authorised person in written.<sup>39</sup> Different kinds of offences and their punishment with or without adequate fine has been mentioned in section 15 to 25 where the minimum fine is excessive and has no option to consider less than that with the gravity of the offence.

This Act provides Maritime cooperation with other countries regarding safe movement of persons, goods, commodities and vehicles, as well as cooperation in customs, fiscal, immigration, sanitary control, development of marine bio-technology and removal of

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<sup>35</sup> The Territorial Waters and Maritime Zones (Amendment) Act 2021, s 9 (a).

<sup>36</sup> *ibid*, s 24.

<sup>37</sup> Court means the Admiralty Courts Act 2000 deals with all issues related to Admiralty. (Maritime Laws of Bangladesh, Admiralty & Ship Arrest).

<sup>38</sup> The Territorial Waters and Maritime Zones (Amendment) Act 2021, s. 27

<sup>39</sup> *ibid*, s 30.

cultural or historical objects in the maritime zones.<sup>40</sup> It should have to include robust provisions to emphasize on measures to formulate cooperative mechanism with neighboring and other concern states regarding the suppression of piracy, armed robbery, theft and maritime terrorism, to conduct marine scientific research, hydrographic survey and military survey, exploring or exploiting any natural resources within and beyond national jurisdiction.

### **3.2. Marine Fisheries Act 2020**

Due to weak governance and a lack of regional cooperation, illegal unreported and unregulated fishing practices, known as IUU fishing, are promoted.<sup>41</sup> The Food and Agriculture Organization (FAO) developed guidelines to promote responsible fishing, but IUU fishing continues to devastate marine life and habitats, which are causing poverty and food insecurity and also worsening the impact of global warming on marine ecosystems<sup>42</sup>.

Recently, the Marine Fisheries Act of 2020, enacted in Bangladesh has several inadequacies that prevent the country from meeting its international obligations and also lack provisions regarding sub-regional, regional and international co-operation. The Act does not incorporate the precautionary principle, which is accepted globally as an essential component of fisheries management, as well as ecosystem-based fisheries management.<sup>43</sup> The precautionary principle is being used as a guideline for governmental decisions and initiatives. Two conceptions coexist under this principle. The first is to encourage prevention that is commensurate with the possible hazards and is founded on the strengthening of the idea of environmental preservation. The second seeks to eliminate hazards and can even call for a “proof demand” of innocence.<sup>44</sup> It also does not provide sufficient detail on the determination and enforcement of the total allowable catch of fish and the sharing of available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks with other concerned states.<sup>45</sup> Additionally, the 2020 Act has some administrative shortcomings, which include numerous responsibilities and excessive power given to the Director of the Marine Fisheries Division without establishing a system of checks and balances. This Act has some overlapping provisions of various laws and lack of capacity which defines fish to include all species of living and processed marine resources, potentially causing conflicts with measures

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<sup>40</sup> *ibid*, s 7G.

<sup>41</sup> Buzan (n 19) 4.

<sup>42</sup> Buzan (n 19) 5.

<sup>43</sup> Abdullah Al Arif, and Md Saiful Karim, ‘Marine Fisheries Act 2020 of Bangladesh: A Missed Opportunity for Sustainability and Collaborative Governance’ (2022) 37(2) *International Journal of Marine and Coastal Law* 337.

<sup>44</sup> Laxe Fernando, ‘The precautionary principle in fisheries management’ (2005) 29 *Marine Policy* 495.

<sup>45</sup> Abdullah Al Arif and Md Saiful Karim, ‘Marine Fisheries Act 2020 of Bangladesh: A Missed Opportunity for Sustainability and Collaborative Governance’ (2022) 37(2) *The International Journal of Marine and Coastal Law* 337.



adopted under the Wildlife (Conservation and Security) Act 2012.<sup>46</sup> There are also potential jurisdictional conflicts between different government agencies managing marine protected areas without proper coordination, cooperation, and capacity.

Another drawback of the law can be found in the fisheries sector. As we know, implementation of fishery policy depends on an effective monitoring and assessment procedure. But the existing fishery policies lack proper clauses for adequate monitoring and impact assessment.

This article suggests that policymakers have not shown a strong commitment to sustainable management of marine resources and that the 2020 Act does not adequately address the shortcomings in capacity and coordination.<sup>47</sup> The declaration of marine protected areas without proper management and enforcement measures is seen as ineffective and suggests a lack of commitment to their effective management.

### **3.3. Coast Guard Act 2016**

The Coast Guard Act 2016 is the most praiseworthy initiative by the Bangladesh Government. The Bangladesh Coast Guard is responsible for ensuring maritime safety and security, fisheries management and conservation, protecting the country's maritime borders, and supporting maritime economic activities through monitoring, interception, coordination with other law enforcement agencies, and enforcing laws and regulations related to maritime activities.<sup>48</sup>

While trying to close loopholes in the legal system, many legislation in Bangladesh has gone too far. The Bangladesh Coast Guard (BCG) and the Bangladesh Navy have been pushing for more authority to visit and arrest individuals in Bangladesh's maritime zones, but this issue remains unresolved due to disagreements between the Ministry of Foreign Affairs and the Ministry of Defence (MoD). Act passed in 2016 granting coast guard personnel the authority to uphold the law in Bangladesh's maritime zones. This amendment allows coast guard officers to arrest anyone suspected of committing a crime under Bangladeshi law within its Exclusive Economic Zone (EEZ). The *Territorial Waters and Maritime Zones (Amendment) Act, 2021* has empowered the Government, by publishing a notification in the official Gazette, to grant any gazetted officer of the Bangladesh Navy or Bangladesh Coast Guard the power to arrest any person and investigate offenses related to this Act.<sup>49</sup> But there is no focus on capacity building of the coast guard and advancement of technological equipment. As a result the huge and resourceful maritime boundary of the country has not been utilised properly till date. However, the United Nations Convention on the Law of the Sea (LOSC) only permits coastal states to enact laws that apply to their rights in each maritime zone.

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<sup>46</sup> *ibid.*

<sup>47</sup> *ibid.*

<sup>48</sup> The Coast Guard Act 2016, Preamble.

<sup>49</sup> The Territorial Waters and Maritime Zones (Amendment) Act 2021, s 28.

### **3.4. The Navy Ordinance 1961**

The Bangladesh Navy Ordinance of 1961 is a pivotal legislative document that plays a critical role in defining the roles, responsibilities, and code of conduct for naval personnel which highlights the navy's commitment to safeguarding Bangladesh's maritime borders, combating maritime threats, and contributing to regional and global maritime security efforts. The primary objective of the Bangladesh Navy is to defend the sovereignty of Bangladesh's internal waters, territorial sea, contiguous zone, exclusive economic zone, and continental shelf, while also promoting riverine and maritime economic activities, including the free flow of riverine and seaborne trade.<sup>50</sup>

While the Bangladesh Navy Ordinance of 1961 provides a framework for the functioning and discipline of naval personnel, it may have some shortcomings regarding the role of navy personnel in maintaining maritime security.

Maintaining maritime security often requires seamless coordination between different government agencies and international partners. The Bangladesh Navy, Coast Guard, and River Police are three major law enforcement agencies while each agency has its specific mandate, there is an overlapping of jurisdiction in some areas, which can create challenges in coordinating their activities effectively. The ordinance may not provide clear mechanisms or guidelines for effective inter-agency cooperation, which could hamper the navy's efforts in responding to complex maritime security issues.

The ordinance does not adequately address the need for continuous training and skill development of naval personnel regarding technology in naval operations. It should be inaugurated provisions sufficiently address the importance of cybersecurity measures to protect naval systems and data from cyber-attacks.

In the aspect of maritime security implementation, the ordinance might not clearly highlight the navy's responsibility in upholding maritime laws, which are essential for protecting the country's maritime resources and include fighting piracy, illicit fishing, and human trafficking.

The ordinance does not adequately promote civil-military integration, cooperation and conduct public awareness which is crucial for addressing non-traditional security threats, such as environmental challenges and humanitarian crises, that can impact maritime security.

Mostly important is that the ordinance mentions different forms of punishment, such as long term imprisonment and death, depending on whether the offense is committed with intent to assist the enemy or not. This ambiguity may create uncertainty and inconsistency in the application of punishments, leading to potential loopholes or unfair treatment.<sup>51</sup>

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<sup>50</sup> Ehsan Abdullah, *Bangladesh Navy- in War and Peace invincible at Sea Bangladesh* (Audacity of Hope 8 February 2014) <<https://mygoldenbengal.wordpress.com/2014/02/08/bangladesh-navy-in-war-and-peace-invincible-at-sea/>> accessed 12 July 2023.

<sup>51</sup> The Navy Ordinance of 1961, s 29, 30, 31, 32.

It is the demand of the ages to develop and update the Bangladesh Navy Ordinance for maritime security, this includes priorities modernization, comprehensive training, and cybersecurity measures, strengthen civil-military cooperation, enhance maritime domain awareness, and foster regional and international partnerships to address emerging maritime security threats effectively.

#### **4. Challenges of Bangladeshi Legal Regime for Facing Non-conventional Threats to Maritime Security**

Developing coastal states face challenges in addressing maritime non-conventional threats due to two main reasons. Firstly, inadequate provisions of international law, in particular, the United Nations Convention on the Law of the Sea (UNCLOS-III) as well as the combination, harmonisation and lacking of municipal laws and regulations. Secondly, the states struggle with financial and technological constraints in managing their maritime zones.<sup>52</sup> This section will focus only on the inadequacy of municipal laws and regulations of Bangladesh with regard to certain non-conventional threats to maritime security. Out of a range of non-conventional threats to maritime security, the issue of piracy, trafficking, maritime terrorism, illegal fishing, and pollution of marine environment will be investigated.

##### **4.1. Piracy**

The term 'pirate' and 'piracy' is avoided in international law due to the constraints it poses. The Harvard Research on International Law Group's Draft Convention in 1932 on Piracy which was first attempt to define the term internationally.<sup>53</sup>

The concept of piracy remained confined to the 'high seas,' and various definitions were proposed by scholars and international bodies.<sup>54</sup> The provisions of the Geneva Convention of 1958 on the High Seas influenced UNCLOS-III, which addresses piracy in Articles 100-107. Notably, the 1958 Convention did not cover "terrorism" or "hijacking" of vessels within piracy. A serious scholar of international law, like I.L. Oppenheim has delivered the definition: "Piracy must be defined as every unauthorised act of violence against persons or goods committed on the 'open sea' either by a private vessel against another vessel or by a mutinous crew or passengers against their own vessels".<sup>55</sup>

Piracy has generated a wave of extensive distress in the whole world where only the collective action can help to reduce the piracy attack.<sup>56</sup> Bangladesh has confronted significant financial and reputational damages as a result of criminal activities in the Bay of Bengal. Bangladesh has declared certain parts of its coast as "high-risk areas"

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<sup>52</sup> *ibid.*

<sup>53</sup> Singh (n 25).

<sup>54</sup> Christ C Joyner, 'Off-shore Maritime Terrorism' (1984) 36(4) *Naval War College Review* 213.

<sup>55</sup> I. L. Oppenheim, *International Law* (8th edn, Longmans, Green & Co., London 1955) 608-609.

<sup>56</sup> *ibid.*

due to the threat of piracy and other criminal activities.<sup>57</sup> Bangladeshi sea robbers differ from global maritime pirates as they lack the capability to endeavor into deep seas.<sup>58</sup> Instead, they engage in armed robbery, minor theft, and banditry targeting anchored ships near the coast or even within ports. The losses incurred by traders due to sea-borne robbery globally are estimated to be billions of dollars annually.<sup>59</sup>

The Bangladesh Coast Guard (BCG) faced resource limitations. It is modernizing the protection of international shipping, providing improved security for fishermen and coastal mariners. Some coastal areas in Bangladesh lack sufficient security assets and are effectively governed by criminal gangs with ties to local politicians and police.<sup>60</sup> For this reason, these coastal areas are regulated by organized criminal organizations with brutality and criminal skill.<sup>61</sup>

The influx of Rohingya refugees to Bangladesh in 2017 has led to an increase in incidents of piracy and crews, boatmen, fishermen, and owners of cargo trawlers and engine boats face risks from pirate attacks, making it unsafe for them in the Bay of Bengal.<sup>62</sup> The law enforcement agencies' role and involvement are crucial in combating these maritime security threats and ensuring the safety of individuals involved in maritime activities in the region.

A report by Suritec Piracy in August 2014 highlighted emerging piracy and robbery hotspots, including South China, Gulf of Guinea, and Bangladesh. According to a report by the International Maritime Bureau (IMB) in 2006, Chattogram port was designated as the most hazardous port globally due to frequent pirate attacks.<sup>63</sup> The port experienced 47 incidents of robbery that year. This situation had a detrimental effect on the port's reputation, and many ships that were willing to dock at Chattogram port agreed to do so only at an increased cost to cover the perceived risk. Consequently, the increased cost of import and export had a negative impact on the economy.<sup>64</sup>

## 4.2. Trafficking

The Bay of Bengal has become a hub for drug production, with drug smugglers establishing networks that engage in illicit activities like human trafficking and gun

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<sup>57</sup> Jubeda Chowdhury, *Bangladesh's Role in Combating Maritime Threat in the Strategic Bay of Bengal* (Srinagar 18 January 2022) <<https://kashmirreader.com/2022/01/18/bangladeshs-role-in-combating-maritime-threat-in-the-strategic-bay-of-bengal/>> accessed on 10 July 2023.

<sup>58</sup> Moutushi Islam, 'Maritime Security Challenges for Bangladesh: Response Options' (2019) 40(3) *BISS* 276.

<sup>59</sup> *ibid.*

<sup>60</sup> Ari A. Kohen, 'Maritime Piracy on the Bay of Bengal: A Case Study of Maritime Crime, Targeted Intervention, and the Diffusion of Guardianship' (PhD thesis, American University 2017).

<sup>61</sup> *ibid.*

<sup>62</sup> *ibid.*

<sup>63</sup> Shahadat Hossain Chowdhury, 'How Ctg Port was Rid of Pirates' *The Business Standard* (Dhaka, 25 February 2022) <<https://www.tbsnews.net/dropped/trade/how-ctg-port-was-rid-pirates-376264>> accessed on 25 March 2023.

<sup>64</sup> *ibid.*

smuggling. These networks primarily utilize sea routes due to the extensive coverage and vastness of the ocean.

#### **4.2.1. Human Trafficking**

Human trafficking by sea gained significant attention in Bangladesh in 2015 when international media reported the rescue of 72 Bangladeshi men from a jungle camp in Thailand.<sup>65</sup> These individuals were victims of organized slave trade, lured with promises of employment but later sold as slaves. Many Bangladeshi workers seek employment in East Asian countries, and human traffickers exploit this demand to traffic people from Bangladesh.<sup>66</sup>

There are various dreadful impacts of sea-route human trafficking on the society and individual's life where psychological and health impact is very much increasing on the trafficking victims.<sup>67</sup> There are three adverse consequences apparent from the sea-route human trafficking in Bangladesh:<sup>68</sup> Firstly, Sea-route human trafficking victims face severe physical distress. They have to face sexual violence which means physical contract with others, causes sexually transmitted diseases like HIV. As illegal immigrants, the victims are eliminated from the protection of different states. Women who have been in prostitution may face stigma upon returning home, limiting their opportunities for employment and incapable to trust in a social relationship.<sup>69</sup> Psychological Impact, is the second consequences where traffickers use tactics of mental pressure through threats, fear, and physical and emotional violence upon the victims. Trafficking industry developed by exploiting the victims through family dysfunction, homelessness, psychologically manipulation, childhood violence etc.<sup>70</sup> Thirdly, the economic impact of human trafficking is significant, known as modern slavery, with the industry generating approximately 150 billion US dollars annually.<sup>71</sup> One-third of the revenue generates from Asia and surprisingly half of this revenue comes from industrialized countries.<sup>72</sup>

#### **4.2.2. Arms Trafficking**

Illegal arms trafficking in the Bay of Bengal poses another non-conventional threat to Bangladesh. Arms suppliers use ports and maritime routes as transit points, and Bangladesh has encountered incidents of illegal arms seizures. Sea-borne robbery is

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<sup>65</sup> Ataus Samad Raju, 'Non-Conventional Maritime Threats for Bangladesh Security' *Bangla News* (Dhaka, 10 September 2016) <<https://www.banglanews24.com/english/open-forum/news/bd/56143.details>> accessed on 5 July 2023.

<sup>66</sup> *ibid.*

<sup>67</sup> MD Rahaman, 'Human Trafficking in South Asia (Special preferences on Bangladesh, India and Nepal): A Human Rights Perspective' (2015) 20(3) *IOSR Journal of Humanities and Social Science*

<sup>68</sup> Arif Ahmed, 'Combating Sea-route Human Trafficking in Bangladesh: A Critical Analysis on Legal and Institutional Framework' (2017) 6(7) *Asian Journal of Research in Social Sciences and Humanities* 980.

<sup>69</sup> *ibid.*

<sup>70</sup> *ibid.*

<sup>71</sup> *ibid.*

<sup>72</sup> Rahaman (n 67).

also a concern, with incidents occurring in deep seas and coastal areas. These robberies involve seizing ships and cargo, demanding hefty ransoms to avoid violence. The Bay of Bengal, along with the Pacific region, Indian Ocean, Somalia coast, Malacca Strait, and Singapore, is considered a high-risk area.

#### 4.2.3. Drug Smuggling

Drug smuggling through the sea has been prevalent for decades, and terrorist groups sometimes collaborate with drug traffickers. Pakistan, a neighboring South Asian country, is known as the “Golden Crescent” for illegal drug supply, and Myanmar, Bangladesh’s eastern neighbor, is a major hub for drug trafficking as the “Golden Triangle” state. Bangladesh could be affected as a transit point for drug peddlers.<sup>73</sup>

#### 4.3 Illegal Fishing

The fishing industry plays a crucial role in providing nutrition and protein, particularly important for an overpopulated country like Bangladesh, where maritime fishing is essential for food security. However, Bangladeshi fishermen have long faced security issues, including torture, killings, and robberies within Bangladesh’s maritime territory. Numerous sea robbery groups operate in the Bay of Bengal, causing immense difficulties for fishermen.<sup>74</sup>

The Cox's Bazar District Fishing Trawler Owner Association (DFTOA) estimated that over the past five years, at least 411 fishermen were killed, and 1,000 others were injured by robbers. Bandits pose significant obstacles, while the Bangladesh Navy, constrained by equipment shortages and limited manpower, has limited ability to prevent such activities. Additionally, Myanmar’s fishermen violate international maritime laws by encroaching on fishing grounds, depriving Bangladeshi fishermen of their livelihoods.<sup>75</sup>

Twenty percent of the country’s fisheries income and five percent of the GDP come from sea-based activities, making it vital for sustainable food security and the national economy. Without a robust national policy in this sector, smooth and sustainable growth becomes challenging. Poverty and unemployment also drive some coastal poor communities towards robbery as an alternative source of income.<sup>76</sup>

Illegal fishing activities in Bangladesh’s maritime zones also pose grave national security challenges. For instance, seafaring fishermen in Bangladesh assert that over 200 trawlers arrive in Bangladesh annually, despite the fact that 10–12 foreign fishing vessels are apprehended by the relevant authorities annually.<sup>77</sup> When any of the IUU

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<sup>73</sup> Ko-Lin Chin, *The Golden Triangle: Inside Southeast Asia’s Drug Trade* (1st edn, Cornell University Press 2009).

<sup>74</sup> *ibid.*

<sup>75</sup> *ibid.*

<sup>76</sup> *ibid.*

<sup>77</sup> Afifat Khanam Ritika, ‘IUU Fishing: A Serious Threat to Bangladesh’s Marine Catch’ *The Daily Sun* (Dhaka, 19 September 2022) <<https://www.daily-sun.com/printversion/details/645481/IUU-Fishing:-A-Serious-Threat-to-Bangladeshs-Marine-Catch>> accessed 30 May 2023.

vessels is in danger, they band together, use radio communication to alert other trawlers to their location, and transmit signals to each other. The very few of this trawlers and their crew were detained by the Bangladesh Navy.

#### **4.4. Maritime Terrorism**

Bay of Bengal does not have many incidents regarding maritime terrorism although there is always a potential threat to Bangladesh. Terrorism specially based on religious motivation poses significant risks to “soft” targets like population centers, transport hubs, cultural landmarks, discipline forces working stations and tourist attracted places along the coastline of Bangladesh.

Bangladesh is facing a sustained threat from jihadist attacks since 2015, with two jihadist groups, Jamaat-ul Mujahideen Bangladesh (JMB) and Ansarul Islam (Ansar), targeting foreigners, secular activists, intellectuals, religious minorities, and other perceived opponents. The expansion of these groups is largely rooted in domestic political dynamics, which influence state efforts against them. The 2016 siege in Dhaka's Gulshan neighborhood led to a reconsideration of jihadist militancy's roots in the country. The report analyzes the roots of Bangladesh's jihadist groups, their goals, organizational dynamics, recruitment patterns, and links to regional and transnational networks.<sup>78</sup> Another incident was foiled attack on Chittagong port in 2004 where militants from the banned group Harkat-ul-Jihad al-Islami Bangladesh (HuJI-B) arrived in a boat and attempted to detonate explosives at the Chittagong port. However, security forces foiled the attack.<sup>79</sup> These incidents demonstrate the ongoing deliberate threat of terrorism from the sea in Bangladesh, and the need for robust coastal security measures to prevent such attacks.

#### **4.5. The Pollution of the Marine Environment**

Marine environment is called the lungs of of the earth. The marine environment is deteriorating due to unsustainable utilization and exploitation of ocean resources and various sources of pollutants released into the ocean.<sup>80</sup>

Marine pollution in Bangladesh is primarily caused by both land-based and sea-based sources.<sup>81</sup> The main contributors to land-based pollution are point and non-point sources, while sea-based pollution is mainly attributed to shipping activities in the sea. This pollution poses risks to human health and the marine ecosystem due to exposure

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<sup>78</sup> Crisis Group, 'Countering Jihadist Militancy in Bangladesh' (Crisis Group 28 February 2018) <<https://www.crisisgroup.org/asia/south-asia/bangladesh/295-countering-jihadist-militancy-bangladesh>> accessed 5 July 2023.

<sup>79</sup> *ibid.*

<sup>80</sup> *ibid.*

<sup>81</sup> UNEP, 'An Overview of Land Based Sources of Marine Pollution. Jamaica: United Nations Environmental Program' (UNEP 2001). <[https://wedocs.unep.org/bitstream/handle/20.500.11822/28660/CEP\\_TR\\_33en.pdf?sequence=1&isAllowed=y](https://wedocs.unep.org/bitstream/handle/20.500.11822/28660/CEP_TR_33en.pdf?sequence=1&isAllowed=y)> accessed 5 June 2023.

to organic and inorganic pollutants, particularly from ship-breaking activities.<sup>82</sup> Studies indicate that land-based marine pollution is the most significant threat in Bangladesh.<sup>83</sup> Therefore, urgent legislation is mandatory to regulate marine resource exploitation and utilization and protect the marine environment, with a specific focus on addressing land-based marine pollution.<sup>84</sup>

The pollution of the marine environment is considered a significant offense in Bangladesh. Rivers that flow through China, Nepal, India, and finally Bangladesh carry waste from the upper regions and deposit it into the Bay of Bengal. This includes various types of chemical and industrial waste, which pose harm to both living and non-living resources.

The Bay of Bengal is home to approximately 20 percent of all living resources and 80 percent of non-living resources. Scientists estimate that there are nearly half a million types of living and non-living resources in the sea. One major cause of sea pollution is the discharge of oil from ships and vessels, which spreads over large areas, adversely affecting fisheries.<sup>85</sup>

The ship breaking industry in Bangladesh is a contentious issue due to its environmental pollution. During the ship recycling process, not all materials can be properly recycled, leading to the generation of toxic waste that poses severe harm to the environment. Scrapped ships contain significant amounts of lead, cadmium, arsenic, zinc, chromium, and various types of oil.<sup>86</sup>

Ship breaking activities in Bangladesh pose threats to the territorial and marine environment, as well as public health, due to inadequate disposal of materials. The rising temperature from climate change contributes to sea level rise, particularly affecting low-lying delta regions.<sup>87</sup> Annual sea level rise of 1 cm in Bangladesh impacts sectors such as agriculture, fisheries, tourism, ecosystems, and ports. Maritime-related sectors face significant threats from climate change impacts.

The Bangladesh Environment Conservation Act (ECA) of 1995, last amended in 2010, is the primary legislative framework for environmental protection in Bangladesh. It aims to conserve and improve the environment while controlling and mitigating pollution. The Act includes provisions such as declaring ecologically critical areas, regulating vehicle emissions, requiring environmental clearance for projects,

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<sup>82</sup> EPC, 'Oil Spills' Effects on Human Life. Environmental Pollution Center' (EPC 2018) <<https://www.environmentalpollutioncenters.org/oil-spill/humans/>> accessed 11 June 2023.

<sup>83</sup> Md. M. Maruf Hossain, and M. Mahmudul Islam, *Ship Breaking Activities and its Impact on the Coastal Zone of Chittagong, Bangladesh: Towards Sustainable Management*. Chittagong (1st YPSA 2006).

<sup>84</sup> A.J. Mmochi, and J. Francis, *Land Based Activities and Sources of Pollution to the Marine, Coastal and Associated Fresh Water Ecosystems in the Western Indian Ocean Region* (IMS 2003).

<sup>85</sup> Umme Habiba, 'Marine Pollution in Bangladesh is Impeding Blue Economy Growth' *The Business Standard* (Dhaka 3 November 2003).

<sup>86</sup> *ibid.*

<sup>87</sup> *ibid.*



regulating industries and development activities through discharge permits, establishing standards for air, water, noise, and soil quality, setting limits for waste discharge and emission, and formulating environmental guidelines.<sup>88</sup> But the act does not contain any provision targeted at marine pollution. It also does not contain any mechanism for implementing the international laws and conventions Bangladesh has ratified.<sup>89</sup> Unsurprisingly, there has been no exclusive specialized maritime environmental court established in this act for ensuring justice regarding the crime related marine environment

## **5. Conclusion**

Bangladesh aspirations to take a leading role in maritime security in the Bay of Bengal Region and to achieve this, it must ensure that its legislative framework aligns with its maritime security goals and international obligations under the LOSC and other treaties. While Bangladesh's security concerns are valid, its navy and coast guard have considerably developed their capabilities since the country's independence in 1971. Capabilities in maritime security of Bangladesh have improved significantly over the past two decades, but its domestic legal framework has not retained pace, insufficient to support national maritime security goals. This has resulted in operational limitations and impedes the efforts of its maritime security. To effectively support its regional maritime security objectives, legislative framework of Bangladesh needs to meet both adequacy and legitimacy standards. This is critical and very challenging on meeting the demands of maritime security in a progressively complicated region upholding the commitment of Bangladesh to establish principles and regulations of international order.

Law enforcement agencies play a crucial role in combating these threats, and concerted efforts are needed to strengthen cooperation among the internal instructions of the country to ensure a comprehensive and effective response. By addressing these challenges head-on and adopting a proactive approach, Bangladesh can better protect its maritime interests and contribute to the wider efforts of ensuring maritime security in the region. To address these issues effectively, Bangladesh must prioritize capacity building in regulatory frameworks, institutional structures, human resources, technology, infrastructure, and maritime diplomacy. By doing so, the country can intensify its maritime security and defend its interests in the evolving global maritime landscape.

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<sup>88</sup> Arif Ahmed, 'Conservation of ECAs' *The Daily Star* (Dhaka, 6 Jun 2017). <<https://www.thedailystar.net/law-our-rights/conservation-ecas-1415971>> accessed on 15 June 2023.

<sup>89</sup> *ibid.*

