SECURITY DILEMMAS IN MARITIME LAW ENFORCEMENT DUE TO OVERLAPPING CLAIMS BETWEEN COASTAL AND ARCHIPELAGIC STATES

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ABSTRACT

The delimitation of maritime boundaries remains one of the most complex issues in the international law of the sea. The 1982 United Nations Convention on the Law of the Sea (UNCLOS 1982), particularly Articles 74 and 83, mandates coastal states to delimit their Exclusive Economic Zone (EEZ) and Continental Shelf by agreement on the basis of international law to achieve an equitable solution. However, the absence of a mandatory timeframe under UNCLOS 1982 often causes negotiations to stall for decades, resulting in zones of overlapping claims (undelimited maritime boundaries). This article aims to analyze how the negotiation requirements in UNCLOS 1982 inadvertently trigger a Security Dilemma in maritime law enforcement operations and to explore potential mitigation strategies. Employing a qualitative normative-doctrinal legal research methodology integrated with a Structural Realism perspective, this study examines law enforcement interactions through statutory, conceptual, and case study approaches, specifically focusing on the South China Sea–North Natuna Sea complex and the Ambalat Block. While previous scholarship (e.g., Schofield, 2012; Beckman, 2013) primarily examines maritime disputes through general geopolitical or dispute-settlement frameworks, this article offers a novel contribution by systematically bridging normative-doctrinal legal gaps under UNCLOS 1982 with the operational action-reaction dynamics of civil-paramilitary instruments (Coast Guards) in grey-zone operations. The findings indicate that the lack of formal boundaries leads to a direct clash between mandatory domestic jurisdiction and non-jurisdiction principles. Routine law enforcement operations, especially those utilizing Coast Guard fleets are perceived by opposing states as covert military threats and attempts to establish a fait accompli. This dynamic induces an action-reaction spiral and heightens the risk of accidental confrontation at sea. The article concludes that maximizing Provisional Arrangements pursuant to Articles 74(3) and 83(3) of UNCLOS 1982, reinforced with a robust "without prejudice" clause, is critical to decoupling law enforcement and economic cooperation from underlying sovereignty disputes, thereby maintaining regional maritime stability.

Keywords: UNCLOS 1982, Security Dilemma, Maritime Law Enforcement, Maritime Boundary Delimitation, Provisional Arrangements.

ABSTRAK

Penetapan batas maritim adalah persoalan paling rumit dalam hukum laut. UNCLOS 1982 (khususnya Pasal 74 dan 83) mewajibkan negara pantai menetapkan batas ZEE dan Landas Kontinen melalui kesepakatan berdasarkan hukum internasional agar diperoleh solusi yang adil. Namun karena tidak ada batas waktu yang mengikat, perundingan sering tertunda lama hingga muncul wilayah tumpang tindih klaim karena batas belum jelas.Artikel ini menilai bagaimana kewajiban perundingan dalam UNCLOS 1982 secara tidak langsung memicu *Security Dilemma* dalam operasi penegakan hukum maritim, serta membahas strategi mitigasinya. Dengan metode hukum normatif-doktrinal kualitatif dan perspektif *Structural Realism*, penelitian berfokus pada kompleks Laut Tiongkok Selatan–Laut Natuna Utara serta Blok Ambalat. Temuan menunjukkan bahwa ketiadaan batas formal menyebabkan benturan antara yurisdiksi domestik yang harus dijalankan dan prinsip non-yurisdiksi. Operasi penegakan hukum yang rutin—terutama oleh penjaga pantai—dapat dianggap negara lain sebagai ancaman militer terselubung dan upaya menciptakan *fait accompli*. Pola ini berpotensi memicu spiral *action–reaction* dan meningkatkan risiko konfrontasi yang tidak disengaja di laut.Kesimpulannya, memaksimalkan *Provisional Arrangements* sesuai Pasal 74(3) dan 83(3) UNCLOS 1982, disertai klausul kuat *“without prejudice”*, penting untuk memisahkan penegakan hukum dan kerja sama ekonomi dari sengketa kedaulatan, sehingga stabilitas maritim kawasan tetap terjaga.

Kata kunci: *UNCLOS 1982, Security Dilemma, penegakan hukum maritim (Maritime Law Enforcement), penetapan batas maritim (Maritime Boundary Delimitation), Provisional* arrangements.

INTRODUCTION

Maritimes are strategic domains that play a central role in international trade, food security, energy resources, and global geopolitics. The 1982 United Nations Convention on the Law of the Sea (UNCLOS 1982) is often referred to as the "Constitution of the Oceans" because it provides a comprehensive legal framework governing all maritime spaces and activities (UN, 1982). However, UNCLOS 1982 is not a flawless instrument. One of the most fundamental challenges in its implementation lies in determining maritime boundaries between countries that are in or adjacent to each other (Ardianto, etc., 2013).

Articles 74 and 83 of UNCLOS 1982 stipulate that the delimitation of the Exclusive Economic Zone (EEZ) and Continental Shelf shall be conducted through negotiations on the basis of international law to achieve a just solution. This principle emphasizes the peaceful resolution of disputes. However, in practice, these mandatory negotiations often take years, even decades, to produce a final agreement (Tanaka, 2004).

The absence of definitive maritime boundaries creates zones of overlapping claims. In these areas, coastal states perceive themselves as having sovereign rights and legitimate jurisdiction to conduct law enforcement activities, such as fisheries patrols, preventing smuggling, and protecting their sovereignty (Iswardhana, 2026).

This is where the Security Dilemma arises. When State A sends Coast Guard or Navy vessels to enforce the law in overlapping areas to safeguard its sovereignty and natural resources, State B perceives this action as provocative, expansive, or a violation of its sovereignty. State B responds by increasing its military or law enforcement presence in the same location. This defensive stance from each party, based on legal uncertainty, triggers a spiral of escalating tensions, ship arrests, and even the potential for armed conflict (Herz, 1951).

This article aims to analyze how the negotiating requirements of UNCLOS 1982 inadvertently created a precedent for a security dilemma in maritime law enforcement operations and explores mitigation strategies to maintain regional maritime stability.

METHODOLOGY

This research uses a qualitative approach within the framework of normative-doctrinal legal research, combining normative analysis with an international relations analytical framework based on the perspective of Structural Realism. As explained by Peter Mahmud Marzuki (2005), normative legal research is a process of identifying legal rules, principles, and doctrines to address specific legal issues.

Methodologically, this study applies three primary approaches (Marzuki, 2005):

- Statutory Approach. An in-depth examination of relevant provisions in the 1982 United Nations Convention on the Law of the Sea (UNCLOS), specifically Article 74 (delimitation of the exclusive economic zone), Article 83 (delimitation of the continental shelf), Article 279, and Part XV regarding Dispute Settlement.
- Case Approach. An analysis of the dynamics and realities of law enforcement in maritime areas lacking defined boundaries (overlapping claims) such as the South China Sea, the North Natuna Sea, and Ambalat to observe how legal norms are applied during the escalation of actual disputes.
- Conceptual Approach. An examination and application of the "Security Dilemma" concept derived from the works of John H. Herz (1950) and Robert Jervis (1978), as an interdisciplinary analytical tool to explain behavioral patterns and the action-reaction dynamics of coastal state law enforcement agencies in areas of overlapping claims.

Primary Legal Materials was The official text of UNCLOS 1982 and relevant international court rulings (such as those from the International Tribunal for the Law of the Sea [ITLOS] and the International

Court of Justice [ICJ]). Secondary legal sources: Reputable scholarly journals, textbooks on the law of the sea, maritime security literature, policy papers, and official government documents.

Data analysis used a prescriptive-evaluative approach. The researcher categorized legal materials based on normative issues under UNCLOS 1982, identified interaction patterns among maritime law enforcement agencies, and formulated an analysis of the correlation between the obligation to negotiate territorial boundaries and the escalation of security dilemmas, in order to provide normative arguments and prescriptive recommendations for addressing the issue under study.

DISCUSSION

Security Dilemma in the Maritime Space

Historically, the concept of the security dilemma was first proposed by John H. Herz in his work *Political Realism and Political Idealism* (1951) and developed more systematically by Robert Jervis in his landmark article, "Cooperation Under the Security Dilemma" (1978). In the discourse of International Relations Theory, particularly within the Structural Realism or Neorealism School, this concept rests on the fundamental assumption of the anarchic structure of the international system. Anarchy in this context does not refer to chaos, but rather to the absence of a supreme authority or supranational government with a legitimate monopoly on the use of force to protect states from external aggression.

From an International Law perspective, this systemic anarchy does not imply a complete absence of legal norms, but rather highlights the decentralized nature of the international legal order. As Malcolm N. Shaw (2017) posits, unlike domestic legal systems governed by a centralized sovereign authority, international law operates horizontally among sovereign states, relying primarily on self-help mechanisms and state consent for compliance. This structural reality creates a complex interplay between legal obligations and state behavior: in the absence of a global enforcement apparatus, states frequently interpret international law, articularly rights over maritime boundaries and jurisdictional claims, through the lens of national security. Consequently, as critical legal scholar Martti Koskenniemi (2000) observes, international law in contested zones functions simultaneously as a framework for peaceful coexistence and an arena of hegemonic contestation, where states leverage legal instruments to reinforce their security postures without escalating into open conflict.

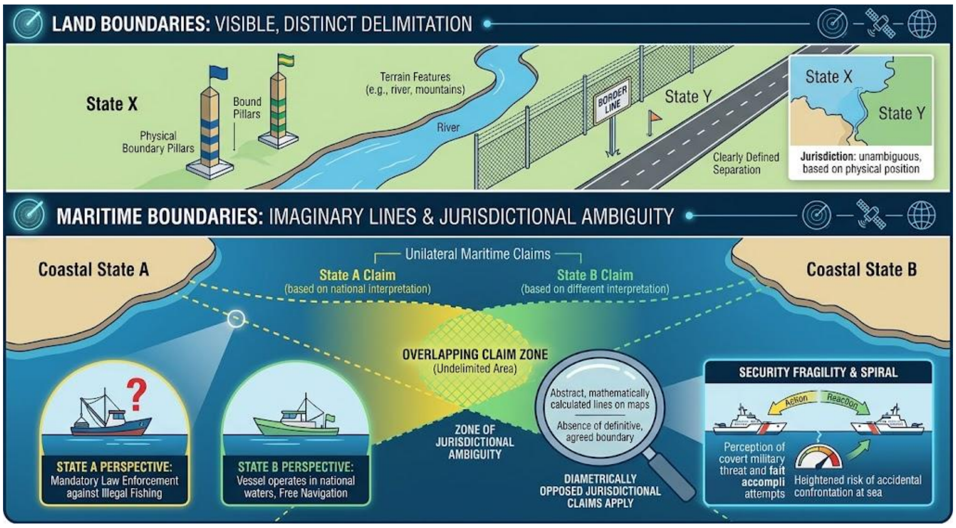
In conditions of international anarchy, states are forced to operate within a self-help system. To ensure their survival and sovereignty, a state will rationally take steps to increase its security capacity, whether through military modernization, increased defense budgets, or increased patrols in border areas. However, herein lies the central paradox: a nation's defensive actions are almost always perceived ambiguously by its neighbors (Charney & Alexander, 1993).

Neighboring nations, uncertain about the true intentions of another nation, will respond to such increased capacity with suspicion. They tend to assume the worst-case scenario, viewing these defensive measures as preparations for an offensive or a direct threat to their security. As a natural response, neighboring nations will retaliate by increasing their defenses or strengthening their physical presence in disputed areas. The end result of this dynamic is an escalating spiral of interactions (action-reaction spiral) that leads to accumulated tensions, an arms race, and an increased risk of involuntary armed conflict. Ultimately, the security levels of both parties actually deteriorate compared to the initial conditions before the defensive actions were taken.

Although the security dilemma theory was originally formulated against the backdrop of military confrontations on land and in the air during the Cold War, its application in the maritime space, particularly in areas with overlapping sovereign rights claims, has its own unique characteristics. These characteristics are catalyzed and exacerbated by the following three geopolitical, legal, and operational dimensions:

1. Boundary Uncertainty and Spatial Ambiguity. One of the most fundamental distinguishing elements between land and maritime domains lies in the physical form of territorial boundaries. Land boundaries are generally visibly marked using physical boundary pillars, territorial markers, perimeter fences, or clearly defined geographic features such as rivers and mountains. In contrast, maritime boundaries, such as the Exclusive Economic Zone (EEZ) and Continental Shelf, are imaginary, abstract, and mathematically calculated lines drawn above sea level based on baselines.

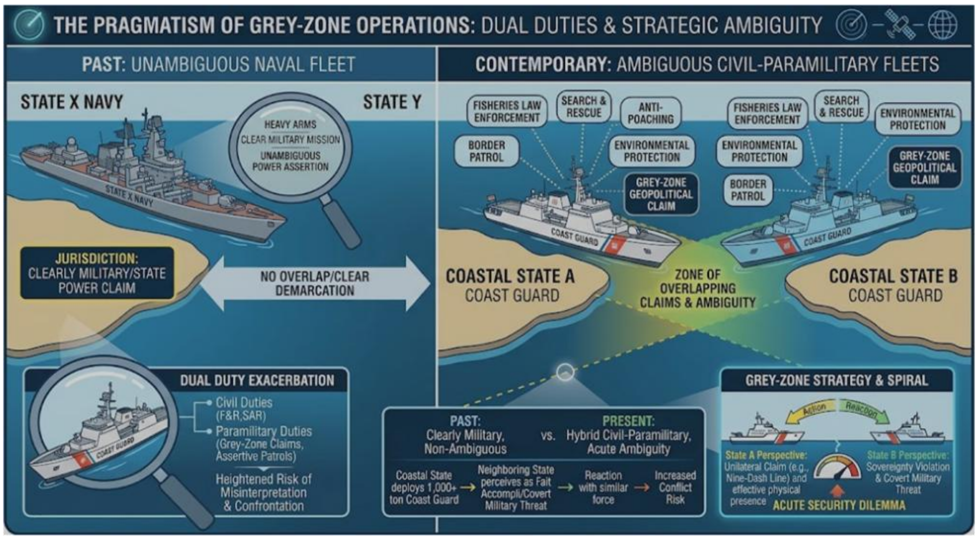
In situations where two or more countries have not yet formalized an agreement on maritime boundary delimitation (undelimited areas), these boundaries become highly problematic. Each country will publish its own unilateral claim maps based on its normative interpretation of international maritime law. This boundary uncertainty gives rise to acute jurisdictional ambiguity. When a maritime area is declared an EEZ by State A and simultaneously recognized as an EEZ by State B, two diametrically opposed jurisdictional claims apply in the overlapping area. This lack of clear boundaries creates security fragility, as any movement by foreign vessels can be perceived as a violation of national sovereignty or sovereign rights.



Picture 1: Boundary Uncertainty and Spatial Ambiguity

2. The Pragmatism of Grey-Zone Operations and the Dual Duties of Maritime Law Enforcement. The dynamics of contemporary maritime law enforcement are marked by a shift in the use of state instruments. While in the past, the presence of a naval fleet was the primary marker of a claim to power, today coastal states more frequently deploy maritime law enforcement agencies, or Coast Guards. The use of these civil-paramilitary instruments is often interpreted as part of grey-zone operations—a strategy to advance geopolitical positions and territorial claims without crossing the threshold of armed conflict.

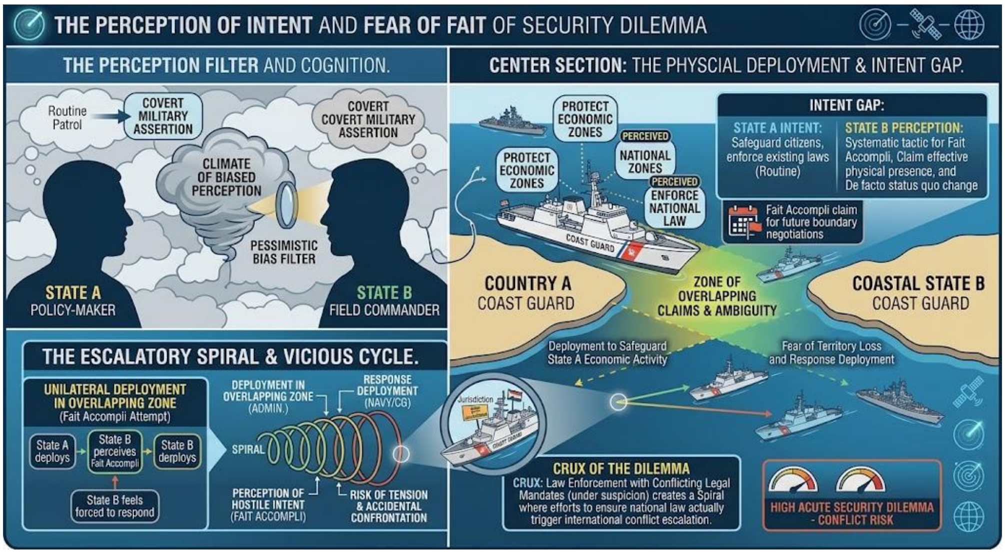
However, the deployment of these law enforcement agencies actually exacerbates the ambiguity that fuels the security dilemma. The modern Coast Guard is no longer simply equipped with small patrol boats to catch poachers, but rather a fleet with sophisticated navigation capabilities with a tonnage of 1,000 tons.



Picture 2: The Pragmatism of Grey-Zone Operations and the Dual Duties of Maritime Law Enforcement

3. Perception of Intent and Fear of Fait Accompli. The escalation of security dilemmas at sea depends heavily on the cognition and perceptions of political decision-makers and field commanders. In a climate of bilateral relations rife with mistrust, every operational maneuver will be assessed through a pessimistic bias.

When Country A permanently deploys a Coast Guard patrol unit or naval fleet in an overlapping area to safeguard the economic activities of its citizens or enforce its national laws, Country B will not view this as a mere routine administrative obligation. Country B will perceive this move as a systematic tactic to create a fait accompli, a strategy to de facto change the status quo on the ground. This allows Country A to claim effective occupation (effective occupation) when formal maritime boundary negotiations are held in the future. Fear of losing territory due to this fait accompli forces Country B to respond by sending its own warships or patrol vessels to the same coordinates. This direct interaction between law enforcement vessels operating under conflicting legal mandates and guided by suspicions of ill will is the crux of the security dilemma at sea: a vicious cycle in which efforts to ensure national law actually trigger the escalation of international conflict.



Picture 3: Perception of Intent and Fear of Fait Accompli

The 1982 UNCLOS Regime and the Obligation to Negotiate Boundaries

Article 74 paragraph (1) and Article 83 paragraph (1) of UNCLOS 1982 state: "The delimitation of the exclusive economic zone/continental shelf between States whose territories are opposite or adjacent shall be carried out by agreement on the basis of international law... in order to achieve an equitable solution." This mechanism is designed to be flexible so that States prioritize diplomacy. However, this flexibility gives rise to several fundamental problems, such as: No Mandatory Timeframe: UNCLOS does not stipulate a time limit for negotiations to be completed.

As a result, the status quo without clear boundaries can persist for decades. Limitations of Compulsory Dispute Settlement Mechanisms: While Part XV of UNCLOS provides for compulsory procedures entailing binding decisions, Article 298 allows participating states to exclude maritime boundary delimitation disputes from international judicial mechanisms (such as the International Court of Justice (ICJ) or the International Tribunal for the Law of the Sea (ITLOS). Multiple Interpretations of the Equitable Solution Principle: The concept of equity is subjective and is often interpreted unilaterally by each state based on historical claims, baselines, or specific geographic conditions.

Juridical Conflicts Between Coastal and Archipelagic States

The absence of a valid maritime boundary delimitation line agreed upon bilaterally or multilaterally creates a vacuum of legal uncertainty. In situations where two or more coastal states issue overlapping unilateral claims to the Exclusive Economic Zone (EEZ) or Continental Shelf, a fundamental conflict arises between two international legal principles regarding maritime law enforcement authority:

1. **The Principle of Mandatory Domestic Jurisdiction**. Under national law and the UNCLOS 1982 regime, a coastal state has sovereign rights to explore, exploit, manage, and conserve living and non-living natural resources in its EEZ (Article 56 of UNCLOS 1982). Consequently, domestic law enforcement agencies such as the Ministry of Maritime Affairs and Fisheries, the Maritime Security Agency, or the Maritime Police have a constitutional obligation to enforce national laws (such as the Fisheries Law) against any foreign entity or vessel conducting unauthorized activities in the claimed waters. From this state's perspective, tolerating the illegal activities of foreign vessels in the claimed area would be considered an infringement of economic sovereignty and a disregard for the mandate of the law.

2. **The Principle of Non-Jurisdiction and Immunity**. Conversely, other claimant states view the same maritime territory as an inseparable part of their own EEZ or national jurisdiction. Consequently, any attempt by law enforcement officials of another country to arrest, stop, or investigate vessels flying their flag is considered an illegal unilateral action, a violation of sovereign rights, and an unlawful intrusion. Foreign fishing vessels that are apprehended generally claim to be operating legally in their home country's traditional fishing grounds or EEZ.

This contradictory legal dispute sometimes creates operational impasse. Both parties act in the name of their respective national legal legitimacy, but these actions are interpreted by the opposing party as a violation of international law.

3. Escalation of Maritime Incidents. The most concrete manifestation of this clash of legal principles is the rise in the seizure of fishing vessels, which quickly escalates into complex diplomatic and security incidents. This phenomenon is exacerbated by the adoption of Grey-Zone Operations by certain countries. In grey-zone tactics, countries deliberately minimize the use of their naval fleets to avoid accusations of military aggression that could trigger outright war. Instead, they deploy civilian-paramilitary forces such as the Coast Guard, fisheries regulatory agencies, or even organized fishing groups (maritime militia). The deployment of these Coast Guard elements presents a tactical ambiguity:

On the one hand, the Coast Guard's presence can be claimed as a normal civil-administrative law enforcement activity that does not violate the principle of the prohibition on the use of force as stipulated in Article 2, paragraph (4) of the UN Charter. On the other hand, the Coast Guard's large and well-armed fleet is used assertively to deter law enforcement officials from neighboring countries who are arresting their fishermen.

A classic scenario that often occurs is when state officials arrest a foreign fishing vessel in an overlapping area, then a Coast Guard vessel from the fishermen's home country arrives and physically intervenes, such as by performing dangerous maneuvers, ramming, or cutting off navigational lanes to free the fishing vessel. This direct confrontational interaction between officials in an unbounded area is what locks the two countries into a security dilemma, where a routine law enforcement mission unexpectedly turns into a potential spark of military conflict.

A Case Study of the South China Sea and the North Natuna Sea

The maritime dispute in the South China Sea is the most manifest example of the security dilemma arising from overlapping claims and the absence of formal boundaries (Beckman, 2013). This conflict involves several coastal and island states in Southeast Asia (such as the Philippines, Vietnam, Malaysia, and Brunei) confronting China's unilateral historical claims, based on the nine-dash line concept. China's historical claims fundamentally conflict with the sovereign rights to the EEZ and Continental Shelf of ASEAN countries, as guaranteed under UNCLOS 1982 (United Nations, 1982; Prescott & Schofield, 2005).

The deadlock in boundary negotiations (Articles 74 and 83 of UNCLOS 1982) has triggered an escalation of grey-zone operations. China has massively deployed its large-tonnage China Coast Guard (CCG) fleet and maritime militia to escort its fishermen in overlapping areas, while obstructing other countries' oil and gas exploration activities (Schofield, 2012). When claimant states like the Philippines deploy their law enforcement vessels to protect national sovereign rights (Article 56 of UNCLOS 1982), these maneuvers are interpreted as threats by China. Conversely, the CCG's ramming, use of water cannons, and other dangerous maneuvering tactics have raised concerns among regional countries about attempts to create a fait accompli or effective physical control (effektivité) (Beckman, 2013).

Picture 4: China’s claimed vs UNCLOS role

The normative and geopolitical landscape of this dispute underwent a monumental shift following the landmark **2016 South China Sea Arbitration Award (*The Republic of the Philippines v. The People's Republic of China*, PCA Case No. 2013-19)** constituted under Annex VII of UNCLOS (PCA, 2016). In its unanimous Award, the Arbitral Tribunal unequivocally rejected China’s claims to historic rights within the maritime areas encompassed by the 'nine-dash line,' ruling that such claims lack legal effect to the extent they exceed the geographic and substantive limits of sovereign rights under UNCLOS 1982. Furthermore, the Tribunal concluded that none of the high-tide features in the Spratly Islands are capable of generating an Exclusive Economic Zone (EEZ) or continental shelf, thereby invalidating overlapping EEZ claims between China and neighboring littoral states in those specific areas.

Paradoxically, despite establishing legal clarity, China’s official non-participation in the proceedings and explicit non-compliance with the binding Award (*"non-acceptance and non-recognition"*) have significantly exacerbated the regional **security dilemma** (Jervis, 1978). By dismissing a final and binding legal mechanism provided under Article 296 and Annex VII of UNCLOS 1982, Beijing reinforced a structural perception among Southeast Asian claimant states that international legal instruments are insufficient to constrain great-power ambition in the absence of a centralized enforcement mechanism. Consequently, rather than defusing tensions, the post-2016 legal divergence has deepened the action-reaction spiral: Southeast Asian states increasingly feel compelled to resort to external balancing and military deterrence, while China counter escalates through grey-zone coercion to enforce *de facto* control vividly illustrating how legal fragmentation and non-enforcement amplify the systemic anarchy driving maritime security dilemmas.

This legal uncertainty has triggered an escalatory spiral (action-reaction spiral) (Jervis, 1978). The Philippines has responded by strengthening its defense alliance with the United States and increasing its military presence, while China has intensified its land reclamation and militarization of artificial islands in the Spratly Islands. This phenomenon demonstrates that the UNCLOS negotiation requirements without a clear time limit have transformed a routine law enforcement mission into a regional power contest that threatens global maritime stability.

A Case Study of Ambalat Block (Indonesia–Malaysia)

The maritime dispute in the Ambalat Block (Celebes Sea) serves as a classic manifestation of a bilateral security dilemma between two neighboring Southeast Asian states, triggered by unresolved continental shelf and Exclusive Economic Zone (EEZ) boundaries following the 2002 judgment of the International Court of Justice (ICJ) regarding the status of Sipadan and Ligitan Islands (ICJ, 2002; Prescott & Schofield, 2005). Although Malaysia had unilaterally published its 1979 Map prior to the ruling, drawing continental shelf boundaries that encroached significantly upon Indonesia's archipelagic baselines in the Celebes Sea, the 2002 ICJ decision awarding sovereignty over Sipadan and Ligitan to Malaysia on the basis of *effectivités* fundamentally altered the strategic landscape. Malaysia subsequently sought to leverage this territorial award to solidify its maritime claims over the hydrocarbon-rich seabed of Ambalat, asserting that sovereignty over the islands naturally generated extended maritime zones, whereas Indonesia maintained that its status as an archipelagic state under UNCLOS 1982 entitled it to a 200-nautical-mile EEZ and continental shelf extending from its primary baseline, unconstrained by small offshore features (Djalal, 2006; Arsana, 2011).

Due to the persistent deadlock in boundary negotiations governed by Articles 74 and 83 of UNCLOS (Charney & Alexander, 1993; Tanaka, 2004), the Ambalat region has degenerated into a prolonged vacuum of legal certainty. This normative ambiguity is further exacerbated by high economic stakes, specifically overlapping claims over promising offshore energy blocks such as ND6 and ND7. In the absence of a mutually agreed maritime boundary, both nations have engaged in competitive assertions of jurisdiction: Malaysia granted unilateral oil exploration concessions to international energy conglomerates, which Indonesia interpreted as a illegal *fait accompli* designed to establish physical *effectivités* (Prescott & Schofield, 2005). In response, Indonesia authorized state-owned energy companies to conduct exploratory activities and intensified naval presences. The situation escalated into a classic action-reaction spiral (Jervis, 1978) as Indonesia deployed Indonesian Navy (*TNI AL*) warships and fighter aircraft to enforce its sovereign rights, while Malaysia deployed the Royal Malaysian Navy (*TLDM*) and the Malaysian Maritime Enforcement Agency (*MMEA*) to intercept Indonesian patrols.

These asymmetrical enforcement missions frequently resulted in dangerous naval standoffs, unauthorized airspace incursions, and cat-and-mouse maneuvers in disputed coordinates, bringing the two founding members of ASEAN to the brink of armed confrontation. The Ambalat crisis vividly demonstrates how unilateral economic exploitation and overlapping enforcement missions in undelimited maritime zones can transform routine border management into an escalating national security conflict. To mitigate such risks, the case underscores the imperative of entering into provisional arrangements of a practical nature pursuant to Articles 74(3) and 83(3) of UNCLOS 1982 incorporating an explicit "without prejudice clause" (Churchill & Lowe, 1999)thereby decoupling resource management and maritime law enforcement from final boundary determinations to preserve regional stability.

Provisional Arrangements and Conflict Resolution

Recognizing that maritime boundary delimitation negotiations are inherently complex, time-consuming, and prone to political impasse, the drafters of UNCLOS 1982 incorporated a pragmatic safety-valve mechanism. Specifically, Article 74(3) for the Exclusive Economic Zone (EEZ) and Article 83(3) for the Continental Shelf establish two complementary and legally binding duties for disputing states during the transitional period pending a permanent boundary agreement:

- **Obligation to Make Every Effort to Enter into Provisional Arrangements of a Practical Nature.** Coastal states are required to act in good faith to reach temporary, operational arrangements. These arrangements can take various forms, including Joint Development Areas (JDAs) for hydrocarbon exploitation, joint fisheries management regimes (Joint Fishing Areas), interim law enforcement lines, and coordinated naval or coast guard patrol procedures. The primary legal objective of these mechanisms is to functionalize economic activities and maritime security while formally "freezing" underlying sovereignty claims through a strictly enforced "without prejudice" clause (Churchill & Lowe, 1999; Beckman, 2013).

- **Duty Not to Jeopardize or Hamper the Reaching of a Final Agreement.** During the interim period, states are strictly prohibited from engaging in unilateral acts that could aggravate the dispute, alter the physical environment, or undermine negotiations. Unilateral activities such as constructing permanent artificial infrastructure, granting exclusive oil and gas concessions in overlapping zones, or executing aggressive law enforcement maneuvers violate this negative obligation by attempting to force a *de facto effectivité* (Tanaka, 2019).

Far from being mere theoretical ideals on paper, the practical utility and limitations of provisional arrangements are well-documented in regional state practice:

- **Hydrocarbon Joint Development (Success Case):** The **1979/1990 Malaysia–Thailand Joint Development Area (JDA)** in the Gulf of Thailand demonstrates how states can successfully bypass intractable continental shelf disputes by creating a joint administrative authority (*Malaysia-Thailand Joint Authority*) to share resource exploration costs and revenues equally (Maser, 1993; Schofield, 2007). Similarly, the **1989 Timor Gap Treaty** (and its successor, the 2002 Timor Sea Treaty) between Australia and Indonesia/Timor-Leste temporarily transformed a volatile maritime dispute into an economically productive zone without compromising the parties' ultimate boundary positions (Onorato & Valencia, 1990). These empirical precedents prove that joint development mechanisms effectively mitigate the bilateral *security dilemma* by substituting competitive unilateral exploitation with cooperative governance.
- **Joint Fisheries Regimes (Volatile Case):** Conversely, provisional arrangements in fisheries, such as the **2000 Sino-Vietnamese Agreement on Fisheries Cooperation in the Gulf of Tonkin**, highlight both the potential and fragile nature of enforcement cooperation (Gao, 2005; Zou, 2006). While the agreement established a Joint Fishing Zone and coordinated enforcement protocols, persistent non-compliance by local fishing fleets and asymmetrical coast guard enforcement have occasionally re-ignited localized tension.

Provisional arrangements are a critical prerequisite for regional maritime stability. By decoupling economic resource management from final sovereignty claims, states can prevent routine law enforcement activities and commercial exploration from escalating into armed conflict, fulfilling the peaceful settlement imperative codified in Article 279 of UNCLOS 1982.

Political Will

Although the Provisional Arrangements instrument was offered by UNCLOS 1982 as a pragmatic solution, the effectiveness of its implementation in practice depends heavily on the political will and good faith of the countries involved. In various regional cases, temporary arrangements often face fatal obstacles due to the politicization of sovereignty issues at the domestic level. Political leaders often worry that agreeing to joint management zones or refraining from law enforcement will be perceived by the domestic public as weakness or acquiescence to neighboring claims. Without good faith, provisional arrangements are often manipulated by hegemonic states to strengthen the legitimacy of their de facto claims.

Therefore, for provisional arrangements to effectively mitigate the security dilemma, practical agreements must explicitly include a "without prejudice" clause. This clause guarantees that any cooperation, joint patrols, or economic exploration conducted during the provisional arrangement period will never be interpreted as a recognition or relinquishment of sovereignty claims over future final territorial boundaries. Only with this legal guarantee can states work together to maintain maritime stability without feeling compromising their national sovereign rights.

CONCLUSION

The protracted maritime disputes, exemplified by the South China Sea conflict and the Ambalat Block standoff are driven not merely by competing territorial claims, but fundamentally by a systemic security dilemma operating within an ambiguous legal architecture. Through the integration of Structural Realism and normative legal analysis, the findings reveal that the absence of definitive maritime boundary delimitation under Articles 74 and 83 of UNCLOS 1982 creates a dangerous regulatory vacuum. In this vacuum, routine law enforcement patrols, unilateral resource explorations, and grey-zone operations executed by coastal states are inherently interpreted by neighboring states as provocative attempts to establish physical *effectivités*, thereby triggering an escalating action-reaction spiral that threatens regional maritime stability.

The empirical and normative trajectory of these disputes highlights both the potential and the structural limitations of international legal mechanisms. While the landmark 2016 South China Sea Arbitration Award provided critical legal clarity by unequivocally invalidating China’s 'nine-dash line' claims, Beijing's subsequent non-compliance underscores the weakness of horizontal international law lacking centralized enforcement. Similarly, the bilateral standoff in the Ambalat Block demonstrates how historical ICJ rulings such as the 2002 Sipadan-Ligitan judgment can inadvertently intensify maritime boundary friction when unilateral interpretations outpace diplomatic negotiations. Rather than resolving conflict, legal ambiguity and unenforced judicial awards have frequently prompted states to double down on military deterrence and external balancing.

To disrupt this dangerous trajectory, coastal states must urgently embrace the safety-valve mechanisms embedded in Articles 74(3) and 83(3) of UNCLOS 1982. As demonstrated by successful regional precedents such as the Malaysia–Thailand Joint Development Area (JDA), provisional arrangements of a practical nature offer a viable path to functionalize economic exploitation and maritime security without compromising ultimate territorial claims. By incorporating strict "without prejudice" clauses, disputing nations can effectively decouple resource management and law enforcement from sovereignty determinations. Ultimately, transforming volatile maritime frontiers into zones of cooperative governance is essential to mitigating the regional security dilemma and upholding the peaceful settlement imperative codified in Article 279 of UNCLOS 1982.

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