

# REACHING SDG TARGET 14.4 BY ESTABLISHING PROVISIONAL ARRANGEMENTS FOR LAW ENFORCEMENT OPERATION

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disampaikan 30/09/2024 – di-review 06/11/2024 – diterima 26/12/2024  
DOI: 10.25123/vej.v10i2.8570

## **Abstract**

*The research article argues that establishing provisional arrangements for law enforcement operations in overlapping maritime claims areas could be a viable option for claimant states to suppress illegal, unreported, and unregulated fishing (IUUF), which hinders progress toward achieving Sustainable Development Goal (SDG) Target 14.4. This target emphasizes sustainable fishing practices, marine life protection, and effective fish population management, aiming to prevent overfishing, reduce harmful fishing techniques, and ensure the sustainability of fish stocks. Under the 1982 UN Convention on the Law of the Sea, provisional arrangements for law enforcement operations can provide a practical framework for claimant states to conduct joint efforts, pending and without prejudice to the final resolution of overlapping maritime claims. To substantiate this argument, the article employs a juridical normative legal research method to: analyze the connection between SDG Target 14.4 and IUUF, which may impede progress toward the goal; examine the challenges of enforcing laws in overlapping maritime claims areas, including the factors contributing to IUUF in such contexts; and assess the potential impact of provisional arrangements for law enforcement on suppressing IUUF and advancing the achievement of SDG Target 14.4. The study highlights that these arrangements could serve as a collaborative interim solution, promoting sustainable development and marine ecosystem conservation while territorial disputes remain unresolved.*

## **Keywords:**

*law enforcement; overlapping maritime claim; provisional arrangement; sustainable development goals*

## **Abstrak**

Penelitian ini mengkaji pengaturan sementara atas operasi penegakan hukum yang dapat menjadi salah satu opsi yang dapat dipilih oleh negara-negara yang memiliki tumpang tindih klaim maritim di suatu wilayah, untuk menanggulangi tindakan *illegal, unreported, and unregulated fishing* (IUUF) yang dapat menghambat tercapainya SDG Target 14.4. SDG Target 14.4 berfokus pada penangkapan ikan berkelanjutan, perlindungan kehidupan di air, dan pengelolaan populasi ikan demi mencegah penangkapan ikan berlebih, mengurangi penangkapan ikan yang berbahaya, dan mempromosikan keberkelanjutan stok ikan. Berdasarkan Konvensi Hukum Laut PBB 1982, pengaturan sementara untuk operasi penegakan hukum dapat menjadi kerangka praktis operasi penegakan hukum, sambil menunggu dan tanpa mengesampingkan upaya mencapai delimitasi final wilayah dengan tumpang tindih klaim maritim. Penelitian ini akan menggunakan metode yuridis normatif untuk, pertama membahas SDG Target 14.4 dan hubungannya dengan IUUF yang dapat menghambat terwujudnya capaian Target; mendiskusikan operasi penegakan hukum di wilayah dengan tumpang tindih klaim maritim, termasuk hal-hal yang dapat menjadi dasar terjadinya tumpang tindih klaim serta hambatannya untuk menanggulangi IUUF di wilayah maritim yang masih dipersengketakan tersebut; dan mempertimbangkan konsekuensi pembentukan pengaturan sementara operasi penegakan hukum di wilayah tersebut terhadap penanggulangan IUUF dan pencapaian SDG Target 14.4.

## **Kata Kunci:**

penegakan hukum; pengaturan sementara; tujuan pembangunan berkelanjutan; tumpang tindih klaim maritim

## Introduction

On 25 September 2015,<sup>1</sup> the United Nations (UN) Sustainable Development Summit succeeded in adopting the *Transforming our World: the 2030 Agenda for Sustainable Development*<sup>2</sup> (SDG). It aims to respond to the ever-increasing disparity between the least developed and the developed states and address environmental concerns that come along with the development issue by 2030<sup>3</sup> with reaching its 17 goals, 169 constituent targets, and 231 evidence-based indicators.<sup>4</sup> The SDG is the successor of the Millennium Development Goals (MDG), dissolved in 2015.<sup>5</sup> Established in 2000, the MDG was primarily focused on developing states.<sup>6</sup> Experts consider that several of the MDG goals have been reached,<sup>7</sup> such as poverty reduction, an increase in primary education and gender equality, a decrease in child and maternal mortality, and access to sanitation.<sup>8</sup> Although recently established, the idea of the SDG was envisioned long ago.<sup>9</sup> In 1987, the Report of the World Commission on Environment and Development (the Brundtland Commission) defined sustainable development as “a development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”<sup>10</sup> The concept continued to be adopted in Agenda 21 during the 1992 Earth Summit and the 1997 Kyoto Protocol.<sup>11</sup>

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<sup>1</sup> Sasiko Fukuda-Parr, “Sustainable Development Goals (SDGs) and the Promise of a Transformative Agenda”, UN Committee for Development Policy Review, No. 11, August 2022, p. 2.

<sup>2</sup> United Nations General Assembly Resolution 70/1.

<sup>3</sup> John Stansfield, *The United Nations Sustainable Development Goals (SDGs): A Framework for Intersectoral Collaboration*, Whanake: The Pacific Journal of Community Development, Vol. 3, No. 1, 2017, p. 38.

<sup>4</sup> United Nations, 2015, *Transforming Our World: the 2030 Agenda for Sustainable Development*, United Nations, New York.

<sup>5</sup> Hafisah Fajar Jati, Susilo Nur Aji Cokro Darsono, Dedy Tri Hermawan, Wahdi April Salasi Yudhi, Ferry Fadzrul Rahman, *Awareness and Knowledge Assessment of Sustainable Development Goals Among University Students*, Jurnal Ekonomi & Studi Pembangunan, Vol. 20, No. 2, 2019, p. 164.

<sup>6</sup> Id.

<sup>7</sup> United Nations General Assembly Resolution 55/2.

<sup>8</sup> Jati, et al., supra note 2, p. 164.

<sup>9</sup> World Commission on Environment and Development, *Our Common Future*, Oxford University Press, Oxford, 1987, p. 43.

<sup>10</sup> Id.

<sup>11</sup> Jacobus A. Du Pisani, *Sustainable Development – Historical Roots of the Concept*, Environmental Sciences, Vol. 3, No. 2, 2006, p. 83–96.

The process of establishing the SDG started after the Rio Summit in 2012.<sup>12</sup> In parallel, the UN also convened “a public consultation at an unprecedented scope” that took a three-year-long and involved various stakeholders, including 88 domestic consultations convened and established door-to-door and online surveys.<sup>13</sup> The process resulted in the categorization of SDG targets, from 169 targets, 49 targets (29%) are considered to be easy to achieve, 91 targets (54%) need clarification, and 29 targets (17%) targets require significant work.<sup>14</sup> Yet, regardless of those categories, there are significant interlinkages between all of the SDG targets and other prevailing laws and regulations.<sup>15</sup> Often the individual achievement of each target relies on the reaching of others' targets.<sup>16</sup> Thus, it seems that the SDG's targets had been established and designed specifically to influence each other and stimulate collaborative innovation to integrate all economic, social, environmental, and governance.<sup>17</sup> Furthermore, among the 17 SDG goals, SDG goal 14 (SDG14) ‘Life Below Water’ is considered as the target that “interacts with all other SDGs.”<sup>18</sup> This fact arguably demonstrates the importance of SDG14. However, currently, SDG14 is also one of the SDG goals that has the lowest achievement level,<sup>19</sup> including SDG Target 14.4 which focuses on the conservation and sustainable use of the oceans, seas, and marine resources, including ending overfishing, illegal, unreported, and unregulated fishing (IUUF), and destructive fishing practices.<sup>20</sup>

One example of the interconnection of SDG Target 14.4. with other prevailing regulations could be seen in indicator 14.14.1 of the SDG Target 14.4., which stated the “proportion of fish stocks within biological sustainable levels.”<sup>21</sup> A fish stock is considered to be biologically sustainable if “its abundance is at [level] or greater than the level that can produce the maximum sustainable yield.”<sup>22</sup> The maximum

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<sup>12</sup> UNDP, Sustainable Development Goals, Background on the Goals, <https://www.undp.org/sdg-accelerator/background-goals>, accessed 26 June 2024.

<sup>13</sup> Id.

<sup>14</sup> ICSU et ISSC, Review of the Sustainable Development Goals: The Science Perspective, International Council for Science, Paris, 2015, p. 6.

<sup>15</sup> World Wildlife Fund, Improving International Ocean Governance for Life Below Water, WWF European Policy Office, Brussels, 2020, p. 8.

<sup>16</sup> European Commission, Sustainable development in the European Union: Monitoring report on progress towards the SDGs in an EU context. Statistical books, Publications Office of the European Union, Luxembourg, 2018.

<sup>17</sup> World Wildlife Fund, supra note 15, p. 8.

<sup>18</sup> European Commission, supra note 16.

<sup>19</sup> World Wildlife Fund, supra note 15.

<sup>20</sup> Id., p. 14.

<sup>21</sup> UN Statistical Commission, A/RES/71/313, Indicator 14.4.1.

<sup>22</sup> UN Statistics Division, SDG Indicators: Metadata Repository, Indicator 14.4.1.

sustainable yield is defined as “the greatest amount of catch that can be harvested continuously from a stock under constant and current environmental conditions, ..., without affecting the long-term productivity of the stock.”<sup>23</sup> The indicator along with the definitions are in accordance with the provisions of the 1982 United Nations Convention on the Law of the Sea (UNCLOS 1982),<sup>24</sup> the UN Fish Stock Agreement,<sup>25</sup> and the Food and Agriculture Organization (FAO) Code of Conduct for Responsible Fisheries (1995).<sup>26</sup>

According to the 2023 United Nations SDG Report, although there has been development in achieving SDG Target 14.4, including expanding marine protected areas, combating IUUF, banning fishing subsidies, and supporting small-scale fishers, it is not sufficient for fulfilling the target.<sup>27</sup> The report further underlines the need to strengthen the State’s law enforcement level against IUUF by enhancing monitoring and enforcing various prevailing laws and regulations, domestic, regional, and international, pertaining to IUUF.<sup>28</sup> Those processes are according to the provisions of UNCLOS 1982 that provide coastal states with jurisdictional rights to deploy law enforcement operations, including for suppressing IUUF, which undermines the States’ effort to reach SDG Target 14.4.<sup>29</sup>

Furthermore, the enforcement of coastal states’ laws and regulations could also be based on the provisions of UNCLOS 1982, including against IUUF.<sup>30</sup> Those enforcement are done by the deployment<sup>31</sup> of the Maritime Police, Coast Guard, or other law enforcement agencies. <sup>32</sup> In practice, there are several principles as the basis for exercising coastal states’ maritime jurisdiction.<sup>33</sup> However, the most relevant to the research is the territorial principle which requires that the

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<sup>23</sup> Id.

<sup>24</sup> United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982), Montego Bay, 10 December 1982, 1833 UNTS 3 (entered into force on 16 November 1994), Arts. 61(3), 119(1).

<sup>25</sup> Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks 1995 (A/CONF.164/37), Art. 5(b).

<sup>26</sup> FAO Code of Conduct for Responsible Fisheries 1995, Art. 7.2.1.

<sup>27</sup> United Nations, The Sustainable Development Goal Special Report, United Nations, New York, 2023, p. 40.

<sup>28</sup> Iwao Fujii, et al., Promoting Cooperation of Monitoring, Control, and Surveillance of IUU Fishing in the Asia-Pacific”, Sustainability, Vol. 13, No. 18, 2021, p. 6.

<sup>29</sup> Nathalie Klein, Maritime Security and the Law of the Sea, Oxford University Press, Oxford, 2011, p. 62.

<sup>30</sup> Id.

<sup>31</sup> Malcolm N. Shaw, International Law, 6<sup>th</sup> Edition, Cambridge University Press, Cambridge, 2008, p. 649-651.

<sup>32</sup> Erik Jaap Molenaar, 'Port State Jurisdiction: Towards Mandatory and Comprehensive Use' in David Freestone, Richard Barnes and David M. Ong (eds.), The Law of the Sea: Progress and Prospects, Oxford University Press, Oxford, 2006, p. 192-197.

<sup>33</sup> Malcolm N. Shaw, *supra* note 31, p. 652-658.

enforcement of the jurisdiction is restricted<sup>34</sup> within the maritime territory of that particular coastal state.<sup>35</sup> Furthermore, it also considers that a coastal state may control and enforce the control over persons or legal entities as well as legal events within its territory.<sup>36</sup>

The law enforcement process in the state's territory could be very challenging and complex due to various factors.<sup>37</sup> The complexity would become more problematic when some parts of the coastal state's maritime area are also claimed by other states.<sup>38</sup> Yet, regardless of those conditions, coastal states are still required to enforce their jurisdiction, including in the overlapping claims area.<sup>39</sup> Those enforcement operations should be conducted with strict adherence to the non-use of force principle, respecting the prevailing human rights principles, and observing agreements that were established before the delimitation.<sup>40</sup> Nevertheless, the law enforcement operation could become ineffective, especially if the claimant States are adamant about their unilateral claim for the overlapping area, without giving any consideration to other states' claims.<sup>41</sup> Thus, if it is not rectified, it could lead to failure in suppressing IUUF and reaching SDG Target 14.4.

This research article will aim to consider options that could be undertaken by the claimant states to increase their maritime law enforcement effectiveness. One of those is under Articles 74(3) and 83(3) UNCLOS 1982, that the claimant states may establish a provisional arrangement of practical matters pending to and without prejudice to the final delimitation of the maritime boundary.<sup>42</sup> It may serve as the basis for an effective law enforcement operation in overlapping claims areas for effectively suppressing IUUF and the eventual reaching of SDG Target 14.4. The research would use the juridical normative legal research method to analyze primary legal sources including the UNSDG, the UNCLOS 1982, and other relevant

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<sup>34</sup> UNCLOS 1982, *supra* note 24, Art. 2, 33, 49, 56, 73, 77.

<sup>35</sup> *Id.*, Art. 27, Art. 28, Art. 73, Art. 105, and Art. 110.

<sup>36</sup> Malcolm N. Shaw, *supra* note 31, p. 652-658.

<sup>37</sup> Dirham Dirhamsyah, Saiful Umam, & Zainal Arifin, Maritime law enforcement: Indonesia's experience against illegal fishing, *Ocean and Coastal Management*, Vol. 229, 1 October 2022, 2022.

<sup>38</sup> Eddy Sumartono, The Importance of Law Enforcement of Indonesia's Territorial Sea Areas Amidst the Rise Of Trespassing Actions By Foreign Parties, *Pancasila Law Review*, Vol. 1, Issue 1, 2004, p. 25.

<sup>39</sup> Irina Papanicolopulu, 2010, Enforcement Action in Contested Water: The Legal Regime, 6<sup>th</sup> IHO-IAG ABLOS Conference, Contentious Issue in UNCLOS – Surely Not? Paper, (25-27 October 2010), p. 1.

<sup>40</sup> *Id.*

<sup>41</sup> Esther Christie Erlina & Raden Ahmad Gusman Catur Siswandi, Law Enforcement Issues and Regulations in Undelimited Maritime Boundaries: An International Law Perspective, *Lentera Hukum*, Vol.7, No. 1, 2020, p. 7.

<sup>42</sup> UNCLOS 1982, *supra* note 24, Art. 74(3) and Art. 83(3).

international legal instruments. The research would also examine several case laws that are relevant to the topic of the article. The international legal instruments would serve as the primary legal sources of the article, whereas the case laws would serve as its subsidiary legal sources. Furthermore, the research would also use secondary legal sources, which include books and journal articles relevant to the topic of the article. While the research would only conduct library research, however, the effectiveness of the law enforcement operations for suppressing IUUF and the eventual reaching of the SDG Target 14.4 would be examined by analyzing past research that could show the level of effectiveness of law enforcement against IUUF. To reach its conclusions the research would use the juridical normative legal research method to, first, consider SDG Target 14.4 and its relations with IUUF. The article will also discuss law enforcement operations in the overlapping maritime claim areas. Finally, the research will examine the consequence of establishing a provisional arrangement for law enforcement operations in overlapping maritime claims areas by examining previous studies on law enforcement operations for suppression of IUUF and the eventual reaching of SDG Target 14.4.

## **Analysis**

### **SDG Target 14.4 and Its Relations with IUUF**

Oceans and seas are an essential part of Earth's ecosystem and their wellbeing and existence are vital to the survival of our planet.<sup>43</sup> It has always been an important source of food and livelihood, as well as for recreation, trade, culture, and other economic activities for humans from various states. The Intergovernmental Panel on Climate Change (IPCC) even stated that all humans need the ocean.<sup>44</sup> Fisheries and aquaculture industries alone support the livelihoods of around 10–12% of the world's population.<sup>45</sup> In 2017, the global fish production number was estimated at 172.6 million tons, providing approximately 21 kg/capita per year as well as 17 percent of animal proteins and important micronutrients consumed by humans.<sup>46</sup>

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<sup>43</sup> Winfried Huck, *Sustainable Development Goal Article-by-Article Commentary*, Hart Publishing, Oxford, 2022, p. 526.

<sup>44</sup> IPCC, 'Summary for Policymakers' in *IPCC Special Report on the Ocean and Cryosphere in a Changing Climate*, Cambridge University Press, Cambridge, 2019, p. 5.

<sup>45</sup> World Wildlife Fund, *supra* note 15, p. 6.

<sup>46</sup> Lahsen Ababouch, David Vivas Eugui & Lorenz Formenti, *Advancing Sustainable Development Goal 14: Sustainable fish and seafood value chains, trade and climate Background Note*, UNCTAD, FAO, UNEP, Geneva, 2019, p. vi.

The upstream and downstream fisheries industry activities along its value chain provided significant working and other economic benefits to the States and coastal populations. Around 59.6 million people were employed in fisheries and aquaculture industries in 2016 and another 200 million employment opportunities were created from the fishing and seafood value chain industries.<sup>47</sup> The significant economic value of the fishing industry and its derivative can be seen in the examples of several Pacific States it contributes to more than 80 percent of the States' exports per capita.<sup>48</sup>

Yet, according to the United Nations Secretary General's Special Envoy for Ocean, "The ocean is in trouble."<sup>49</sup> The ocean's ecosystems are under massive threat from various causes, including illegal activities.<sup>50</sup> Extensive over-exploitation of marine resources has led to the dilapidation of fish stocks, their habitats, and the overall marine ecosystems and biodiversity. The consequences were enormous for the States' economic loss which has been valued at US\$83 billion per year for fisheries and over US\$6 billion per year for aquaculture.<sup>51</sup> That loss is further aggravated by climate change, which results in loss of work, dislodgment, and population migration.<sup>52</sup>

Fortunately, the States had also comprehended the severe consequences of the conditions. Since the 1970s, international efforts have started to implement the principle of the preservation of the marine environment in various legal instruments. In the 1972 Stockholm Conference, provisions on the protection of the marine environment were included and became one of the key elements in the Stockholm Declaration.<sup>53</sup> The establishment of UNCLOS 1982 enabled it to serve as a comprehensive legal instrument for the protection and conservation of the marine environment.<sup>54</sup> The UNCLOS 1982 and its subsequent related agreement, the

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<sup>47</sup> Id.

<sup>48</sup> Id.

<sup>49</sup> World Wildlife Fund, *supra* note 15, p. 2.

<sup>50</sup> Winfried Huck, *supra* note 43, p.523.

<sup>51</sup> Lahsen Ababouch, David Vivas Eugui & Lorenz Formenti, *supra* note 46, p. vii.

<sup>52</sup> Id.

<sup>53</sup> Winfried Huck, *supra* note 43, p. 524.

<sup>54</sup> UNCLOS 1982, *supra* note 24, Art. 192 – 273.

Compliance Agreement 1993<sup>55</sup> and the Fish Stock Agreement 1995<sup>56</sup> would also serve as a comprehensive framework for the management of resources from the oceans and seas.<sup>57</sup> Moreover, UNCLOS 1982 also contributed to the evolution of principles that were later adopted in SDG14.<sup>58</sup>

The 1987 Brundtland Report also discussed the oceans and their impact on the ecosystem and signifies the “balance of life of the ecosystem.”<sup>59</sup> However, the balance is under grave hazard due to several factors such as overexploitation, pollution, and land-based development. Fortunately, the report also provides various procedures to mitigate those threats including implementing sustainable development principles.<sup>60</sup> In 1992, the principle of the preservation of the marine environment was adopted in the Agenda 21 and Rio Declaration.<sup>61</sup> Both documents, which would become one of the earliest predecessors of the SDG, combine the process for the preservation of coastal and marine environments and the precautionary approaches.<sup>62</sup> A couple of years later, several elements of Agenda 21 were also adopted and even expanded by the global conference on the sustainable development of Small Island Developing States (SIDS), with the main focus being the SIDS and their proneness concerning the environmental problems and natural disaster resulting from climate change, as well as their unique geographical features, secluded from the distribution channel, making it more vulnerable economically.<sup>63</sup>

During the negotiation of SDG, there were two main ideas for addressing the preservation of the ocean environment. One approach considers that it should be combined and referred into other goals of the SDG, whereas the other prevailed approach was to address the ocean issue within a distinct SDG (SDG14 - Life below Water).<sup>64</sup> SDG14 has 10 targets, 14.1 – 14.7 and 14.a – 14.c, which furthermore, each of those targets has one respective indicator (14.1.1 until 14.2.1 until 14.c.1). It was

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<sup>55</sup> Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (Compliance Agreement 1993), Rome, 24 November 1993, 2221 UNTS 91, (24 April 2003).

<sup>56</sup> The United Nations Agreement for the Implementation of the Provisions of UNCLOS relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, (the Fish Stock Agreement 1995), New York, 4 August 1995, 2167 UNTS 3, (11 December 2001).

<sup>57</sup> Lahsen Ababouch, David Vivas Eugui & Lorenz Formenti, *supra* note 46, p. 1.

<sup>58</sup> Winfried Huck, *supra* note 43, p. 524.

<sup>59</sup> World Commission on Environment and Development, *supra* note 9, Part III, Chapter 10, para. 1.

<sup>60</sup> *Id.*, para 2.

<sup>61</sup> Winfried Huck, *supra* note 43, p. 525.

<sup>62</sup> *Id.*

<sup>63</sup> A/CONF.167/9.

<sup>64</sup> Winfried Huck, *supra* note 43, p. 526.



established as a framework for the preservation of marine biodiversity and environment as well as sustainable use of oceans, and marine resources.<sup>65</sup> Those functions are further elaborated with three-pronged responses towards problems faced by the world oceans and become the basis for: (a) sustainable use and conservation of oceans, seas, and marine resources; (b) responding to threats to oceans, in the form of marine pollution, marine debris, and ocean acidification; and (c) protecting the economy surrounding oceans, which include promoting sustainable fisheries, limiting subsidies contributing to IUUF, and protecting small scale fishers.<sup>66</sup>

Reaching SDG14 requires collaboration with other SDGs.<sup>67</sup> One study considered that around 38% of the total SDG Target required collaboration and involvement of the oceans (SDG14).<sup>68</sup> However, according to the same report, SDG14 was one of the SDGs that had achieved the least of its targets.<sup>69</sup> None of its targets had been achieved, only around half of the targets had been achieved partially, and one even had insufficient data to be measured.<sup>70</sup> One of the SDG14 targets, and the one that becomes the focus of the research article, is SDG Target14.4. It states that by 2020, states should effectively regulate harvesting, end overfishing, IUUF, and destructive fishing practices, and implement science-based management plans to restore fish stocks in the shortest time feasible.<sup>71</sup> SDG Target 14.4 is one of the SDG14 Targets that is yet to be achieved.<sup>72</sup> One report even suggested that by 2023, only three states, Tuvalu, Papua New Guinea, and the Marshall Islands, succeeded in reaching the target.<sup>73</sup>

Previous researches have shown that there is a very strong nexus between IUUF, law enforcement, and the reaching of SDG14.<sup>74</sup> Consequently, coastal states should consider alternative methods to increase the effectiveness of law enforcement operations against IUUF, including in overlapping claims areas. Those

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<sup>65</sup> Id.

<sup>66</sup> Id., p. 521.

<sup>67</sup> World Wildlife Fund, *supra* note 15, p. 6

<sup>68</sup> Id.

<sup>69</sup> Id., p. 2.

<sup>70</sup> Id.

<sup>71</sup> SDG Target 14.4.

<sup>72</sup> World Wildlife Fund, *supra* note 15, p. 2.

<sup>73</sup> Ferhan Oral, Examination of the literature on SDG 14-IUU-trade and maritime security, *Marine Development*, Vol.2, No.24, 2024, p. 12.

<sup>74</sup> Id.

actions against IUUF should be enforced by states domestically, regionally, and internationally, in three situations: during fishing operations, during landing, and the selling of the products.<sup>75</sup> Without undermining other actions by states, this research paper would limit the consideration of states' actions according to the territorial principle based on their sovereignty or sovereign rights.<sup>76</sup>

However, a complication arises when there are overlapping claims for the territory where the law enforcement operation is conducted. This situation would hamper the effectiveness of the law enforcement operation against IUUF, which would eventually prevent the reaching of SDG Target 14.4. This research will look at the options that could be taken by claimant states and establish a provisional arrangement for law enforcement operation in the overlapping maritime claim area, without prejudice to the outcome of the final delimitation between the claimant states. By establishing such a provisional arrangement, the claimant states should be able to enforce their jurisdiction without the risk of clashes with law enforcement agencies from the other claimant states.

### **Law Enforcement Operations in Overlapping Maritime Claim Area**

UNCLOS 1982 explicitly regulates specific rights of the coastal state within its respective maritime zone.<sup>77</sup> Those rights, which include the right to enforce their jurisdiction against IUUF and to manage the resources, should only be exercised by the coastal states.<sup>78</sup> UNCLOS 1982 has also provided provisions on the maximum breadth of the maritime zones that coastal States could claim to determine the maximum limit of their respective jurisdiction, e.g., 12 nautical miles (NM) in the territorial sea or 200 NM for Exclusive Economic Zone (EEZ) and Continental Shelf (CS).<sup>79</sup> At this point, it is also best to note that there are cases of states' claims over particular maritime zones that might not necessarily be in line with the provisions of UNCLOS 1982. Some states had been known to rely on absurd historical bases to

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<sup>75</sup> Lahsen Ababouch, David Vivas Eugui & Lorenz Formenti, *supra* note 46, p. 31.

<sup>76</sup> States may also potentially have the jurisdiction to enforced IUUF based on Flag State Jurisdiction, however, the discussion on that issue also fall outside the scope of the discussion under the research article.

<sup>77</sup> UNCLOS 1982, *supra* note 24, Art. 2, 33, 49, 56, 73, 77.

<sup>78</sup> Malcolm N. Shaw, *supra* note 31.

<sup>79</sup> UNCLOS 1982, *supra* note 24, Art. 3, 57, 76; the maximum breadth for the continental shelf might be extended to a distance maximum 350 NM or to a certain distance reached on the depth 2500 isobath pursuant to the extended continental shelf regime.

assert their claim over the maritime zone. However, for the sake of the discussion, this paper will only assume that the claim of the states would be supported by sound and clear legal bases under the UNCLOS 1982 provisions.

While UNCLOS 1982 has regulated the maximum breadth of maritime zones, not all geographical conditions of the undelimited area are suitable for an expeditious maritime boundary delimitation process. There are cases for the opposite coastal states where the maximum breadth of the delimited maritime zones is less than the maximum prescribed breadth of the maritime zones pursuant to the UNCLOS 1982 provisions.<sup>80</sup> In other cases, for adjacent coastal states, the neighboring coastal states might fail to negotiate the width or the projection of the boundary line.<sup>81</sup>

UNCLOS 1982 explicitly stipulates that the delimitation method for the territorial sea is the “median line” or the “equidistance principle,”<sup>82</sup> which is a relatively simple procedure since it is needed only to split the delimited maritime area into two parts of equal distance, provided that the states can agree on baselines as the starting point of measuring the maritime zones.<sup>83</sup> Nevertheless, UNCLOS 1982 is silent on the technical methods that could be implemented for the EEZ and CS delimitation since it only provides provisions that it should be conducted pursuant to the principle of international law to achieve an “equitable solution” among the claimant states.<sup>84</sup> The term “equitable solution” is a negotiated term that is agreed as a middle ground between states who prefer to also use the median line principle for EEZ and CS delimitation and those states who favor applying the equitable principle.<sup>85</sup> The provisions may also trace their root to the decision of the International Court of Justice (ICJ) in *the 1969 North Sea Continental Shelf Case* where the Court noted that states were obliged to negotiate using any delimitation method of their preference for reaching an equitable delimitation result.<sup>86</sup> As such,

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<sup>80</sup> Nugzar Dundua, *Delimitation of Maritime Boundaries Between Adjacent States*, Fellowship diss., United Nations – The Nippon Foundation Fellow, 2007, p. 3.

<sup>81</sup> UNCLOS 1982, *supra* note 24, Art. 15, 74, 83.

<sup>82</sup> *Id.*, Art. 15.

<sup>83</sup> Eddy Pratomo, *Negotiating Maritime Boundaries*, *Journal of Legal, Ethical and Regulatory*, Vol. 21, No. 3, 2018.

<sup>84</sup> UNCLOS 1982, *supra* note 24, Art. 74, 83.

<sup>85</sup> Stephen Fietta, Robin Cleverly, “A Practitioner’s Guide to Maritime Boundary Delimitation.” Oxford University Press, Oxford, 2016, p. 53.

<sup>86</sup> International Court of Justice, *North Sea Continental Shelf Cases* (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands), (I.C.J. Reports 1969, International Court of Justice (ICJ), 1969), para. 85.

it may be argued that the ICJ had taken an approach that emphasized the outcome of the delimitation process rather than the methodology of the process for achieving the final maritime boundary.

Although ICJ is not bound by its previous ruling (*stare decisis* principle),<sup>87</sup> the approach would later be followed and developed in subsequent cases, including the Tunisia – Libya CS delimitation case where the court ruled that to attain an “equitable solution,” claimant states need to consider relevant circumstances, i.e.: the length and general direction of the state’s coast, the presence of islands or any other relevant maritime features and the preceded boundaries agreement.<sup>88</sup> Moreover, in the same case, the ICJ had also decided that the equidistance principle was only to be applied should it lead to an equitable solution.<sup>89</sup>

In 2009, on the judgment for the Black Sea delimitation case, the ICJ established the “three-stage approach” which arguably has become the preferred method for maritime boundary delimitation for EEZ and CS.<sup>90</sup> The three-stage approach required the claimant states to first draw a provisional boundary line that is “geometrically objective.” Afterward, the states should adjust the provisional boundary line following the relevant circumstances that are appropriate in the delimited area. The third stage of the method required the states to exercise the disproportionality test of the adjusted provisional boundary line with the ratio between the length of the coastal area of each of the coastal states with the overall delimited maritime area.<sup>91</sup>

Experts consider that this approach has become the preferred delimitation method by the claimant states during the negotiation between them and judicial institutions.<sup>92</sup> Most of the states’ and judicial institution practices after 2009 supported that claim and showed a significant usage of the method.<sup>93</sup> Moreover, the International Tribunal for the Law of the Sea (ITLOS) in the case between Bangladesh and Myanmar in the Bay of Bengal, had stated that the principle to be

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<sup>87</sup> Statute of the International Court of Justice, 18 April 1946, 33 UNTS 993, Art. 59.

<sup>88</sup> International Court of Justice, Continental Shelf (Tunisia v. Libya), (I.C.J. Reports 1982, International Court of Justice, 1982), para. 72, 75-95.

<sup>89</sup> Id., para. 109.

<sup>90</sup> Stephen Fietta, Robin Cleverly, *supra* note 83, p. 53-54

<sup>91</sup> Id., 54

<sup>92</sup> Id.

<sup>93</sup> Id.

*“acquis judicare”* in accordance with Article 38(1) of the ICJ Statute and consequently should take precedence in the application of articles 74 and 83 of UNCLOS 1982 on the delimitation of EEZ and CS.<sup>94</sup> Other experts have noted that there are four factors for delimitation negotiation to succeed: political, strategic, and historical factors; economic and environmental factors; geographical factors; geological and geomorphological factors.<sup>95</sup> Among those factors, the political, strategic, and historical factors are very closely related to law enforcement operations in the overlapping maritime claim area which makes it hamper the delimitation process.<sup>96</sup> Other experts have also considered that domestic factors are also influential for a claimant state, which includes the capacity, both political technical, and financial to undergo negotiation, as well as the attention of the state over the negotiation.<sup>97</sup> Due to its complications and numerous factors related to it, thus it is quite understandable that the maritime delimitation processes might take a considerable time to settle.<sup>98</sup> Examples of that situation may be seen in the delimitation process for maritime boundaries between Indonesia and Malaysia, which aside from the CS boundary agreed upon in 1969, has yet to be established,<sup>99</sup> and in the EEZ agreement between Indonesia and the Philippines which took 20 years to be negotiated.<sup>100</sup>

To rectify the situation, the claimant states, that parties to UNCLOS 1982, may opt to use the compulsory dispute settlement procedure under Part XV UNCLOS 1982. However, Part XV UNCLOS 1982 could only be triggered after the claimant states had failed to settle their dispute using their preferred settlement method and did not make any declaration on this issue.<sup>101</sup> For certain claimant states, however, the above recourse might be problematic. Some states prefer for the delimitation

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<sup>94</sup> International Tribunal for the Law of The Sea, *Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh v. Myanmar)*, (Judgment, ITLOS Case No 16, 52014XC0830(01), International Tribunal for the Law of the Sea, 2012), 339.

<sup>95</sup> I Made Andi Arsana, *Batas Maritim Antarnegara*, Gadjah Mada University Press, Yogyakarta, 2009, p. 73-81.

<sup>96</sup> Bernard H. Oxman, *International Maritime Boundaries: Political, Strategic and Historical Considerations*, University of Miami Inter-American Law Review Vol. 26, No. 2, 1995, p. 255-270.

<sup>97</sup> Md. Monjur Hasan et al., *Protracted Maritime Boundary Disputes and Maritime Laws*, Journal of International Maritime Safety, Environmental Affairs, and Shipping Vol. 2, No. 2, 2019.

<sup>98</sup> Eddy Pratomo, *supra* note 83, p. 3

<sup>99</sup> Arif Havas Oegroseno, *Indonesia’s Maritime Boundaries* in Robert Cribb and Michele Ford (eds.), *Indonesia Beyond the Water’s Edge Managing an Archipelagic State*, Institute of South East Asian Studies, Singapore, 2009, p. 57.

<sup>100</sup> “Treaty Setting PH, Indonesia EEZ Boundary Enters into Force.”, Philippine News Agency, Accessed 31 August 2019, <https://www.pna.gov.ph/articles/1076768>.

<sup>101</sup> UNCLOS 1982, *supra* note 24, Art. 286, 298.

process to be done without any third-party involvement and would like to retain the delimitation process between the disputing states alone. These states often took a hard stance and were unwilling to compromise their position. In the long run, the attitude that would cause protracted maritime boundary delimitation will be disadvantageous and only preserve the *status quo* of overlapping maritime claims.

Indeed, the UNCLOS 1982 does not, “in principle,” prohibit law enforcement operations in the overlapping maritime claim area, with conditions: the law enforcement operation deployed pursuant to the right obtained by the state in its owned maritime zone; the law enforcement operation has to follow the principle of the law of the “use of force” and respect the general provisions of human rights; the law enforcement operation should observe the specific provisions (if any) before the establishment of the maritime delimitation agreement.<sup>102</sup> Due to its complexity, the maritime delimitation process would involve not only legal experts but also experts with various backgrounds, i.e. technical and scientific,<sup>103</sup> The process also involved much wider elements of consideration, which include political, historical, economic, and cultural. Consequently, the length of time for the process may take a considerable long time. At the same time, the claimant states may need to continue to deploy law enforcement operations to address maritime security issues in the overlapping maritime claim area.

From the law of the sea perspective, maritime law enforcement operation is defined to be the method for “invoking and applying authoritative prescriptions” which includes several actions, i.e. monitoring, stopping, and boarding vessels, inspecting, reporting, arresting or seizure persons and vessels, detaining and imposing sanctions.<sup>104</sup> Additionally, states also consider that the operation is included in their action to safeguard the sovereignty or sovereign rights of their maritime zone.<sup>105</sup> Another opinion also sees that law enforcement operations aim to respond to foreign vessels, including by expulsing the vessel that illegally entered the maritime zones of the coastal state and violating the coastal states’ law.<sup>106</sup>

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<sup>102</sup> Irina Papanicolopulu, *supra* note 39, p. 2.

<sup>103</sup> Eddy Pratomo, *supra* note 83., p. 3

<sup>104</sup> William T. Burke, *The New International Law of Fisheries: UNCLOS 1982 and Beyond*, Clarendon Press, Oxford, 1994, p. 303.

<sup>105</sup> Widodo, Implementasi MOU Common Guidelines Indonesia Malaysia Tentang Perlindungan Nelayan dalam Penanganan Illegal Fishing di Selat Malaka, *Jurnal Pertahanan & Bela Negara*, Vol. 7, No. 2, August 2017, p. 168.

<sup>106</sup> *Id.*

Coastal states would have the right to uphold their jurisdiction in their maritime zone.<sup>107</sup> The coastal states may enforce a broad range of laws and regulations in the territorial sea under their sovereignty.<sup>108</sup> However, coastal states only have sovereign rights in the EEZ and CS that render limited jurisdiction over the exploration and exploitation of resources and the protection of the marine environment, including the management of fishing and the suppression of IUUF.<sup>109</sup> The enforcement of the state's jurisdiction in each of its maritime zones should always be based on the allocated rights and obligations rendered to that particular maritime zone by UNCLOS 1982. This is imperative for keeping the enforcement action of the states *intra vires*.

Looking at the details of the law enforcement operation in the overlapping maritime claim area, the most problematic issues that arise from this action would be law enforcement operations towards foreign vessels, nationals, or state agencies that originate from the other claimant state.<sup>110</sup> Law enforcement operations toward the vessels from another claimant state within the overlapping maritime claim area would potentially provoke retaliatory action that might escalate the incident and the overall tension between the claimant states in the overlapping maritime claim area and might also lead to open hostility.<sup>111</sup>

In contrast, the claimant states will generally accept law enforcement operations from the claimant states toward third parties' vessels that originated from non-claimant states. Although the actual maritime boundary line is yet to be established, which also resulted in the unclear entitlement of the claimant states' rights in the overlapping maritime claim area, the above enforcement action seems in line with the general understanding that the area would, either way, be owned by one of the claimant states.<sup>112</sup> The claimant state would also be quite content should the other claimant state deploy law enforcement operations against security issues of common interest, such as combatting illegal activities, including IUUF perpetrated by third-party vessels.<sup>113</sup> It seems that for these kinds of problems, any means of law

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<sup>107</sup> Nathalie Klein, *supra* note 29., p. 63.

<sup>108</sup> UNCLOS 1982, *supra* note 24, Art. 2 (1).

<sup>109</sup> *Id.*, Art. 56, 77.

<sup>110</sup> Irina Papanicolopulu, *supra* note 39.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

enforcement should be better instead of no response against that security problem within the overlapping maritime claim area.<sup>114</sup> Furthermore, in deploying law enforcement operations in overlapping claim areas, the claimant states should also strictly adhere to the general principles of international, especially the non-use of force principles under Article 2(4) UN Charter.<sup>115</sup> Consequently, the application of any form of lethal weapons during law enforcement operations, other than for self-defense, is unjustified under international law.<sup>116</sup>

The arbitration tribunal in the Guyana – Suriname case<sup>117</sup> had further confirmed that law enforcement action conducted by military forces of the claimant states towards entities from the other claimant state or entities that owned a license from the other claimant state, could be considered as a “threat of the use of force” against the other claimant and consequently a clear violation of Article 2(4) of the UN Charter.<sup>118</sup> The tribunal seems to differentiate the use of force against another state and the use of force in law enforcement operations against entities that infringe on states’ rights under international law.<sup>119</sup> Thus, it is of paramount importance that the claimant states to refrain from conducting any activities that may deteriorate the existing dispute within the overlapping area. However, the claimant states would like to retain their right to enforce their jurisdiction in the overlapping area, with or without any pre-arrangement or coordination between all claimant states. As such, it seems that coordination and arrangement become the keywords to prevent law enforcement ineffectiveness in overlapping maritime claim areas.

One of the solutions to rectify the problem is by establishing an interim arrangement for law enforcement operations in the overlapping maritime claim area under Article 74(3) and Article 83(3) UNCLOS 1982, especially if the overlapping area is the EEZ or CS. The solution is derived from the nature of the legal regime of both maritime areas, sovereign rights, that focus on the management of economic resources of the areas.<sup>120</sup> The establishment of a provisional arrangement should be

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<sup>114</sup> Id.

<sup>115</sup> Charter of the United Nations, 26 June 1945, 1 UNTS XVI, Art. 2(4).

<sup>116</sup> Id.

<sup>117</sup> Guyana v. Suriname, Award, ICGJ 370 (PCA 2007), Permanent Court of Arbitration (PCA), September 2007.

<sup>118</sup> Id.

<sup>119</sup> Irina Papanicolopulu, *supra* note 39, p. 4.

<sup>120</sup> UNCLOS 1982, *supra* note 24, Art. 74(3), 83(3).



pending and without prejudice to the final delimitation agreement.<sup>121</sup> Furthermore, there are two conditions for claimant states to enter into such arrangements.<sup>122</sup> First, the claimant states need to focus on coordination and arrangements on practical matters between the claimant states. Second, the claimant states should not hinder the ongoing delimitation process.<sup>123</sup>

The deployment of the claimant states' law enforcement operations within the overlapping maritime claim area could not be automatically considered a violation of the second obligation.<sup>124</sup> The claimant states may deploy law enforcement operations, including for suppressing IUUF, within the overlapping claims area, as long as it does not deteriorate the dispute.<sup>125</sup> The establishment of a provisional arrangement specifically for law enforcement operations in the overlapping area will guarantee that the law enforcement deployment will not worsen the dispute. The establishment of a provisional arrangement for law enforcement operations in overlapping claims areas will increase the effectiveness of law enforcement in the area, including the suppression of IUUF, since it will provide the legal basis for cooperation and coordination among the claimant states' authorities and also avoid any jurisdictional confusion for law enforcement in the overlapping claims areas.<sup>126</sup> In the longer term, it could also be used to foster good relations and encourage the claimant states to strive to conclude the maritime boundary delimitation. which.<sup>127</sup>

#### **Provisional Arrangement for Law Enforcement Operations Against IUUF in Overlapping Maritime Claims Area for Reaching SDG Target 14.4**

While SDG14 currently has one of the lowest levels of achievement of the SDG, reports and experts also suggested solutions for the condition by enhancing monitoring and law enforcement against IUUF. One expert even stated further that robust law enforcement should always be the solution for suppressing IUUF.<sup>128</sup> Focusing on maritime areas with overlapping claims, if all related stakeholders

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<sup>121</sup> Id.

<sup>122</sup> Irina Papanicolopulu, *supra* note 39, p. 3.

<sup>123</sup> Id.

<sup>124</sup> Id.

<sup>125</sup> Id.

<sup>126</sup> Id.

<sup>127</sup> Id.

<sup>128</sup> Iwao Fujii, *supra* note 28.

supported it, the claimant states could consider establishing a provisional arrangement for law enforcement operations in the overlapping maritime claims area.<sup>129</sup> However, the establishment of such provisional arrangements would not be easy. It required several factors that should essentially be pre-existing for such arrangements to succeed.<sup>130</sup> It required mutual cooperation, understanding, and good faith from all claimant states. and support from all related stakeholders. It also required a certain level of cordial relations between the claimant states. Finally, it also required a mutual restraint from the claimant states from invoking its claim in the area.<sup>131</sup> Without all those fundamental factors, the process of establishing the provisional arrangement would not have succeeded, hence the dispute would have been prolonged without an alternative for suppressing IUUF.<sup>132</sup>

In general, there are two types of provisional arrangements: the provisional arrangement to supplement the agreed boundary line and the provisional arrangement that was established *in lieu* of the maritime boundary delimitation that is yet to be concluded.<sup>133</sup> As of 2014, it was recorded that there were six examples of the first type of provisional arrangements that are or have been in force and there are sixteen examples of the second type of provisional arrangements that have been or are implemented.<sup>134</sup> While the majority of the practices of establishing provisional arrangements were to manage natural resources, this article would examine the possibility of establishing provisional arrangements for law enforcement operations to suppress criminal activities issues, including IUUF. Thus, the claimant states might consider establishing provisional arrangements that enable the claimant states to deploy law enforcement operations individually or jointly by all claimant states, to suppress criminal activities, including IUUF.<sup>135</sup> Examples of such arrangements are the 1978 agreement on joint measures of fisheries and fisheries regulations in the Barents Sea between Norway and Russia and the 1999 agreement between France, Italy, and Monaco for the creation of the

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<sup>129</sup> C. Schoefield, 'Defining areas for joint development in disputed waters' in S. Wu and N. Hong (eds.), *Recent Developments in the South China Sea Dispute: The Prospect of a Joint Development Regime*, London, Routledge, 2014, p. 80.

<sup>130</sup> Esther Christie Erlina & Raden Ahmad Gusman Catur Siswandi, *supra* note 40.

<sup>131</sup> *Id.*

<sup>132</sup> Irina Papanicolopulu, *supra* note 39.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

Pelagos Sanctuary for Mediterranean marine mammals.<sup>136</sup> Each of those agreements has provisions that regulate law enforcement in the overlapping claims area. Another example of such practice that will be examined in more established was established by Indonesia and Malaysia. In April 2012, Indonesia and Malaysia agreed to establish the Memorandum of Understanding Common Guidelines concerning Treatment of Fishermen by Maritime Law Enforcement Agencies of Malaysia and the Republic of Indonesia (MoU Common Guidelines).<sup>137</sup> The MoU provides the legal basis for the law enforcement operation by both state authorities toward fishermen from both states in the overlapping claims area.<sup>138</sup>

Prior to the establishment of the MoU, the law enforcement authorities from both states often arrested all fishermen who fished in the overlapping claims area.<sup>139</sup> The fishermen then face criminal prosecution for illegal fishing, although, in reality, their fishing area is an overlapping maritime claim area.<sup>140</sup> That condition was changed by the MoU, which established that the fishermen would be treated based on human rights principles and only inspected and asked to leave the overlapping area immediately unless they were using an illegal method, such as fishing using explosive materials or chemical substances, in which case they would face criminal proceedings.<sup>141</sup> The MoU Common Guidelines based its provisions on the principle of good relations, close cooperation, and mutual understanding.<sup>142</sup> Consequently, law enforcement operations in the overlapping maritime claim area should be conducted without the use of force and prejudice to ongoing delimitation negotiation.<sup>143</sup> The MoU also required communication between claimant state authorities for any action against fishing vessels from the other claimant state.<sup>144</sup>

The MoU Common Guidelines is deemed to be a success as a legal basis for law enforcement operations in the overlapping claims area between Indonesia and Malaysia. It has increased the coordination and opened the communication channel

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<sup>136</sup> Id.

<sup>137</sup> Indonesia and Malaysia, "Memorandum of Understanding Common Guidelines concerning Treatment of Fishermen by Maritime Law Enforcement Agencies of Malaysia and the Republic of Indonesia," (MoU Common Guidelines), 27 Januari 2012.

<sup>138</sup> Id., Art. 5.

<sup>139</sup> Id.

<sup>140</sup> Widodo, *supra* note 103, p. 167.

<sup>141</sup> MoU Common Guidelines, *supra* note 134, Art. 3.

<sup>142</sup> Id., Art. 3.

<sup>143</sup> Id.

<sup>144</sup> Id.

between law enforcement agencies, especially in the event of a particular claimant state enforcing its jurisdiction in the overlapping area.<sup>145</sup> Nevertheless, the MoU Common Guidelines also have several shortcomings. Critics from domestic law enforcement agencies argued that the MoU undermined Indonesia's law enforcement jurisdiction in the overlapping claims area, especially for suppressing IUUF.<sup>146</sup> The MoU also lacks technical guidelines that cause discrepancies in standards and policy, such as the disparity over the threshold of the illegal method of fishing.<sup>147</sup>

Regarding the effectiveness of the law enforcement actions and their nexus with the suppression of IUUF as well as the eventual reaching of SDG Target 14.4., it can be perceived from the example of previous studies on law enforcement operations. Between 2014-2019, Indonesia implemented a robust law enforcement policy, including the seizing and sinking of vessels policy that allows the authorities to sink the confiscated vessels after legal proceedings.<sup>148</sup> One study showed that the policy resulted in a decrease in the number of IUUF by around 25%.<sup>149</sup> Furthermore, the study also showed a 90% decrease in IUUF by foreign vessels during the same period.<sup>150</sup> The study underlined strong law enforcement's effectiveness and close nexus with decreasing numbers of IUUF.

Seeing the discussion above, the research will then propose a list of considerations that should be adopted in the provisional arrangement for law enforcement operations in the overlapping claims area. First, the provisional arrangement should provide legal certainty. It means that its provisions should serve as an interim legal basis for law enforcement operations pending the final delimitation of the maritime area. The provisions should also be unambiguous and executable. Second, the provisions should be aimed at not hindering the final delimitation process. Moreover, if conducted properly, the establishment and implementation of the provision arrangements could increase the confidence level between the claimant states and expedite the dispute settlement process. If the

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<sup>145</sup> Widodo, *supra* note 134, p. 177-180

<sup>146</sup> *Id.*, p. 181.

<sup>147</sup> *Id.*, p. 181-182

<sup>148</sup> Iwao Fujii, *supra* note 28.

<sup>149</sup> Reniel B Cabral, et. al., Rapid and lasting gains from solving illegal fishing, *National Ecology & Evolution*, Vol.2, No. 4, 2018, p. 650.

<sup>150</sup> *Id.*

abovementioned measures are taken, there is a strong hope that the state's effort in suppressing IUUF, including within the overlapping maritime claims area will prevail. It would arguably increase the law enforcement effectiveness and it also would support the eventual reaching of SDG Target 14.4.

## **Conclusion**

The UN Sustainable Development Goals was established in 2015 as a response to the ever-increasing environmental concerns that arise as the consequences of over-exploitative economic development. Its 17 goals are hoped to be reached by 2030. One of the goals of the SDG, SDG14 "Life Below Water," focuses on the preservation of oceans, seas, and the sustainable fisheries industry. Within the goal, there is one target (SDG Target 14.4) that focuses on the suppression of IUUF to safeguard sustainable fishing. At the current rate, SDG Target 14.4 is one of the SDG targets with the lowest achievement level. One of the methods to rectify the issue is by increasing law enforcement operations, including in areas with overlapping maritime claims. There is evidence of the close nexus of increasing law enforcement operations with the decrease in the number of IUUF cases.

However, there are certain maritime areas with several claimant states due to several factors, geographical, historical, etc. It would decrease the effectiveness of the enforcement efforts, including in suppressing IUUF, because of the legal uncertainty, and subsequently hampering the eventual reaching of SDG Target 14.4. One of the solutions that can be taken by the claimant states for the above problems is by establishing provisional arrangements for law enforcement operations. Inspired by Articles 74(3) and 83(3) UNCLOS 1982, the provisional arrangement, incorporating certain provisions that issues faced by previous examples of interim arrangements, will serve as a legal basis for effective law enforcement operations in suppressing IUUF in the overlapping claims area. It is hopeful that by establishing such provisional arrangements, the law enforcement effective level will increase, and it could eventually state efforts to reach SDG Target 14.4.

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