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# Crafting hybridity: institutionalizing and governing maritime militias' public-private collaboration

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The institutionalization of maritime militias through public-private collaboration signifies a strategic shift toward hybrid governance, blending state authority with private-sector capabilities. This study employs a comparative analysis to examine this process, contrasting the formalized and deeply integrated systems in China and Vietnam with the more fragmented and experimental institutional arrangements in the Philippines and the United States. The analysis reveals that hybrid governance presents three core dilemmas: ensuring the behavioral accountability of private actors, managing the dual-use conversion of civilian vessels, and adapting to rapid technological transformations. A central paradox is identified: while institutionalized collaboration enhances a state's tactical control over maritime forces, it simultaneously exacerbates governance challenges at the international level. These findings underscore a critical tension between the strategic utility of hybrid governance and the stability of rule-of-law frameworks, making it imperative to reconcile the operational advantages of these public-private models with the principles of international order.

## KEYWORDS

hybrid governance, maritime militias, public-private collaboration, institutional ambiguity, governance dilemmas, gray zone conflict

## 1 Introduction

The evolving role of maritime militias in safeguarding national maritime claims across the South China Sea reveals a strategic calculus of hybrid governance in crafting public-private collaboration (McLaughlin, 2022). While China and Vietnam have systematically codified hybridity through blending civilian operations with state security functions, claimants like the Philippines and extra-regional actors like the U.S. increasingly experiment with similar models amidst escalating maritime frictions. For instance, since 2023, the Philippines has deployed chartered yachts to assert sovereignty in disputed areas such as Ren'ai Reef, Huangyan Island, and Sabina Shoal, where they have collided with China Coast Guard law enforcement activities (Ministry of Foreign Affairs, 2023). These semi-civilian forces operate through state-orchestrated ambiguity through engaging in routine fishing and non-combat rights assertion in peacetime (e.g., reef monitoring, environmental and hydrographic surveys), while transitioning to intelligence collection and tactical support roles during crises (e.g., disturbing foreign vessels, obstructing naval maneuvers). This institutionalized duality transcends traditional civil-military binaries, constituting a distinctive hybrid governance regime.

Hybrid governance represents a strategic blurring of institutional boundaries, wherein state and non-state actors collaboratively exercise authority while maintaining plausible deniability. Unlike traditional Weberian statehood, which emphasizes centralized control, this model thrives in contested spaces where formal sovereignty is ambiguous, leveraging the flexibility of non-state proxies to advance state interests without overt escalation (Schuppert,

2011). Academic and policy discourses on maritime militias have intensified following the U.S. Department of Defense's 2017 congressional report, which framed China's maritime militias as "third maritime force" exploiting legal ambiguities in international law (U.S. Department of Defense, 2017). Subsequent studies have mostly drawn on the "gray zone" conflict perspective, integrating a defense concept defined as a state of "neither war nor peace" (gray)—positioned between peace (white) and war (black)—into the realm of interstate narrative competition (Fischman, 2019; Green et al., 2017). The gray zone functions as a theoretical tool that enables actors to legitimize their actions while portraying their opponents' actions as either illegal or unreasonable (Kiessling, 2021). Relevant research focuses on functional classifications, operational impacts, vessel modifications, ambiguities in rules of engagement, and deterrence efficacy (Erickson, 2024; Martinson, 2017; Ngo, 2020; Kiessling, 2021; Cherhat, 2022; McLaughlin, 2022; Song, 2023; Chen et al., 2024; Zhang, 2024). While some emphasize the operational advantages of cost-effectiveness and plausible deniability (Todd et al., 2024; Dobias, 2024), scholarly works in Vietnam and China primarily focus on institutional measures that secure rights-protection legitimacy (Cui and Shi, 2022; Nguyen, 2022).

The rise of maritime militias presents a strategic paradox: Does the hybrid governance inherent ambiguity effectively de-escalate interstate tensions through non-militarized presence, or does it inadvertently fuel conflict via unregulated proxy escalation? Critical gaps persist: First, scholars have overlooked the institutional mechanisms that sustain this deliberate ambiguity in hybrid governance systems. Second, the regulatory challenges stemming from public-private collaboration's inherent indeterminacy remain underexplored. This study contends that maritime militias function as strategic instruments of hybrid governance, exploiting legal gray zones to avoid direct military confrontation while gaining tactical advantages—yet at the cost of systemic regulatory failures.

To address these inquiries, this article develops a three-stage analytical framework tracing "the formation, operation, and governance of hybridity." First, it examines the formation of hybridity, investigating how states strategically craft hybridity through legal and operational mechanisms that formalize maritime militias' dual roles. Second, it analyzes the operation of hybridity by employing comparative institutional analysis to map the divergent trajectories of hybrid system development between mature and nascent practitioners, thereby revealing how state practices shape the emerging international order. Third, it explores the governance of hybridity, focusing on three regulatory deficiencies in behavioral accountability, vessel conversion, and technological transformation. Finally, the conclusion proposes reconciling the strategic value of hybrid governance with rule-of-law constraints.

## 2 Crafting hybridity: public-private collaboration of maritime militias as strategic design

This section examines the formation of hybridity through the theory of public-private collaboration, which illuminates the strategic duality of maritime militias as intentionally designed hybrid institutions. By fusing state security mandates with private-sector agility, states institutionalize ambiguity to navigate legal regimes and

retain paramilitary leverage. Within this framework, the dual roles of maritime militias—as both implementers of national maritime strategy and private actors engaged in fisheries production—are comprehensively clarified.

### 2.1 Designing hybridity: legal and normative frameworks

Public-private collaboration refers to cooperation between the public sector and private individuals or entities in performing public functions, aiming to enhance administrative efficiency, reduce financial expenditures, and circumvent domestic democratic oversight mechanisms. Such partnerships seek to efficiently achieve the state's foreign policy objectives while mitigating domestic and international public opinion pressures, avoiding potential political risks, and limiting state responsibility in law enforcement and rights protection activities. In transnational interactions, private actors are increasingly engaged not only in "low politics" (e.g., trade) that directly affect their interests but also in "high politics" (e.g., security), which were traditionally considered beyond their domain (Busch and Givens, 2012). When private interests are aligned with state interests, they acquire a public dimension, enabling the home state to take sovereign actions to defend them. The privatization of security reshapes accountability mechanisms without eliminating them—a dynamic exemplified by Southeast Asian states' strategic use of maritime militias to de-escalate tensions while maintaining plausible deniability. By legally linking fishermen's livelihood activities to sovereignty assertion, hybrid frameworks transform civilian fleets into strategic assets that deter overt militarization yet preserve avenues for diplomatic resolution.

#### 2.1.1 The public identity of maritime militias

In the context of law enforcement and combat, maritime militias serve as an auxiliary and reserve component of the national armed forces. They have evolved into a distinctive form of paramilitary organization, characterized by private participation in public affairs.

In terms of operational methods, maritime militias typically share similar organizational structures and operational practices with general militias. Compared to the navy, maritime militias operate as independent military organizations that function in accordance with domestic law and are managed by local military authorities. They engage in non-combat activities during peacetime but can be mobilized as active-duty forces during wartime (Military Service Law of the People's Republic of China, 2021), with private vessels potentially serving as auxiliary ships for the navy. However, such auxiliary ships are primarily utilized for self-defense purposes (San Remo Manual on International Law Applicable to Armed Conflicts at Sea, 1994). Although maritime militias may undertake offensive actions, such operations risk provoking direct counterattacks that could undermine their strategic hybrid identity advantage. Compared to the coast guard, maritime militias similarly embody a dual civilian-military character (Shuxian and Panter, 2021). In practice, civilian resources including fishermen, fishing vessels, and merchant ships may be requisitioned by the government for rights protection operations, with the coast guard coordinating these activities. When performing state-assigned missions, militia vessels share the same legal status as coast guard ships, both classified as "ships used exclusively for government non-commercial service." *The United*

*Nations Convention on the Law of the Sea* (UNCLOS) consistently references this category in its provisions, granting such vessels immunity from foreign jurisdiction in both territorial waters and on the high seas (Proelss, 2017). Maritime militias primarily contribute to rights protection by assisting domestic law enforcement agencies in monitoring and deterring unauthorized vessels in designated maritime zones. As these activities constitute inherent governmental functions aimed at safeguarding national maritime interests, they fully satisfy the core criteria of “government non-commercial service,” particularly the requirement of non-commercial nature.

### 2.1.2 The private identity of maritime militias

The daily operations of maritime militias are based on the principle that their members—primarily fishermen—continue regular fishing activities. This operational foundation fundamentally determines the militias’ civilian character.

Regarding personnel structure, maritime militias primarily consist of local fishermen serving as volunteers, which instills the organization with a strong sense of territoriality. Their equipment and resources are typically acquired through individual or collective contributions rather than through national military funding.

Regarding the legal status of fishing vessels, both the UNCLOS and general principles of international law establish that a vessel’s classification determines the permissible scope of its maritime activities. Conventionally, fishing vessels are presumed to engage solely in commercial fishing operations. When maritime militia vessels operate exclusively as fishing vessels, they should retain standard fishing vessel status under international law. Consequently, such vessels remain subject to flag state jurisdiction while being entitled to the UNCLOS-guaranteed rights, including: innocent passage, transit passage, archipelagic sea lane passage and high seas fishing freedoms. These rights are counterbalanced by corresponding obligations, particularly compliance with conservation measures and management regimes instituted by coastal states and regional fisheries management organizations for sustainable marine resource stewardship.

In terms of operational objectives, maritime militias maintain close integration with fishing activities, their routine operations being fundamentally tied to three dimensions: (1) local economic interests, (2) maritime rights protection, and (3) community security. Possibly motivated by patriotism and citizens’ constitutional duty, these fishermen voluntarily conduct maritime patrols, surveillance operations, and marine resource protection initiatives—all without direct command from state military authorities. Furthermore, their organizational framework, built on local autonomy and voluntary participation, substantively reinforces the militias’ civilian nature.

## 2.2 The motivations for state-sanctioned privatization

From a national perspective, the hybrid public-private identity offers strategic advantages of operational flexibility, mitigation of sovereignty conflicts, and circumvention of state responsibility. This section explores the fundamental motivations behind China’s state—approved privatization initiatives as an example.

Amid globalization, China’s public-private collaboration model traces its origins to the early twentieth century, coinciding with domestic reforms such as governmental restructuring, functional transformation of administrative bodies, and outsourcing of public

services. Over the past three decades, this model has expanded beyond economic sectors into public governance, including law enforcement and rights protection, with maritime militias serving as a prominent example through their involvement in safeguarding sovereignty and enforcing maritime laws (Firmino, 2020). China currently faces disputes of varying intensity in the South China Sea, East China Sea, and Yellow Sea, encompassing territorial sovereignty, maritime boundary delimitation, and resource exploitation, where direct deployment of naval forces risks triggering military conflicts and raising legal questions regarding self-defense, while reliance on administrative forces may escalate tensions when applying coercive measures against foreign civilian vessels, potentially damaging China’s international standing. In this context, employing civilian actors such as fishermen and militias strategically positions disputes as interactions between private entities under international law, thereby mitigating sovereignty-linked tensions, reducing escalation risks, and advancing maritime claims through non-traditional means without formal state attribution. Given the inherent tension between sovereignty assertions and conflict de-escalation in disputed waters, conventional military or administrative tools remain suboptimal for maritime rights protection.

The substantial mobilization of civilian forces for maritime rights defense demonstrates the strategic adaptability of China’s maritime policy. This approach aligns with international legal obligations under the UNCLOS and the 2002 Declaration on the Conduct of Parties in the South China Sea (DOC), which mandate restraint in disputed waters. Specifically, Article 74(3) of the UNCLOS requires states with overlapping Exclusive Economic Zone (EEZ) claims to establish provisional arrangements while refraining from actions that could prejudice final delimitation (United Nations Convention on the Law of the Sea, 1982), while Article 5 of the DOC explicitly prohibits activities that might escalate disputes (The Governments of the Member States of ASEAN and the Government of the People’s Republic of China, 2002). Although states retain rights to conduct law enforcement in contested EEZs, excessive enforcement—as demonstrated in the Guyana v. Suriname case (UN reports of international arbitral awards, 2007) where naval intervention was ruled a violation of mutual restraint principles—risks violating these obligations. China’s utilization of fishermen and maritime militias for surveillance and incident reporting establishes a calibrated response mechanism: by delegating initial monitoring to non-state actors, authorities gain diplomatic space to address violations through peaceful channels before considering formal enforcement. This tiered approach satisfies the DOC’s restraint requirements while maintaining operational presence, as civilian patrols constitute less provocative “practical arrangements” under the UNCLOS Article 74(3) compared to direct state enforcement. The model thus achieves dual compliance—fulfilling sovereign rights through monitored presence while observing international obligations through deferred state intervention—making it particularly suitable for contested EEZs where balanced enforcement is paramount.

In summary, the hybrid public-private identity of maritime militias offers distinct strategic advantages. Their civilian character serves a dual function: while substantively supporting state law enforcement objectives, it simultaneously reduces the risk of external perceptions as purely military entities. This intentional ambiguity allows them to operate within the normative framework of civilian fishermen defending legitimate interests, thereby granting exceptional operational flexibility in complex maritime scenarios. Such

adaptability enables both rapid response capabilities and the maintenance of lawful economic activities through maritime resource utilization. The model ultimately strengthens the resilience of fishing communities while furnishing the state with an innovative form of non-kinetic maritime influence—a manifestation of carefully calibrated “soft power” in maritime domain awareness and rights protection.

### 3 Institutionalizing hybridity: global practices of hybrid collaboration

This section analyzes the operation of hybridity through comparative institutional analysis, mapping the divergent trajectories of hybrid system development between established and emerging military practitioners. It reveals state practices that are shaping a new international order. State practice—especially when coupled with *opinio juris* (the belief in its legal necessity)—shapes customary international law (Shaw, 2017). Such evolving practices may solidify into new norms when adopted by states confronting comparable security challenges. These hybrid models redefine civilian-military boundaries under international humanitarian law, while their deliberate ambiguity provides states with strategic flexibility in contested maritime zones. Historically, militia systems have long been integral to military development. For example, the *British Militia Act of 1757* formalized militias as a reserve force to support the regular army (Militia Act, 1757). During the French Revolution, the National Guard was established as a self-defense force composed of workers and peasants. Similarly, in Russia's October Revolution, Lenin's Red Guards—primarily urban workers—played a pivotal role in consolidating Soviet power. Today, maritime militias, with China, Vietnam, the Philippines, and the U.S. as key participants, are emerging as a new state practice, actively shaping a transformed maritime security and legal order.

#### 3.1 Mature collaboration models: formalized hybrid governance in China and Vietnam

Currently, China and Vietnam utilize their large fishing fleets to deploy maritime militias as mobile forces protecting territorial sovereignty and maritime interests.

##### 3.1.1 Maritime militias in China

China has long practiced the concept of “combining peacetime and wartime.” As early as 535–551 AD, the militias system was established, where militias served as farmers during peacetime, engaged in agriculture, conducted military training during off-seasons, and performed wartime duties, eventually being incorporated into the regular army during conflicts. This system persisted under various names throughout history. In modern times, militias actively participated in resisting invasions. Around 1927, mass armed organizations under the leadership of the Communist Party of China established the modern militia system. Before the founding of the People's Republic of China, Article 23 of the interim constitution explicitly mandated that the new China would maintain the militia system (Common Program of the Chinese People's Political

Consultative Conference, 1949). This provision institutionalized the militia system within the provisional constitutional framework. In 1955, China promulgated its first Military Service Law, which stated in its annex that “the militias continue to bear the tasks of defending local life and production order” (Military Service Law of the People's Republic of China, 1955). Following reform and opening-up, China amended the Military Service Law in 1984 to meet new mobilization needs. The revision introduced a combined model integrating the militia system with the reserve service system (Military Service Law of the People's Republic of China, 1984). China lacks specific regulations governing “maritime militias.” Domestic laws pertaining to “militias” are primarily defined in the Constitution, the *Military Service Law*, the *National Defense Law*, the *National Defense Mobilization Law*, and the *Emergency Response Law*.

The characteristics of China's maritime militias can be summarized as follows: First, personnel composition falls into two categories. The majority are ordinary militias, primarily consisting of fishing community members and employees from coastal fishing companies, shipping firms, and fishery associations. A smaller proportion are permanent militias, including veterans and personnel with specialized technical skills (Military Service Law of the People's Republic of China, 2021). Second, crews are flexibly organized under a “vessel-specific assignment” strategy that matches ships with professionals based on mission requirements. These composite teams include fishermen familiar with disputed waters' conditions and foreign vessel activities, alongside skilled retired military personnel and medical professionals. Third, maritime militia vessels are predominantly civilian fishing boats requisitioned for military purposes. Their equipment configurations typically retain civilian vessel characteristics. Owned by individuals, fishing companies, and fishery associations, these are generally large-tonnage, high-speed, wind-resistant ocean-going fishing boats designed with self-protection capabilities for emergencies like sea collisions. Fourth, there is a lack of clear operational command specifications. Scholars have proposed establishing a “Maritime Rights Protection Command Headquarters” to standardize action procedures, content, and methods, while coordinating interactions between maritime militias and other entities including the navy, coast guard, fisheries, and maritime affairs departments (Xingguo and Chang, 2023).

##### 3.1.2 Maritime militias in Vietnam

Vietnam established its modern militia system relatively early, playing a significant role in achieving national independence and unification. On March 28, 1935, the First Congress of the Indochinese Communist Party (predecessor of the Communist Party of Vietnam) resolved to create militia self-defense forces and established regulations governing their organization, discipline, and operations (Khánh Hòa, 2019). Following national unification, Vietnam actively implemented a “military-civilian integration” policy within its “people's national defense” framework, elevating the militias' status within the national defense system. The National Assembly formally enacted the “Militia Self-Defense Force Law” in 1996, subsequently amending it in 2004, 2009, and 2019 to adapt and refine the militia system in response to changing circumstances. Under Vietnam's Constitution, Military Service Law, Militia Self-Defense Force Law, National Defense Law, Maritime Law, and Militia Self-Defense Force Activity Regulations, the militias constitute an integral component of both the national armed forces and the military service system. Its primary mission is safeguarding the sovereignty and territorial integrity of the Socialist



Republic of Vietnam. Notably, Vietnam's Maritime Militias have become a key force in protecting maritime rights and interests.

The Vietnamese Maritime Militias (also known as the Maritime Self-Defense Force) emerged around 1980 with substantial investments from coastal enterprises and institutions. To address South China Sea challenges, Vietnam has developed a large-scale maritime militias by mobilizing resources from 30 coastal provinces, over 100 district-level units, and nearly 700 coastal communes, including dozens of island districts and communes. The militias are typically divided into two categories: the maritime militias, composed primarily of fishermen distributed across coastal communities, and the maritime self-defense forces, consisting of employees from maritime enterprises and institutions. Estimates suggest the total strength exceeds 70,000 personnel, representing more than 4.7% of Vietnam's total militias and self-defense forces (Chen, 2020). Organizationally, Vietnam employs a five-tier structure ranging from groups to sea regiments, with deployments extending to state-owned vessels, offshore installations, and even foreign/private enterprises while ensuring the Party's absolute leadership (*Dân quân tự vệ có vai trò nòng cốt trong nền Quốc phòng toàn dân*, 2018).

The operations of Vietnam's maritime militias primarily encompass three key aspects. First, they assist and collaborate with the navy, coast guard, border defense forces, and fisheries agencies in maritime law enforcement and rescue operations. Their duties include deterring, intercepting, and apprehending foreign fishing vessels engaged in illegal activities that violate Vietnam's territorial sovereignty, as well as conducting search and rescue missions for distressed vessels. For example, by the end of 2020, Vietnam's maritime militias had directly participated in over 2,000 maritime law enforcement operations (*Huyện Thuận Nam với việc xây dựng dân quân biển vững mạnh*, 2018). Second, under the guise of fishing activities, they operate in disputed areas of the South China Sea to assert sovereignty. For instance, Vietnamese fishing fleets and maritime constabulary forces have repeatedly intruded into Indonesia's EEZ (Putra, 2024). While engaging in illegal fishing, they deliberately provoke collisions with foreign law enforcement vessels, fishing boats, and offshore drilling platforms. These actions aim to manufacture fishing disputes and portray Vietnam as a "victim" to garner international sympathy. The Vietnamese government promotes the slogan that "every fishing boat is a mobile sovereignty marker" and provides tax incentives to encourage fishermen to operate near the Paracel (Xisha) and Spratly (Nansha) Islands, thereby reinforcing Vietnam's territorial claims while boosting state revenue. Additionally, the Vietnamese navy supports fishery activities by offering military docks, communication systems, and protection for fishing vessels. Third, disguised as fishing boats, they conduct surveillance in specific maritime zones, collecting and reporting foreign military intelligence and maritime activity data to authorities. By March 2017, Vietnam's maritime militias had submitted 13,460 intelligence reports related to national defense and maritime security (South China Sea Strategic Situation Probing Initiative (SCSPI), 2020).

## 3.2 Emerging public-private collaboration: fragmented initiatives in Philippines and United States

Among the parties involved in the South China Sea disputes, maritime militias are not unique to China and Vietnam. Other

claimants like the Philippines and extra-regional actors like the U.S. increasingly experiment with similar models amidst escalating maritime frictions.

The Philippines government's "New Fishery Management Plan," launched on May 9, 2025 through a joint initiative by the Philippines Coast Guard and the Bureau of Fisheries and Aquatic Resources, represents a strategic approach to maritime claims. The deployment of M/V Mamalakaya to Scarborough Shoal waters formed part of this comprehensive strategy, which combined direct market intervention through catch purchases with critical logistical support including fuel and ice provisions to incentivize fishermen's operations in contested waters (Philippine Information Agency, 2025). The subsequent announcement by U.S. Ambassador MaryKay L. Carlson on May 17, 2025 regarding American support for Philippines fishing rights underscored the growing international dimensions of these maritime disputes (U.S. Embassy Manila, 2025). These developments highlight how the militia system, despite varying national implementations, has evolved into a significant component of contemporary maritime security architectures across the region.

### 3.2.1 Maritime militias in Philippines

Facing China's military superiority in the South China Sea, the Philippines proposed creating maritime militias in 2020. By 2023, its military announced plans to recruit fishermen into these units, shifting focus from internal security to territorial defense (Manila Bulletin, 2023). The program expanded after the 2024 U.S.-Japan-Philippines summit, which discussed boosting maritime militias efforts. Studies show the Philippines has used domestic laws to tighten control over key sea lanes. This aligns with U.S. efforts to monitor Chinese vessels near Philippines waters, while helping Manila leverage its island geography strategically (The White House, 2024).

In terms of institutional guarantees, Article 16 of the *Philippines Constitution* requires the Armed Forces to include a civilian armed force trained for military service, while the state must maintain a standing army for national security. The 2009 *Philippines Coast Guard Law* (PCG) (PCG Law, Section 11) (Philippines Coast Guard Law, 2009) establishes the PCG Auxiliary (PCGA) as a civilian volunteer group under the PCG Commandant, tasked with assisting in maritime safety, environmental protection, search and rescue, and community relations. The Philippines also has militia organizations under the Militias Law (Republic Act No. 7077, 1991, Article 2,715), which divides them into the Civil Guard and Reserve Militias—the latter mobilizable by the Commander-in-Chief. Executive Order No. 264 further subjects all Citizen Armed Forces members, including the maritime militias, to military law. Despite having 1.8 million fishermen as a potential recruitment pool, surveys show reluctance among them to join such programs (ABS-CBN News, 2020). While the U.S. pushes for a Filipino "maritime militias" to counter China—possibly justifying intervention under the Mutual Defense Treaty—fishermen near Scarborough Shoal care more about livelihoods than geopolitics. The Philippine military plans to train and equip them, but operational specifics remain undisclosed (Naval News, 2023). Generally, although the law grants the PCG the authority to establish and develop maritime security auxiliary forces, the construction of the Philippine maritime militia is still in the exploratory stage, and the relevant organizations and systems have not yet been established.

### 3.2.2 Maritime militias in United States

Given the U.S.'s formidable military presence in the South China Sea, its role warrants examination. While American think tanks often criticize China's maritime militias, the U.S. military has long incorporated militia forces. Notably, the U.S. Navy is now considering forming its own maritime militias (Campbell, 2023). This applies both to expanding its domestic militia capabilities and to potential intervention in the Asia-Pacific under the pretext of safeguarding Philippines maritime militias.

In its early years, the U.S. relied on civilian ships and sailors to support naval operations during wars and emergencies. The Revolutionary War began with militias firing the first shot at Lexington. During the War of 1812, coastal merchants and fishermen aided the navy with intelligence and supplies. In both World Wars, the U.S. drafted civilian vessels for transport, patrols, and anti-submarine missions. *The U.S. Constitution* separates the regular army from militias. *The Militia Act of 1792* made militias a key part of national defense (Wiener, 1940). *The Militia Act of 1903 (Dick Act)* reorganized state militias into the National Guard (Todd, 1941). Peacetime duties include maintaining order, while wartime laws allow federal mobilization. This system also applies to maritime governance.

While the U.S. currently lacks formal maritime militias, similar organizations exist. In 1887, Senator Washington C. Whitthorne introduced Senate Bill 3,320 to establish a Naval Reserve auxiliary force drawn from the U.S. merchant marine. The following year, his H. R. 10,622 proposed registering maritime professionals as naval militias in coastal states—a measure that shaped subsequent state actions. Today, these state-managed naval militias, composed of Naval Reserve members and volunteers, qualify for federal support and may use Navy or Marine Corps Reserve facilities under Title 10 of the *U.S. Code*. Another key example is the Coast Guard Auxiliary (USCG, Auxiliary), a vital volunteer-based support force with 26,000 members across all 50 states, Puerto Rico, the Virgin Islands, American Samoa, and Guam (US Homeland Security, 2025). Established by the Coast Guard Authorization Act, its duties include assisting patrols, conducting vessel safety inspections, and public education. Members are unpaid volunteers who cannot be conscripted, and their vessels/equipment are primarily privately owned. Unlike China and Vietnam's maritime militias (see Table 1), the USCG Auxiliary operates under strict legal limits: it supports non-combat tasks like communications, maintenance, and cybersecurity awareness but is barred from law enforcement, military operations, or weapon possession (US Coast Guard Auxiliary, 2025). Recent efforts by Auxiliary members seek expanded authorities to address challenges like drug smuggling (US Coast Guard News, 2024), supported by the *2021 National Defense Authorization Act*, which encourages broader roles for reserves and civilian auxiliaries (US House of Representatives, 2021). The U.S. also utilizes other volunteer programs, including the Sea Shepherd Conservation Society (anti-illegal fishing) and Surfrider Foundation (ocean cleanup), alongside

local marine patrol initiatives. In summary, the flexible legal framework for the USCG Auxiliary, combined with the ease of converting civilian vessels into auxiliary assets, allows the U.S. to leverage private maritime resources effectively. This capability enhances maritime influence in strategic regions like the Indo-Pacific and South China Sea.

Overall, due to the lack of clear domestic legal norms, maritime militias generally operate within each country's existing militia framework. The USCG Auxiliary exemplifies a distinctive U.S. model of military-civilian collaboration that leverages volunteers to augment the Coast Guard's resources and capacity. This model focuses primarily on non-law enforcement and non-military tasks, such as education, search and rescue, and environmental protection. In contrast, China and Vietnam have fully integrated their maritime militias into their national defense frameworks, employing hierarchical military management to directly advance national security objectives. The U.S. and the Philippines, however, adopt a more decentralized volunteer model that strictly circumscribes auxiliary forces' military roles, limiting them to supporting civil functions. While these differing models reflect varying approaches to safeguarding maritime interests, they all embrace hybrid governance principles. This approach emphasizes addressing increasingly complex, transnational, and non-traditional maritime security threats through multifaceted and adaptable means. The key difference lies in institutional maturity: states like Vietnam and China have relatively advanced systems, while others, including the Philippines and the U.S., are still developing or refining similar frameworks. These national efforts reflect a broader trend toward institutionalization and standardization. Ultimately, resolving these issues depends on advancing both domestic and international legal frameworks. The current optimal approach involves first determining the legal status of militia vessels based on their specific operational contexts, then assessing the legality of these activities under international law.

## 4 Governing hybridity: tension and regulation in maritime militias collaboration

This section examines the tension and regulation in hybrid governance, focusing on three critical regulatory deficiencies: behavioral accountability mechanisms, vessel conversion protocols, and technological transformation frameworks.

### 4.1 Hybrid governance of behavioral accountability

When the actions of maritime militias raise legitimate concerns, holding private actors or their home states accountable poses a significant challenge, primarily stemming from three governance gaps.

TABLE 1 Major differences in the hybrid collaboration in maritime safety among China, Vietnam and Philippines.

Content	China	Vietnam	Philippines	United States
Maritime law enforcement authority	No	Yes	No	No
Military operation authority	Yes	Yes	No	No
Weapons authority	No	Yes	No	No

First, ambiguous legal status complicates accountability. Maritime militias operate in a gray zone as hybrid quasi-military and civilian entities. Their actions blur the line between state-sanctioned operations and private conduct, creating uncertainty over whether the UNCLOS in peacetime, *international humanitarian law* during armed conflict, and the *International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts* (ARSIWA) should govern disputes. This ambiguity persists due to the absence of explicit international legal definitions for such hybrid actors. The application of Article 5 of the ARSIWA to “governmental authority” (Crawford, 2002, p.100) requires demonstration of state empowerment—a burden of proof rendered particularly onerous by the militias’ deliberately opaque operational structures. The Nicaragua v. United States precedent of “effective control” (International Court of Justice (ICJ), 1986, para. 115) proves similarly problematic, as the militias’ decentralized organizational models effectively conceal any demonstrable chain of state command, replicating the attribution difficulties observed in global public-private partnerships.

Second, fragmented evidence undermines responsibility attribution. Disguised as civilian fishing vessels and using informal command structures, maritime militias obscure the link between their activities and state directives. Current maritime surveillance systems cannot reliably distinguish routine fishing from coordinated operations, creating a significant evidentiary gap.

Third, systemic accountability evasion weakens governance. By outsourcing maritime operations to militias, states create a legal shield that traps victims in a dilemma: pursuing compensation from under-resourced private actors or facing insurmountable evidentiary hurdles when seeking state accountability.

To address these issues, a three-pronged governance framework integrating action, identity, and accountability is essential. This could begin with revising and supplementing relevant international regulations to explicitly define the legal status of maritime militias and to implement distinctive marking systems for easier identification. In parallel, creating an international maritime tribunal or a similar specialized body with expedited procedures for evidence collection and analysis can help bridge the evidentiary gap between routine operations and systematic actions. Finally, establish specific categories of internationally wrongful acts under the ARSIWA to harness the conflict-deescalation value of maritime militias while preventing new governance pitfalls.

## 4.2 Hybrid governance of vessel conversion

The governance complexity stems from the dual-role nature of militia vessels, which dynamically alternate between private commercial operations and state-directed public functions. This operational fluidity creates significant legal ambiguities regarding vessel status determination. These vessels may engage in commercial fishing on Monday, conduct state-ordered maritime interdiction on Tuesday, and resume fishing activities by Wednesday—a phenomenon that epitomizes the “civilian-combatant” duality characteristic of hybrid maritime forces (McLaughlin, 2019).

During peacetime, international law does not prohibit the conversion of private vessels (e.g., fishing or merchant ships) into those “used exclusively for government non-commercial service,” broadly referring to vessels owned or operated on behalf of a state.

While the UNCLOS does not explicitly address vessel conversion, its preamble affirms that “matters not regulated by this Convention continue to be governed by the rules and principles of general international law,” and Article 32 grants such vessels immunity from the jurisdiction of any state other than the flag state in foreign territorial seas and on the high seas. Other relevant norms derive from Article 23 of the 1956 *Draft Convention on the Law of the Sea*, Article 22(1) of the 1958 *Convention on the Territorial Sea and Contiguous Zone*, and Article 9 of the *High Seas Convention*. In essence, while a vessel’s physical attributes remain unchanged, its legal status shifts from private to public use, entitling it to sovereign immunity and other special legal privileges.

During armed conflict, private vessels such as fishing or merchant ships may be converted into warships under specific procedures and conditions. The 1907 *Hague Convention VII* outlines six mandatory requirements for such conversion, including: full state control and supervision, display of military markings, appointment of a commanding officer, adherence to military discipline, and formal integration into the naval fleet. These rules have since crystallized into customary international law through repeated state practice (*Hague Convention VII*, 1907). The *San Remo Manual* further clarifies that even state-chartered military supply vessels enjoy sovereign immunity. The minimum duration for such status conversion can be as brief as a single voyage. This transformation grants the vessel combatant status while simultaneously rendering it a lawful military target.

The determination of a vessel’s legal status under hybrid governance principles fundamentally depends on its operational purpose rather than ownership structure. The critical distinction lies in whether the vessel serves “non-commercial government functions,” encompassing both peacetime public services and wartime military operations. This functional approach offers three key advantages: it overcomes the limitations of ownership-based classification (particularly relevant given state-chartered private vessels), avoids subjective intent analysis by focusing on observable activities, and provides a more dynamic framework for status assessment.

To effectively implement this standard, we propose a four-pillar regulatory system. First, an international digital registry should be established, requiring real-time reporting of vessel status changes through AIS systems with automatic verification protocols. This system would mandate continuous updates of operational designations and impose strict penalties for non-compliance, including loss of sovereign immunity protections. Second, a multilateral verification mechanism should be created, combining IMO oversight with coastal state monitoring capabilities to validate operational claims through forensic analysis of digital navigation records and communication patterns. Third, the framework must incorporate clear conversion protocols aligned with existing naval warfare conventions, including the U.S. Navy’s precedent for temporary status changes (Department of the Navy Office of the Chief of Naval Operations Headquarters, 2017). These protocols should specify minimum notification periods, documentation requirements, and governmental oversight procedures for all status transformations. Fourth, a specialized wartime conversion protocol should be developed to address operational ambiguities, establishing standardized procedures for public declarations, visual identification markers, and international notifications during conflict situations. This comprehensive approach achieves three critical objectives: it maintains operational flexibility for state actors, ensures legal accountability through verifiable evidence, and preserves



international maritime security through transparent monitoring mechanisms. By anchoring status determinations in functional criteria rather than formalistic classifications, the framework provides a balanced solution to contemporary maritime governance challenges while preventing potential system exploitation.

### 4.3 Hybrid governance of technological transformation

Technological “upgrading” is not merely about enhancing military capabilities but also significantly increases regulatory complexity (Lingevious, 2023). With technological advancements, emerging fields such as the Internet of Things, big data, sensors, artificial intelligence (AI), and cloud computing have brought significant innovations to the maritime activities of the maritime militias. These technologies span various domains. In the area of communication and information transmission, satellite communication devices, wireless radios, and maritime networks are key components. For reconnaissance and surveillance, drones and radar systems play crucial roles. In navigation and positioning, the Global Navigation Satellite System and inertial navigation systems are essential. In training simulation, simulation systems and electronic warfare equipment are vital tools. As for maritime exploration and data processing, exploration devices and big data platforms are fundamental.

The integration of these technologies into the maritime militias’ operations has significantly enhanced efficiency. Specifically, remote sensing technologies (e.g., high-resolution satellites and drones) enable real-time monitoring of vast maritime areas, ensuring prompt detection of illegal activities such as unauthorized fishing or intrusions. Such capabilities allow maritime militias to swiftly address threats, thereby safeguarding national security interests. For example, AI-powered analytics have been integrated into command systems to process sensor data. This technology not only accelerates threat identification but also optimizes patrol resource allocation through dynamic risk assessments. A study by the Center for Strategic and International Studies highlighted that such digital solutions enhance operational precision by converting raw data into actionable intelligence (Poling et al., 2021). In practice, Zhejiang Province—a hub for Chinese tech companies—has adopted these innovations in militias training. Advanced drone simulators allow operators to repeatedly practice complex maneuvers (e.g., takeoffs and landings) without geographical or weather constraints, significantly improving training outcomes (Chen and Ren, 2024).

However, the adoption of advanced technologies also introduces challenges and risks. While enhancing operational capabilities, technology cannot resolve disputes or violation consequences. Moreover, these technologies themselves generate risks requiring careful management. For instance, unmanned vessels (e.g., ships and boats) overcome traditional spatiotemporal limitations in maritime enforcement but simultaneously raise legal and ethical challenges (Brett, 2022). Specifically, their use conflicts with existing domestic and international laws designed for manned vessels, creating ambiguities in liability, jurisdiction, and regulatory interpretation during incidents. The legal framework must evolve to address these realities, ensuring relevance in modern maritime contexts. International humanitarian law may further restrict unmanned vessel operations, necessitating regulatory updates (Zhang et al., 2024). Additionally, the growing

reliance on digital technologies escalates cybersecurity and data security risks. Unauthorized access, tampering, or data leakage across its lifecycle (collection, storage, transmission, etc.) threaten sensitive navigation and surveillance data (Martínez et al., 2024). Emerging tools such as AI-driven sensors and blockchain verification blur distinctions between legitimate state operations and covert actions, thereby muddling public-private collaborations in hybrid governance structures. This technological transformation renders traditional legal frameworks less effective, as fluid cyber-physical identities challenge established accountability measures aimed at maintaining maritime security and order. Consequently, global governance mechanisms face difficulties enforcing maritime legal standards and ensuring stability.

From a hybrid governance perspective, the technological transformation of maritime militias has introduced additional legal complexities stemming from the dual-use nature of emerging technologies. This governance challenge requires a two-pronged approach: first, systematically identifying specific legal issues within existing maritime, technology, and security frameworks to determine appropriate jurisdictional pathways; second, developing context-sensitive regulatory solutions that balance technological neutrality with necessary oversight. Three innovative governance mechanisms illustrate this approach: (1) establishing experimental regulatory sandboxes through “Special Unmanned Systems Management Zones” among South China Sea littoral states to evaluate competing regulatory models related to maritime militias; (2) forming a multi-stakeholder technical standards consortium involving classification societies, defense technology providers, and maritime NGOs to develop binding Industry Standards for Maritime Militia Technology Applications; and (3) implementing an AI-enabled early-warning system that automatically initiates pre-arranged diplomatic consultations when detecting anomalous concentrations of technology-enhanced maritime militias’ vessels, serving as an institutional circuit-breaker against potential escalation.

## 5 Conclusion

The rise of hybrid governance in maritime disputes presents a complex interplay between state and non-state actors, particularly evident in the institutionalization of maritime militias. These hybrid entities—simultaneously embedded in state security frameworks while maintaining civilian cover—represent a paradigm shift in contemporary maritime governance. South China Sea claimant states have pioneered this model, strategically incorporating fishermen and other private actors into territorial assertions to leverage operational ambiguity for sovereign claims while preserving plausible deniability.

This governance approach offers distinct strategic advantages. Maritime militias’ dual identity as both military and civilian actors provides operational flexibility, mitigates direct sovereign conflicts, and circumvents traditional state accountability mechanisms. These benefits have driven their institutionalization across the region, with China, Vietnam, the Philippines and the U.S. increasingly integrating them into their maritime security architectures. However, this very hybridity creates significant regulatory challenges, particularly regarding behavioral accountability, vessel conversion, and the technological transformation.

The core dilemma lies in reconciling hybrid governance’s strategic utility with rule-of-law frameworks. While maritime militias enable



states to navigate contested waters with reduced political risk, their ambiguous status raises critical questions about compliance with international law and conflict prevention. This situation highlights the urgent need for major powers and disputing parties to develop a shared understanding of hybrid actors' status and operational parameters. Such consensus should address three critical dimensions in chapter 4.

As these hybrid actors continue to evolve, developing effective governance mechanisms becomes paramount. The challenge is to maintain their strategic value while ensuring integration into a rules-based maritime order. This necessitates nuanced solutions that acknowledge hybrid realities without compromising regional stability—a balance between operational effectiveness and conflict prevention that will define the future of maritime governance in contested waters.

## Data availability statement

The original contributions presented in the study are included in the article/supplementary material, further inquiries can be directed to the corresponding author.

## Author contributions

HC: Writing – original draft. JL: Writing – review & editing.

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