

CHINA'S AIR DEFENSE IDENTIFICATION ZONE (ADIZ): POSITION, IMPLEMENTATION AND LEGALITY

ZONA DE IDENTIFICACIÓN DE DEFENSA AÉREA DE CHINA (ADIZ): SITUACIÓN, IMPLEMENTACIÓN Y LEGALIDAD

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ABSTRACT

Objective: *The Air Defense Identification Zone (ADIZ) established by China in the East China Sea in 2013 still invites polemic—likewise, the statement regarding the possibility of establishing an ADIZ in the South China Sea in 2016. An objective discussion based on international law is needed to examine this issue. This paper intends to provide perspective by questioning the position, implementation practices, and legality of the ADIZ that China has established in the East China Sea and the ADIZ that has the potential to establish in the South China Sea.*

Methods: This research uses Qualitative secondary data from various print and digital literature sources to analyze this normative juridical research.

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Results: The results of the discussion show that ADIZ China's position is not a territorial claim but instead used as an effort to achieve national interests, namely security and defense. Practices carried out by China and several countries tend to have similarities and differences but still have a legal and theoretical basis in their respective perspectives. There is an argumentation basis for those who say China's ADIZ is legal and vice versa.

Conclusion: If the perspective is left without an adjudication process, the war of arguments and opinions will never end. Therefore, settlement through an adjudicative perspective is essential as long as there is an agreement between the parties. The impetus to initiate this possibility must come from two opposite directions. This paper has explained that the legal approach will only be able to take a role when a dispute is brought to a court. Nevertheless, ADIZ China is still implemented and tends to be obeyed by some - although not all - airlines that cross ADIZ China.

Keywords: China's ADIZ; practice; legality.

RESUMEN

Objetivo: La Zona de Identificación de Defensa Aérea (ADIZ) establecida por China en el Mar de China Oriental en 2013 todavía invita a la polémica; de la misma manera, la declaración sobre la posibilidad de establecer una ADIZ en el Mar de China Meridional en 2016. Una discusión objetiva basada en el derecho internacional. Es necesario examinar esta cuestión. Este artículo pretende brindar una perspectiva cuestionando la posición, las prácticas de implementación y la legalidad de la ADIZ que China ha establecido en el Mar de China Oriental y la ADIZ que tiene el potencial de establecerse en el Mar de China Meridional.

Métodología: Esta investigación utiliza datos secundarios cualitativos de diversas fuentes de literatura impresa y digital para analizar esta investigación jurídica normativa.

Resultados: Los resultados de la discusión muestran que la posición de ADIZ China no es un reclamo territorial sino que se utiliza como un esfuerzo para lograr intereses nacionales, es decir, seguridad y defensa. Las prácticas llevadas a cabo por China y varios países tienden a tener similitudes y diferencias pero aún tienen una base legal y teórica en sus respectivas perspectivas. Hay una base argumental para quienes dicen que la ADIZ de China es legal y viceversa.

Conclusión: Si la perspectiva se deja sin un proceso de adjudicación, la guerra de argumentos y opiniones nunca terminará. Por lo tanto, la solución a través de una perspectiva adjudicativa es esencial siempre que exista un acuerdo entre las partes. El impulso para iniciar esta posibilidad debe venir de dos direcciones opuestas. Este artículo ha explicado que el enfoque jurídico sólo podrá desempeñar un papel cuando una disputa se lleve ante los tribunales. Sin embargo, ADIZ China todavía se implementa y tiende a ser acatado por algunas (aunque no todas) aerolíneas que cruzan ADIZ China.

Palabras clave: ADIZ de China; práctica; legalidad.

1 INTRODUCTION

The Air Defence Identification Zone (ADIZ) became a discourse in the discussion of international law. The debate arises because of the lack of international conventions that explicitly regulate. However, based on state practice, ADIZ is usually a policy that is applied to its territorial and even extra-territorial airspace. Most countries define their ADIZ up to the Exclusive Economic Zone (EEZ) airspace and even the high seas (Su, 2019). On November 23, 2013, the Chinese Ministry of Defense announced the entry into force of the ADIZ policy in the East China Sea region, which was implemented through its domestic regulations. Later, the possibility of implementing ADIZ was also discussed in the South China Sea region. Despite reaping protests from various countries, especially countries that have contact (*overlapping*) with the ADIZ claims made by China, the policy is still implemented. Japan, South Korea, and Taiwan are countries that feel the impact of these overlapping claims. The ADIZ covers the airspace over the Senkaku/Diaoyu islands, which are claimed by three countries, namely Japan, China, and Taiwan, and the airspace over the Leodo/Suyan reefs, which South Korea claims, and China (Bilal, 2014; Hidayat, 2014; Roy, [2014]). ADIZ certainly adds to the series of problems that were initially focused on the land-island- and sea areas to become the airspace.

International law, as an instrument that regulates the subject of international law, certainly needs to play a role. Several studies regarding the position, practice, and legality of ADIZ that have been carried out so far still depend on the perspective of each country (see some examples, such as Banh, 2017; Gabriela, 2018; Ho, 2016). Even several studies seemed provocative by directing the affected countries to create an 'alliance' against ADIZ China (Trent, 2020). Not only because of the need for regulation based on international conventions, various theoretical justifications that have multiple interpretations also add to the difficulty of making a legal assessment of the ADIZ that has been determined, including ADIZ in the East China Sea and potential ADIZ in the South China Sea. The point of view of discussions carried out by various groups so far has focused a lot on discussions regarding potential violations committed by China regarding sovereignty, self-defense, and security as part of China's national interest. For this reason, the authors assess the need for a discussion regarding the position, implementation, and legality of ADIZ, which China claims according to two opposing points of view and understanding, while still basing it on an international legal perspective.

By looking at the phenomena above, this paper is intended to answer three main issues, namely related to the position or status of China's ADIZ that is determined, the implementation of the ADIZ that is determined, and the legality of the ADIZ that China

implements in the East China Sea. The issue of the status and position of ADIZ China is often questioned because it is seen as an attempt to claim airspace. The implementation carried out by China is also considered unusual as practiced by other countries. Therefore, the legal issue of the ADIZ, which China has determined in the East China Sea, and its potential ADIZ in the South China Sea is an exciting issue to answer. Apart from that, this article will also explore the discussion regarding the ADIZ, which is being discussed in its implementation in the South China Sea. For this reason, the first question to be answered is the legal status or position of ADIZ China. Second, how is the practice of implementing China's ADIZ in the East China Sea and the "South China Sea"? Third, how is the legality of ADIZ determination that has been and will be carried out by China from the perspective of international law? Apart from wanting to be analyzed using relevant international regulations, this issue is also analyzed based on a theoretical approach.

This paper assesses the position, implementation, and legitimacy of international law -if any- and the theory that forms the basis for establishing ADIZ by countries, especially China. It is hoped that studies on ADIZ claims will continue to be carried out objectively based on international law as a joint effort of international law subjects. For this reason, this paper is also one of the efforts to complete the explanation regarding the position, implementation, and legality of ADIZ determined by China as an initial identification effort before discussing legal efforts and steps that can be taken in the future.

2 THEORETICAL REFERENCE

2.1 STATE SOVEREIGNTY AND DEFENSE AND SECURITY INTERESTS

Jean Bodin explains that state sovereignty is something supreme, absolute, and eternal power, unlimited and undivided (Sefriani, 2018, p. 11). According to Shaw (2016, p. 479), sovereignty and similar regimes will be closely related to the area where this sovereignty will be enforced. Before developing into sea and air space, the land was the main object of the state in implementing sovereignty. As a result of being pushed by various technological developments and several interests, the land paradigm, which was considered central at that time, especially in the aspects of defense and security, changed and shifted to sea and air territory (Abdurrasyid, 2009; Martono; Sudiro, 2012, p. 11). In the context of the law of the sea, for example, because of defense interests, economic benefits, and resources, the state can exercise its full sovereignty in internal waters and territorial waters. There is a further compromise even though the authority is limited through contiguous zone regime (see Article 2 United Nations Convention on the Law of the Sea (UNCLOS), United Nations, 1982),

archipelagic waters (Article 49), as well as sovereign rights or the authority to regulate and explore with economic motives in the exclusive economic zone area (Article 56) and the continental shelf (Article 77). Likewise, even though it has differences from concepts on land and at sea, the interests carried by the state in airspace are no different, namely defense, security, and economy. For this reason, state sovereignty is the legitimacy for how various state interests are achieved and achieved.

State sovereignty is closely related to its relationship with national defense and security. This concept forms the basis and ensures that every state has an identity and position recognized as a subject of international law. To exercise its legal sovereignty, the state has legal authority as a reflection of state sovereignty, referred to as jurisdiction (Thonthowi; Iskandar, 2006, p. 151). Jurisdiction is how the state has the authority to form (legislative), implement (executive), up to judicial and supervisory (judicative) authority to ensure the achievement of the legal objectives that are formed (Shaw, 2016, p. 640). The relationship between sovereignty and the interests of state defense and security has been discussed as part of state sovereignty in international law. Sovereignty is a tool for the state to defend its land, sea, and air territory. While defense security covers all aspects and strategies, sometimes the exercise of sovereignty for this purpose involves the military, intelligence, border security, and efforts to maintain territorial integrity and the security of its people. However, according to Lara (2014), this concept still often needs to be revised to avoid interpretation problems.

In line with the needs of the state, the implementation of sovereignty develops not only by covering territorial areas but also outside the boundaries of the state territory, which is also referred to as territory quasi-territorial or even up to extra-territorial. This development is, of course, followed by the implementation of jurisdiction, which is not only territorial but also extra-territorial jurisdiction. Even though it was initially carried out for diplomatic reasons, the implementation of quasi and extra-territorial jurisdiction in various discussions also has justification reasons if its implementation is based on the principle of active or passive nationality, national interests, and the principle of universality. The factor of defense and security is often used as a justification for implementing quasi and extra-territorial jurisdictions. Defense and security are considered as a justification because it is a country's national interest. Not only land and sea, airspace is considered an area with the potential to receive threats. However, it should be noted that state sovereignty does not mean that a country is free to do whatever it wants without regard to the rights or interests of other countries. The limitation of the notion of sovereignty is based on the need for order in the international community. Orderly international relations will not be possible without restrictions on sovereignty (Likadja; Bessie, 1988, p. 33).

2.2 AIR DEFENCE IDENTIFICATION ZONE (ADIZ)

For any country, the border area is an essential barrier to territorial security and a portal to the outside world (SONG *et al.*, 2017). Today's airspace is no exception. It has so much influence on defense and security that various countries have established strategic policies, including the *Air Defence Identification Zone* (ADIZ). Annex 15 Convention International Civil Aviation Organization (ICAO) defines ADIZ as “*Specially designated airspace of defined dimensions within which aircraft are required to comply with special identification and/or reporting procedures additional to those related to the provision of air traffic services (ATS).*” The main principle to be addressed in the arrangement of this special airspace is special identification (ICAO, 2015). The United States procedure regarding ADIZ also defines it as an area of airspace over land or waters where the ready identification, location, and control of all aircraft is necessary for national security (Federal Aviation Administration, 2023).

The United States first adopted the ADIZ concept by expanding its airspace over the high seas in 1950. In 1951, Canada established the Canadian *Air Defence Identification Zone* (CADIZ). The United States and Canada's ADIZ are considered the forerunners and models for the spread of ADIZ during the Cold War era. Initially, ADIZ was intended to protect against long-range nuclear attacks. However, recent developments in military technology have weakened ADIZ's role. It was only in the events of September 11, 2001, and the emergence of new security threats that the practice was revived in the United States (Abeyratne, 2012). Canada, India, Japan, Pakistan, Norway, the United Kingdom, China, South Korea, Taiwan, and the United States are some countries currently maintaining air defense identification zones (Stewart, 2021). Until now, the ADIZ is still a widely discussed topic, as highlighted by the international community regarding the formation of the East China Sea ADIZ. Not only because it overlaps with other countries' ADIZ claims, but this ADIZ is also considered to have different practices from country practices in general.

The state authority carries out the state's practice of ADIZ to issue an official statement explaining the boundaries of the ADIZ and the requirements for foreign aircraft wishing to enter it. A common practice within the ADIZ is to require foreign aircraft wishing to enter the zone to self-identify and provide notification to the country's military authorities to confirm the ADIZ. This action aims to detect potential threats and take response actions if necessary. The state usually takes steps to issue warnings, send fighter planes, and ask foreign aircraft to leave the zone. In some cases, ADIZ is carried out jointly, such as by the United States and Canada. Even though ADIZ has been widely practiced, many researchers continue to discuss aspects of its juridical and theoretical foundations (Su, 2019). This shows that the

legal basis for ADIZ still needs to be completed and firm, coupled with the attitude and acceptance of the international community, which is still diverse.

2.3 INTERNATIONAL LEGAL JUSTIFICATION

So far, when talking about sources of international law, we always refer to article 38 (1) of the statutes of the International Court of Justice (ICJ). These sources include international treaties (*international conventions*), international customary law, general principles of law, court decisions (*jurisprudence*), and expert opinions (*law publicist*). Although, in fact, the article does not refer to itself as a source of international law. Recently, developments regarding the sources of international law used by the ICJ in the future have also developed and been dynamic. The ICJ recognizes other sources outside the article, such as UN General Assembly Resolutions, *soft law*, unilateral action, and *jus cogens* (Latipulhayat, 2021, p. 6). They are also included in air law, especially in determining ADIZ policies. If referring to the existing discussions, some of the existing sources are used by several countries to justify their policies on the ADIZ that was formed.

The source of international law governing the use and utilization of airspace for the benefit of civil aviation was originally the Paris Convention of 1919, which then developed and continued to be regulated in the 1944 Chicago Convention. The 1919 Paris Convention and the 1944 Chicago Convention basically regulate the use and utilization of airspace for the benefit of civil aviation, but this convention is considered one of the country's justifications for establishing ADIZ (Vanhullebusch; Shen, 2016). *United Nations Convention on the Law of the Sea* (UNCLOS) 1982 is also considered the basis for regulating several zones, which explicitly mandate states to regulate their airspace simultaneously. Besides that, the principle of '*self-defense*' contained in *United Nations Charter* Article 51 is also often discussed and considered to be the basis for implementing ADIZ, although some people consider it inappropriate. 'Self-defense' as the legal basis for ADIZ based on Article 51 of the UN Charter is considered inappropriate because this is in the realm of "*jus ad bellum*," while ADIZ is more accurately described as an anticipatory step that can be based on International Customary Law (Hadisusilo; Riyanto; Purwanto, 2022). The '*state necessity*' principle, especially in Article 25 *Draft Articles on the Responsibility of States for Internationally Wrongful Acts*, is also often discussed as a form of state justification for establishing ADIZ. However, the provisions for the application of ADIZ are not found explicitly in those conventions; therefore, in the effort to define and implement them, theories of the application of ADIZ develop (Bakhtiar *et al.*, 2016).

The justification for implementing ADIZ in territorial airspace horizontally is a country's full authority; however, it still needs to be completed vertically. One that is often used is Cooper's opinion, which is often referred to as '*Cooper's control theory*.' This theory emphasizes that in the absence of international agreements, a state can expand its airspace as far as it can control (Devi, 2022; Supriadhie, 2016). This theory is one of the bases used by the United States and Canada in determining their ADIZ. ADIZ also applies because it is considered part of state practices, which are customary international law (Martono; Sudiro, 2012, p. 45-46). However, Su (2021) said that ADIZ was carried out outside its territory (*Offshore ADIZ*) will only be legitimized by customary law if its implementation is carried out passively, namely by means of radar detection, radio communication, or close-range visual inspection. Papp (2015) added several other practices that were considered similar and comparable when discussing the basis for implementing ADIZ, including the permissibility of setting restricted, *prohibited*, and *dangerous areas* regulated in international air law, rules regarding the provision of services on the high seas, cases of flight restrictions that the European Union has carried out, and several other examples of cases that more or less have similar aspects.

3 RESEARCH METHODOLOGY

The discussion on ADIZ China -both those that have been determined and potentially determined- still invites much discussion. This issue is deemed necessary to clarify the position, implementation, and legality according to international law. This issue also continues to attract public attention, especially from countries interested in the East China Sea and the South China Sea. Knowing the position, implementation, and legality of ADIZ in these two areas is essential to determine each country's steps in providing a perspective on solving this problem in the future. This legal research uses secondary qualitative data. Secondary data is in the form of primary and secondary legal materials. Primary legal materials come from international conventions, while secondary legal materials are theories and expert opinions from various literature sources.

Data collection was carried out by referring to library sources, both print and digital. These sources were selected by looking at the relevance of library sources to the topics discussed. Digital sources consist of sources originating from journals and articles that can be accessed online. The selection of digital sources is done by looking at the relevance of the discussion and the credibility of the referral source provider. The analysis in this paper is in the form of qualitative descriptive. The analysis was carried out using content analysis, namely selecting relevant topics from various reference sources that were collected and then

interpreted to describe the position, practice, and legality of China's ADIZ, both those that have been established in the East China Sea and the possibility of its implementation in the South China Sea.

4 ANALYSIS OF RESULTS

China's ADIZ is set in the East China Sea. The possibility of its implementation in the South China Sea still requires further discussion. The author has found various related writings, so he feels the need to make an affirmative effort in several ways. There are at least three issues that need to be emphasized to provide an objective assessment of China's ADIZ determination policy. These three things include the position and status of the ADIZ that have been determined, the practices that China has carried out, and the legality of the ADIZ that has been established in the East China Sea and the South China Sea that has the potential to be determined. These three things are the subject of discussion in this paper.

4.1 ADIZ CHINA'S POSITION: EXPANSION OR ADMINISTRATIVE CONTROL?

A number of countries officially stated their objections to the ADIZ determination made by China. Not only countries that have direct physical contact, such as Taiwan, Japan, and South Korea, but even the United States and Australia have shared their views (Loh, 2017). For Japan to have an island dispute with China, the act of establishing China's ADIZ was deemed provocative. As for Taiwan and South Korea, China's actions are seen as unfriendly, unilateral actions. The United States also commented by saying that the actions taken by China were an attempt to change *the status quo* and increase tension in the region (Sullivan, 2018). This fact confirms the interpretation of many international relations experts who say that establishing ADIZ is considered a form of appropriation (Connolly; Hynd, 2023). China makes at least two official explanations regarding this. Responding to this, the Chinese Ambassador to Vanuatu, Bohua, said that for China, ADIZ is needed to protect state sovereignty and territorial security of its airspace and maintain the conduciveness and safety of international flights. This policy is claimed to still be within the corridors of international law and conventions, although China considers some parties to have errors and distortions of understanding. For that, he gave at least three things that need to be understood by the international community.

First, implementing ADIZ is not an attempt to claim territorial airspace. China will not infringe on other countries' interests. The ADIZ that was formed is not a no-fly zone, and freedom of flight still applies (*freedom of navigation*) under international law. China uses the

ADIZ for identification purposes and seeks to allow sufficient time for early warning. China guarantees that this policy is not directed at any particular country and will not be discriminatory. **Second**, for China, the established ADIZ policy is a common practice, as has been done by many other countries when establishing ADIZ. However, from the continuation of this second explanation, the authors conclude that China considers the ADIZ that was set as a countermeasure for Japan's ADIZ policy, which was expanded many times and covered most of the East China Sea airspace. **Third**, China considers that the established ADIZ policy is still in line with the UN Charter and other international laws and practices regarding requiring aircraft to report their flight plans when flying through the zone. Many countries require the same over their air defense identification zone to report flight plans in advance. China claims that the majority of civil aviation companies whose air routes cross the region have reported flight plans to China's civil aviation department, including several Japanese airlines (Bohua, 2013).

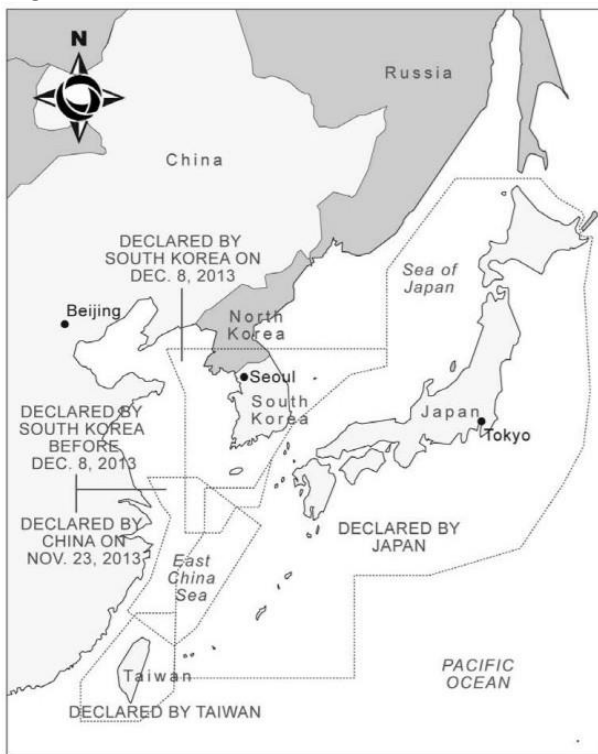
Border areas are always considered to have the potential to cause conflict, such as unilateral claims on resources and the potential for territorial expansion (Massie, 2019, p. 158-159). Normatively, the position of ADIZ in international air law needs to have a clear and firm legal status because no international agreement explicitly regulates ADIZ. ADIZ is procedurally not governed by international conventions such as the International Civil Aviation Convention, which regulates various aspects of civil aviation. This is a space for various interpretations from the international community regarding the implementation of ADIZ, including the interpretation carried out by China. However, in the context of whether China's designation of the ADIZ is an expansive step or just administrative control, it is sufficiently answered that the ADIZ in the East China Sea is an effort of identification and not expansion. The answer will be similar when this question is directed at the prospect of its implementation in the South China Sea. However, the situation and views of countries regarding ADIZ can, of course, change from time to time. At some point, the legal provisions may become more apparent if there are further developments in international air law or more specific agreements regarding ADIZ in the future.

4.2 ADIZ PRACTICES IN THE EAST CHINA SEA AND THE "SOUTH CHINA SEA?"

The findings in this sub have two points of view: implementation practices regarding the existing conditions in the form of ADIZ in the East China Sea and predictive findings regarding the possibility of implementing ADIZ in the South China Sea. The Chinese government announced the establishment and regulation of the ADIZ in the East China Sea as well as releasing a map and the location of the coordinates, which require all aircraft to

report flight plans, use a two-way radio, use the national logo as a sign for the aircraft and several other technical matters (Rinehart; Elias, 2015). Recently, the official announcement, which was initially traceable on the site (http://eng.mod.gov.cn/Press/2013-11/23/content_4476143.htm), is no longer accessible. The specified ADIZ area includes areas with contact with the ADIZ determined by Japan, South Korea, and Taiwan. The Chinese ADIZ includes a group of islands in dispute between China and Japan, called Diaoyu by China and Senkaku by Japan (Marsono; Deni, 2018). The following illustrates the overlapping ADIZ claims of China, Japan, South Korea, and Taiwan.

Figure 1 - Location of the intersection of ADIZ China, Japan, South Korea, and Taiwan



Source: (CIMSEC, 2022).

For the author, data regarding the enforcement of ADIZ by China is still very dependent on media reports and reports from several research institutions, although the media is often said to take sides (Hou, 2015). The lack of official information about the practices carried out certainly also encourages the assumption that China certainly considers it necessary to maintain its secrecy. Bonnie Glaser, the senior adviser at the *Center for Strategic and International Studies* (CSIS), revealed that "China has never attempted to enforce its ADIZ regarding military aircraft fully." Some public reports indicate that China intercepted only a few foreign military aviation aircraft in its ADIZ. China did intercept several non-compliant foreign military flights at its ADIZ in the days following its establishment. In addition, several

media reports also stated that China's wiretapping of several Japanese military aircraft in mid-2014 was China's first wiretapping of foreign military aircraft in ADIZ (Pilger, 2016). This seemed to confirm what was directly conveyed by Bohua (2013), who stated that ADIZ China is complied by civil aircraft but did not mention military aircraft in his explanation.

In the South China Sea context, China's actions in the region are often seen as a form of violation, although some groups try to interpret this with a different narrative (Raymond; Welch, 2022). Regarding the prospect of implementing ADIZ in the South China Sea, although China has not declared its ADIZ, several reports indicate that China has attempted to control air traffic in several parts of the South China Sea. Several foreign military and civil aviation are known to have received warnings from Chinese authorities not to approach Chinese-occupied mainland features of the South China Sea. Some of the incidents that illuminate this statement are when a US reconnaissance plane in May 2015, two US B-52 bombers in November 2015, an Australian reconnaissance plane, a private plane carrying BBC reporters in December 2015, and a Philippine government plane in January 2016 involved in the matter (Pilger, 2016).

Liu Zhenmin, who was the Vice Minister of Foreign Affairs of China in 2016, at a press conference in Beijing, when asked about military deployment, including the establishment of a future ADIZ in the South China Sea, stated that this is China's right which other countries have also done. The designation of an ADIZ in the South China Sea will depend on the level of threat it faces. China will establish its ADIZ in the South China Sea when threatened. In his concluding sentence, Liu gave an invitation to make the South China Sea a cooperation area (Zhenmin, 2016). Although there has been no official statement, several analysts have predicted possible zones if the ADIZ is established in the South China Sea. One that the authors consider provides an overview and prediction of the possibility of establishing an ADIZ in the South China Sea, as shown in the analysis conducted by Tran (2016). According to him, there are three scenarios. Namely, the ADIZ set above the Paracel Islands, the ADIZ above the Spratly Islands, or the ADIZ above the Nine-dash Line.

4.3 LEGALITY OF ADIZ CHINA ACCORDING TO INTERNATIONAL LAW

Stewart (2021, p. 237) argued that the ADIZ carried out in international airspace is illegal. Several arguments also state that the ADIZ established by China violates international regulations. The assessment is broadly emphasized on three things. First, the determined ADIZ experiences overlap with the ADIZ determined by other countries. Second, China has its interpretation of international law, especially its interpretation of the Exclusive Economic

Zone (EEZ) regime in the 1982 UNCLOS, which is used as legitimacy. Third, unlike country practices in general, China's technical procedures for ADIZ are considered. Therefore, the author tries to present legal arguments, both opinions representing the objecting parties and international legal arguments representing China.

First, the argument that China's ADIZ in the disputed area is problematic. In general, ADIZ is not assigned to areas that are still in dispute. Japan's ADIZ, for example, is set to exclude the airspace of the disputed Kuril islands, which are under Russian administrative control. In contrast to this condition, the ADIZ of Japan and ADIZ of China are the subject of polemic, namely the disputed Senkaku (Diaoyu) islands. The islands are currently under Japanese administrative control. Unsurprisingly, many observers argue that China's primary goal in declaring the ADIZ is inseparable from its efforts to strengthen its claims over these islands. This is most likely in response to the Japanese government's purchase of three of the five islands from Japanese citizens at the end of 2012. Based on this first assumption, the Chinese government, through the spokesman for the Ministry of Foreign Affairs, Qin Gang, argued that the inclusion of the Senkaku Islands (Diaoyu) airspace as an ADIZ, entirely in line with the United Nations Charter and other international practices. This is in the context of maintaining the sovereignty of these islands, which, according to China, are an integral part of its territory (Burke; Cevallos, 2017; Ikeshima, 2016).

Second, there are differences in perceptions regarding the procedures and technical implementation of ADIZ carried out by China. There is an impression that some countries do not question the determination of the ADIZ that is carried out but question how China determines the technical and procedures for the ADIZ. Not only is it considered to violate practice, it is even considered unusual, especially according to the United States. China needs to distinguish between aircraft flying through the zone with the intent to fly into Chinese airspace. This practice is unlike that of the United States. However, when viewed from several regulatory aspects, China, Japan, South Korea, and Taiwan have similarities and differences. Among them are whether civil or military aircraft must submit flight plans. Does this also apply to aircraft that only pass, and does the ADIZ also cover areas administered by other countries? In this case, Rinehart and Elias (2015) make a table of differences in these practices as follows:

Table 1 - Differences in ADIZ Claim practices

	Civil Aircraft Required to File Flight Plan or Identify?	Military Aircraft Required to File Flight Plan or Identify?	State Aircraft that transit ADIZ Without Entering Sovereign Airspace Required to file flight plan?	ADIZ Covers Territory Administered by Other Country?
United States	Yes	No	No	No

China (PRC)	Yes	Yes	Yes	Yes
Japan	No	No	No	No
South Korea	Yes	Yes	Yes	No
Taiwan (ROC)	Yes	Unclear	Unclear	Yes

Source: (Rinehart; Elias, 2015, p. 8).

Third, there are different perceptions regarding the use of air space above the Exclusive Economic Zone based on UNCLOS 1982. For this reason, the US Secretary of State at that time, John Kerry, when representing the country, declared his position on encouraging freedom of flight and other legitimate uses of the sea and air according to international law to maintain stability and security in the Pacific. Applying ADIZ procedures to foreign aircraft not intending to enter their national airspace is unjustified. Identification means of *identification considered* contrary to the principle of '*innocent passage*.' Several radio programs were also criticized by the United States (Kerry, 2013; Roy, [2014]). This pressure point for freedom of flight in international airspace is also sometimes used as a justification for several studies that the application of ADIZ in international airspace is a violation (Akinfolarin, 2018).

Before officially establishing its ADIZ, a researcher and a senior Chinese colonel affiliated with the China Institute for International Strategic Studies, Xiaofeng and Xizhong (2005), wrote one perspective representing China. Interestingly, although the article was published in a reputable international journal, it only contains interpretations of the 1982 UNCLOS articles, mainly regarding EEZ and High Seas, without any citations. They emphasized that even though other countries have freedom of navigation and overflight in the EEZ, this freedom must not violate the interests of the coastal state. Freedom of navigation and overflight in the EEZ differs from freedom on the high seas. They were especially carrying out military and reconnaissance activities that are considered to violate and threaten the security of the coastal state. Military activities in the EEZ are considered to violate the principle that in carrying out their rights and obligations under UNCLOS 1982, state parties must refrain from all threats or use of force against the territorial integrity or political independence of any country or in other ways that are inconsistent with legal principles—international law enshrined in the UN Charter. In the context of the South China Sea, Hua Chunying, in a 2015 press conference, conveyed the same thing that China upholds freedom of navigation in the EEZ but firmly opposes undermining China's sovereignty and security interests under the pretext of freedom of navigation and overflight (Burke; Cevallos, 2017; Ikeshima, 2016; Pilger, 2016; Widian; Arimadona, 2018). Later, when the *Permanent Court of Arbitration* (PCA) decided on the South China Sea issue raised

by the Philippines, Hua Chunying said that China considered PCA had no jurisdiction to resolve this case. China did not want to take a role as a party to the case filed (Permanent Court of Arbitration, 2016).

5 DISCUSSION

It is not easy to discuss the position of ADIZ from the perspective of international law if only using a single point of view. The position of the ADIZ applied by the state will depend on other countries' motives, regions, and attitudes toward the ADIZ decisions made. An assessment of the position of ADIZ China will also depend heavily on understanding each country's position. This is because each country needs help to escape from the interests that each carries. China emphasizes that its ADIZ position is not an extension of its air sovereignty. However, China continues to postulate its defense and security interests to establish ADIZ even though it is not in its territorial airspace. Even so, other countries are still suspicious because even though they do not make territorial claims, they are determined and practiced as if the area is inseparable from China's territorial claims. This is reasonable considering that as described by many experts (Adolf, 2022, p. 112), one of which is Brian Taylor Sumner, one theory of territorial claims is the existence of effective control (Mangku, 2020, p. 29).

Dutton (2009) explained that ADIZ was meant to be an area for identification before foreign aircraft entered sovereign airspace, starting from outside a country's air sovereignty until it entered its air sovereignty. The determination of ADIZ is based on calculations of potential threats and the location of vital national objects that are prioritized to be defended from possible air attacks by other parties. Every country can establish an ADIZ in the airspace under its sovereignty and jurisdiction. However, the determination of such an ADIZ is not intended to expand the sovereignty of the country owning the ADIZ over the free seas included in that country's Nincic (1999) added that, in principle, the state's practice of obtaining interests is always followed by efforts to seek legitimacy, especially regarding aspects related to its foreign affairs. Likewise, Duong (2006) states that policies taken by a country - even if they are related to national interests- will still seek international legal legitimacy. On various occasions, China also explained the steps in establishing ADIZ as a form of the country's needs (*state necessity*) to maintain its sovereignty as a form of '*national interest*.' Countries that assess the position of ADIZ also carry their respective interests (Hsu, 2014). However, these countries are still based on the legitimacy of international law, even though they are sometimes trapped in an individual perspective.

Another explanation that reinforces the statement that the ADIZ conflict continues to cause chaos is that the practices carried out by China tend to be different from the ADIZ practices of other countries. According to various analyses, this results from the lack of technically detailed regulations that provide space for state interpretation in implementing their ADIZ. This is reasonable on security issues because it is closely related to the national interest, which the state will continue to fight for even though it reaps much criticism. According to Wolfers, the state will pursue national interests, especially related to security issues, even though it is miles away beyond its territorial boundaries (Trifunović; Ćurčić, 2021). China has its reasons without limiting airlines that only cross or go to China's territorial air. China emphasized this by questioning, "How can you find out where the plane will go if it is not identified beforehand?". The studies that have been carried out so far have focused more on making judgments about establishing ADIZ, even though it is inevitable that in the middle *vacuum of law* towards this ADIZ regulation, it will always bring up at least two perspectives that will contradict each other due to the national interest factor.

What needs to be done on the results of existing studies? First, encouragement in equalizing perceptions by discussing the position of ADIZ that has been determined. This is important to bridge the interests of countries whose opinions have no common ground. At the same time, disputes that are allowed to drag on without resolution can disrupt international relations to the level of war (Sefriani, 2016, p. 354). Second, the encouragement to carry out technical diplomacy in identification, considering that China, in its various statements, opens up space for diplomacy and cooperation. Third, seek the basis for juridical claims as an international legal solution without imposing an individual perspective. In this context, of course, it is intended to examine existing international law or even the formation of international law, which is more detailed and firm on a bilateral, particular, or even universal basis (Farooqui *et al.*, 2022; Mearsheimer, 2006)—especially those related to the prospect of collective management of defense and security interests.

6 CONCLUSION

This study has shown that making legal judgments about a country's actions in establishing its policies is challenging. Moreover, there are no strict and detailed legal instruments that regulate it. Various legal arguments can be used as a justification for each country unless it ends in a court of law which is mutually agreed upon. This fact bears in mind that the effectiveness of international law is closely related to the good faith of the state as a subject of international law. For this reason, there needs to be an international law that defines explicitly and in detail what comes from agreements on countries that carry their

interests. However, differences in the interpretation of agreements sometimes become obstacles and barriers.

If the perspective is left without an adjudication process, the war of arguments and opinions will never end. Therefore, settlement through an adjudicative perspective is essential as long as there is an agreement between the parties. The impetus to initiate this possibility must come from two opposite directions. This paper has explained that the legal approach will only be able to take a role when a dispute is brought to a court.

This study still has limitations and areas for improvement in conducting legal analysis, especially in determining the position, practice, and legality of ADIZ China. Of course, more research is needed to encourage countries to find the best formula for addressing the Chinese ADIZ problem in particular and the possibility of its implementation in areas that have yet to be determined. Therefore, this study suggests the need for a study to put forward an international legal perspective that all parties can accept.

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NOTE

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(A) and (B) initiated the ideas presented. (A), (B), and (C) developed the theory and conducted the analysis from the perspective of air law, law of the sea, and international law in general. (B) and (C) verified the analytical method. (B) and (C) encouraged (A) to investigate various aspects and supervised the findings of this work. All authors discussed the results and contributed to the final manuscript. (A) e (B) iniciaram as ideias apresentadas. (A), (B) e (C) desenvolveram a teoria e conduziram a análise da perspectiva do direito aéreo, direito marítimo e direito internacional em geral. (B) e (C) verificaram o método analítico. (B) e (C) encorajaram (A) a investigar vários aspectos e supervisionar as descobertas deste trabalho. Todos os autores discutiram os resultados e contribuíram para o manuscrito final.

We confirm that the manuscript has been read and approved by all named authors and that no other persons satisfied the criteria for authorship but are not listed. We further confirm that all have approved the order of authors listed in the manuscript. *Confirmamos que o manuscrito foi lido e aprovado por todos os autores nomeados e que nenhuma outra pessoa satisfaz os critérios de autoria, mas não está listada. Confirmamos ainda que todos aprovaram a ordem dos autores listados no manuscrito.*

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