
REVISTA DE DIREITO INTERNACIONAL

BRAZILIAN JOURNAL OF INTERNATIONAL LAW

Editores responsáveis por essa edição:

Editores:

Nitish Monebhurrn

Ardyllis Alves Soares

Marcelo Dias Varella

Editora assistente

Naiara Cardoso Gomide da Costa Alamy

Editores convidados:

Fábia Fernandes Carvalho

George Galindo

João Roriz

ISSN 2237-1036

Revista de Direito Internacional Brazilian Journal of International Law	Brasília	v. 19	n. 3	p. 1-447	dez	2022
--	----------	-------	------	----------	-----	------

A legal analysis of the Air Defense Identification Zone (ADIZ) with special reference to the East China Sea Air Defense Identification Zone*

Uma análise legal da Zona de Identificação de Defesa Aérea (ADIZ), com referência especial à Zona de Identificação de Defesa Aérea do Mar da China Oriental

Mohammad Owais Farooqui**

Nazzal Kisswani***

Sheer Abbas****

Tahir Qureshi****

Abstract

The establishment of the East China Sea Air Defense Identification Zone by China on 23 November 2017 was not well received and has drawn harsh criticisms from the USA, Japan, South Korea, and Taiwan. There are also apprehensions that China may in the future establish an ADIZ in the already troubled South China Sea. This paper traces the origin of the ADIZ and its rationale and examines its legal basis under international law. It finds that despite the absence of a clear permissive or prohibitive rule of international law on the ADIZ, the states have established the ADIZs for the protection of their national security interests and other states have not generally contested them. India has also established the ADIZs in the airspace above its land territory, territorial sea, and waters beyond its territorial sea. East China Sea ADIZ is problematic because it deviates from the normal ADIZs and is established in disputed areas of the East China Sea". The paper concludes that the problems caused by the ADIZs like East China Sea ADIZ can be limited to a greater degree if the community of states agrees to have a clear multilateral legal framework governing the ADIZs.

Keywords: Air Defense Identification Zone; airspace; ICAO.

Resumo

O estabelecimento da Zona de Identificação de Defesa Aérea do Mar da China Oriental (em inglês, ADIZ) pela China em 23 de novembro de 2017 não foi bem recebido e atraiu duras críticas dos EUA, Japão, Coreia do Sul e Taiwan. Há também apreensões de que a China possa no futuro estabelecer uma ADIZ no já conturbado Mar da China Meridional. Este artigo traça a origem da ADIZ e sua justificativa e examina sua base legal sob o direito

* Recebido em 15/04/2022
Aprovado em 27/02/2023

** Dr. Mohammad Owais Farooqui is an Assistant Professor of Air & Space Law at the College of Law, University of Sharjah, UAE. PhD from NALSAR University of Law, Hyderabad, India.
Email: mfarooqui@sharjah.ac.ae

*** Associate Professor, College of Law, University of Sharjah, UAE. PhD in Business law (2011) Macquarie University (MAQ) NSW, Australia.
Email: nkisswani@sharjah.ac.ae

**** Assistant Professor of Space Law, College of Law, University of Sharjah, Sharjah, UAE. PhD at Beijing Institute of Technology (BIT), School of Law.
Email: sheer.abbas@sharjah.ac.ae

**** PhD Student in Law, Jawaharlal Nehru University, New Delhi, India.
Email: tahirqureshiadiv@gmail.com

internacional. Ele considera que, apesar da ausência de uma regra permissiva ou proibitiva clara do direito internacional sobre o ADIZ, os estados estabeleceram os ADIZs para a proteção de seus interesses de segurança nacional e outros estados geralmente não os contestaram. A Índia também estabeleceu os ADIZs no espaço aéreo acima de seu território terrestre, mar territorial e águas além de seu mar territorial. O ADIZ do Mar da China Oriental é problemático porque se desvia dos ADIZs normais e está estabelecido em áreas disputadas do Mar da China Oriental”. O documento conclui que os problemas causados pelas ADIZs, como as ADIZs do Mar da China Oriental, podem ser limitadas em maior grau se a comunidade de estados concordar em ter uma estrutura jurídica multilateral clara que regule as ADIZs.

Palavras chave: Zona de Identificação de Espaço Aéreo, Espaço aéreo, ICAO

1 Introduction

The East China Sea Air Defense Identification Zone (ADIZ) is a highly contentious issue in the international community, with many countries and organizations expressing concern over its legality and implications for regional stability. In this article, we will conduct a legal analysis of the ADIZ in the East China Sea, with a focus on its impact on the freedom of navigation and overflight, and its compatibility with international law.

The East China Sea ADIZ was established in 2013 by the Chinese government, covering an area that includes the disputed Senkaku/Diaoyu islands, which are also claimed by Japan. Under the ADIZ, all aircraft entering the zone are required to identify themselves to the Chinese authorities and comply with their instructions. The Chinese government has stated that the ADIZ is a necessary measure for protecting its national security and maintaining control over its airspace, but many countries and organizations have criticized it as a violation of the freedom of navigation and overflight guaranteed by international law.

The freedom of navigation and overflight is an established principle of international law, which allows all states, regardless of their level of development, to fly over and navigate through the high seas and the airspace above. The United Nations Convention on the Law

of the Sea (UNCLOS) and the Chicago Convention on International Civil Aviation recognize the freedom of navigation and overflight as a fundamental principle.

However, the Chinese government has argued that the ADIZ is a legitimate exercise of its right to self-defense under the United Nations Charter. Article 51 of the Charter recognizes the inherent right of self-defense of all states, and China has argued that the ADIZ is a necessary measure for protecting its national security and maintaining control over its airspace.

In practice, the ADIZ has caused tension in the region, as other countries, including the United States and Japan, have refused to recognize it and have continued to conduct military and civilian flights in the zone without notifying the Chinese authorities. This has led to increased risk of accidental collisions and misunderstandings, raising concerns about regional stability.

Approximately in a period of the previous four years, Air Defense Identification Zone (ADIZ) came to become a prominent area of study and has received sober attention of, amongst others, scholars of international law and international relations. The main event which triggered a fierce debate on the ADIZ which was hitherto lesser-known was the announcement by the People’s Republic of China (China) to establish an ADIZ in the East China Sea and the immediate reactions that this announcement drew from other states, mainly, the United States of America (USA), Japan, Republic of Korea (South Korea) and Republic of China (Taiwan).

“On 23 November 2013, China’s Ministry of National Defense announced that its East China Sea Air Defense Identification Zone (ECS ADIZ) would be effective at 10:00 AM that same day”.¹

the same day, US Secretary of State John Kerry and Secretary of Defense Chuck Hagel responded: that the USA is deeply concerned about China’s unilateral action; that this unilateral action constitutes an attempt to change the status quo in the East China Sea; and that escalatory action will only increase tensions in the region and create risks of an incident.²

¹ RINEHART, Ian E.; ELIAS, Bart. *China’s Air Defense Identification Zone (ADIZ)*. CRS Report, 2015. Available at: <https://fas.org/sgp/crs/row/R43894.pdf>. Access in: 21 Mar. 2022.

² PRESS, Jiji; NEWS, Kyodo; SHIMBUN, Yomiuri. Rising tensions in Northeast Asia after China set up air defense zone over Senkaku/Diaoyu. *Europe Solidaire Sans Frontières*, 15 Dec. 2013. Available at:

Japan's Foreign Minister Fumio Kishida reacted by saying: that Japan does not acknowledge China's establishment of an air defense identification zone over the Japan-controlled Senkaku islets group and that "it was a one-sided action and cannot be allowed. It's also expected to trigger unpredictable events".³ On China's announcement of the ECS ADIZ, South Korean Foreign Minister Yun Byung-se said, "The issue of the air defense identification zone is making the already difficult regional situations even more difficult to deal with [...]. We see competition and conflict in the region deepening."⁴ "Taiwan also reacted to this announcement and declared that Taiwan has sovereignty over the Diaoyutai (Senkaku) Islands with no change due to China's ECS ADIZ and will continue to defend that sovereignty over the islands".⁵ At a later point in time, "Japan's parliament passed a resolution labeling the ECS ADIZ a violation of international law and called for China to withdraw the ECS ADIZ immediately".⁶ On this issue,

Japan also approached International Civil Aviation Organization (ICAO) and raised the issue of the relationship between freedom of overflight of the high seas and air defense identification zones pointing out that, depending on the measures related to the air defense identification zones each country takes, the order and safety of international civil aviation could be endangered.⁷

There may be various reasons why China established the ECS ADIZ and why only Japan, Korea, Taiwan, and the USA so sharply reacted in this case while other countries did not react either so emphatically or at all. There are also speculations of varying degrees that

China may declare the South China Sea Air Defense Identification Zone in the South China Sea.⁸ To better understand the legal consequences of these recent developments for other states and stakeholders in the civil aviation industry from the perspective of international law, it is important to first understand the conceptual and practical underpinnings of the ADIZ within the framework of international law. For this purpose, and at a more general level, several issues arise concerning the ADIZ which are its origin, meaning, nature, functions, implications, and justifications under international law.

2 Air Defense Identification Zones: inception to international law

This part, after tracing the origin of the ADIZ and its rationale and highlighting the definitional dilemma, finds out the legal basis of ADIZs under international law and the Indian position of the ADIZ.

2.1 Origin and rationale⁹

The international community got acquainted with the concept of the ADIZ for the first time in 1950 when the US Department of Commerce on 27 December that year promulgated regulations according to its Civil Aeronautics Act of 1938 and President Henry

<https://www.europe-solidaire.org/spip.php?article30651>. Access in: 21 Mar. 2022.

³ PRESS, Jiji; NEWS, Kyodo; SHIMBUN, Yomiuri. Rising tensions in Northeast Asia after China set up air defense zone over Senkaku/Diaoyu. *Europe Solidaire Sans Frontières*, 15 Dec. 2013. Available at: <https://www.europe-solidaire.org/spip.php?article30651>. Access in: 21 Mar. 2022.

⁴ RINEHART, Ian E.; ELIAS, Bart. *China's Air Defense Identification Zone (ADIZ)*. CRS Report, 2015. Available at: <https://fas.org/sgp/crs/row/R43894.pdf>. Access in: 21 Mar. 2022.

⁵ RINEHART, Ian E.; ELIAS, Bart. *China's Air Defense Identification Zone (ADIZ)*. CRS Report, 2015. Available at: <https://fas.org/sgp/crs/row/R43894.pdf>. Access in: 21 Mar. 2022.

⁶ RINEHART, Ian E.; ELIAS, Bart. *China's Air Defense Identification Zone (ADIZ)*. CRS Report, 2015. Available at: <https://fas.org/sgp/crs/row/R43894.pdf>. Access in: 21 Mar. 2022.

⁷ JAPAN. Ministry of Foreign Affairs of Japan. '200th Session of the Council of the International Civil Aviation Organization (ICAO): press release of 30 November 2013. Available at: http://www.mofa.go.jp/press/release/press4e_000114.html. Access in: 21 Mar. 2022.

⁸ MICHAEL, Pilger. *ADIZ update: enforcement in the East China Sea, prospects for the South China Sea, and implications for the United States*. U.S.-China Economic and Security Review Commission, 2 Mar. 2016. Available at: https://www.uscc.gov/sites/default/files/Research/ADIZ%20Update_0.pdf. Access in: 30 Mar. 2022.

⁹ MARTIAL, J. A. State control of the air space over the territorial sea and the contiguous zone. *The Canadian Bar Review*, p. 245, 1952. p. 257-60. JOHN, Taylor Murchison. *The contiguous Air Space Zone in international law*. McGill University, 1955. Available at: http://digitool.library.mcgill.ca/webclient/StreamGate?folder_id=0&dvs=1493990769634~592&usePid1=true&usePid2=true. Access in: 21 Mar. 2022. p. 1-8. IVAN, L. Head. ADIZ, international law, and contiguous airspace. *Alberta Law Review*, v. 3, p. 184, 1964. "ELIZABETH, Cuadra. Air Defense Identification Zones: creeping jurisdiction in the airspace. *Virginia Journal of International Law*, v. 18, n. 3, p. 485, 1978. p. 492-495. ANAND, R. P. *Origin and development of the law of the sea*. Martinus Nijhoff, 1983. p. 171." PETER, A. Dutton. *Caelum liberum*: Air Defense Identification Zones outside sovereign airspace. *AJIL*, v. 103, n. 4, 2009. p. 698-700. "RINEHART, Ian E.; ELIAS, Bart. *China's Air Defense Identification Zone (ADIZ)*. CRS Report, 2015. Available at: <https://fas.org/sgp/crs/row/R43894.pdf>. Access in: 21 Mar. 2022. p. 1-2. "VANHULLEBUSCH, Matthias; SHEN, Wei. China's Air Defense Identification Zone: building security through lawfare. *The China Review*, v. 16, n. 1, 2016. p. 127-128.

Truman's Executive Order of 20 December 1950 to establish Air Defense Identification Zones over the Pacific Ocean and the Atlantic Ocean near its coasts.¹⁰ Those regulations defined the ADIZ as "airspace of defined dimensions [...] within which the ready identification, location, and control of aircraft are required in the interest of the national security".¹¹ Those ADIZs covered not only the US national territories but also extended in some cases to quite considerable distances over the high seas, for example, Atlantic ADIZ extended more than 300 miles.¹² Those regulations required both the domestic and the foreign aircraft to file the flight plans before entering into these ADIZs if the flights were destined for the USA; and any non-compliance with or violation of these regulations was made an offence punishable with imprisonment or fine or both.¹³

Almost immediately in 1951, Canada's Department of Transport passed Rules for the Security Control of Air Traffic establishing Canadian Air Defense Identification Zones (CADIZs) and followed generally the lines of the USA's regulations.¹⁴ The Canadian rules defined the Canadian Air Defense Identification Zone (CADIZ) as "an airspace of defined dimensions extending upwards from the surface of the Earth [...]".¹⁵ Those CADIZs

differed from the USA's ADIZs in certain aspects. First, The CADIZs were dimensionally much smaller than the USA's ADIZs, being not much more than one hundred nautical miles from land at its widest.¹⁶ Second, unlike the USA's regulations, the Canadian rules were intended to apply to any aircraft about to enter the country, or actually in the zone, regardless of the destination or such aircraft.¹⁷ Third, unlike USA's regulations, no civil or criminal actions were contemplated under the Canadian rules against those found in non-compliance or violating them.¹⁸

Although there were certain differences in the structures of the USA's ADIZs and the CADIZs which should be kept in mind, one most striking and critical feature was commonality in their purposes. This commonality constituted the rationale of the ADIZs of the USA and Canada and the rationale was to protect their national security interest. Protection of interest of national security was considered legitimate and justifiable at that time when the Cold war had begun and been aggravated by the Korean wars.¹⁹ The USA and Canada have continued to maintain their respective ADIZs, although with few modifications, even at present.²⁰ And with time,

¹⁰ JOHN, Taylor Murchison. *The contiguous Air Space Zone in international law*. McGill University, 1955. Available at: http://digitool.library.mcgill.ca/webclient/StreamGate?folder_id=0&dvs=1493990769634~592&usePid1=true&usePid2=true. Access in: 21 Mar. 2022. p. 3-4. ANAND, R. P. *Origin and development of the law of the sea*. Martinus Nijhoff, 1983. p. 171.

¹¹ JOHN, Taylor Murchison. *The contiguous Air Space Zone in international law*. McGill University, 1955. Available at: http://digitool.library.mcgill.ca/webclient/StreamGate?folder_id=0&dvs=1493990769634~592&usePid1=true&usePid2=true. Access in: 21 Mar. 2022. p. 3-4.

¹² JOHN, Taylor Murchison. *The contiguous Air Space Zone in international law*. McGill University, 1955. Available at: http://digitool.library.mcgill.ca/webclient/StreamGate?folder_id=0&dvs=1493990769634~592&usePid1=true&usePid2=true. Access in: 21 Mar. 2022. p. 3-4.

¹³ JOHN, Taylor Murchison. *The contiguous Air Space Zone in international law*. McGill University, 1955. Available at: http://digitool.library.mcgill.ca/webclient/StreamGate?folder_id=0&dvs=1493990769634~592&usePid1=true&usePid2=true. Access in: 21 Mar. 2022. p. 5. ANAND, R. P. *Origin and development of the law of the sea*. Martinus Nijhoff, 1983. p. 171.

¹⁴ JOHN, Taylor Murchison. *The contiguous Air Space Zone in international law*. McGill University, 1955. Available at: http://digitool.library.mcgill.ca/webclient/StreamGate?folder_id=0&dvs=1493990769634~592&usePid1=true&usePid2=true. Access in: 21 Mar. 2022. p. 2. ANAND, R. P. *Origin and development of the law of the sea*. Martinus Nijhoff, 1983. p. 171.

¹⁵ JOHN, Taylor Murchison. *The contiguous Air Space Zone in international law*. McGill University, 1955. Available at: http://digitool.library.mcgill.ca/webclient/StreamGate?folder_id=0&dvs=1493990769634~592&usePid1=true&usePid2=true.

[library.mcgill.ca/webclient/StreamGate?folder_id=0&dvs=1493990769634~592&usePid1=true&usePid2=true](http://digitool.library.mcgill.ca/webclient/StreamGate?folder_id=0&dvs=1493990769634~592&usePid1=true&usePid2=true). Access in: 21 Mar. 2022.

¹⁶ JOHN, Taylor Murchison. *The contiguous Air Space Zone in international law*. McGill University, 1955. Available at: http://digitool.library.mcgill.ca/webclient/StreamGate?folder_id=0&dvs=1493990769634~592&usePid1=true&usePid2=true. Access in: 21 Mar. 2022. p. 5.

¹⁷ JOHN, Taylor Murchison. *The contiguous Air Space Zone in international law*. McGill University, 1955. Available at: http://digitool.library.mcgill.ca/webclient/StreamGate?folder_id=0&dvs=1493990769634~592&usePid1=true&usePid2=true. Access in: 21 Mar. 2022. p. 5.

¹⁸ JOHN, Taylor Murchison. *The contiguous Air Space Zone in international law*. McGill University, 1955. Available at: http://digitool.library.mcgill.ca/webclient/StreamGate?folder_id=0&dvs=1493990769634~592&usePid1=true&usePid2=true. Access in: 21 Mar. 2022. p. 4.

¹⁹ JOHN, Taylor Murchison. *The contiguous Air Space Zone in international law*. McGill University, 1955. Available at: http://digitool.library.mcgill.ca/webclient/StreamGate?folder_id=0&dvs=1493990769634~592&usePid1=true&usePid2=true. Access in: 21 Mar. 2022. p. 2. ANAND, R. P. *Origin and development of the law of the sea*. Martinus Nijhoff, 1983. p. 171.

²⁰ UNITED STATES. Department of Transportation. *Aeronautical Information Manual: official guide to basic flight information and ATC Procedures*. United States: Federal Aviation Administration of US Department of Transportation, 2014. Available at: https://www.faa.gov/air_traffic/publications/media/AIM_Basic_4-03-14.pdf. Access in: 30 Mar. 2022. CANADA. *Designated airspace handbook*

the rationale for the ADIZs has increased to include reducing the risk of midair collisions, combating illicit drug flows, facilitating search-and-rescue missions, and reducing the need for fighter jet sorties for purposes of visual inspection by increasing transparency, predictability, and strategic stability by reducing uncertainty on both sides about when, where, and how aerial interceptions might take place.²¹

2.2 Definition

In the preceding section, we have seen the definitions of the ADIZ as provided under the USA's regulations and the Canadian rules²² and found that these definitions are not identical. This is precisely one of the problems with the ADIZs that lead to one's bewilderment.

Realizing this problem, it seems that International Civil Aviation Organization (ICAO) attempted to provide a legal definition of the ADIZ through international standards and recommended practices on aeronautical information services and to achieve, thereby, a degree of uniformity. Annex 15²³ of Convention of International Civil Aviation²⁴ 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)." This definition appears to be a bit cryptic and does not bring full disclosure as too high, length and breadth of the airspace superjacent to either land or sea or both over which the ADIZ can be established.

Some scholarly attempts have been made to provide a comprehensive definition of the ADIZ. For example, Roach defines the ADIZ as

a defined area of air space within which civil aircraft are required to identify themselves. These zones are established above the exclusive economic zone (EEZ) or high seas adjacent to the coast, and over the territorial sea, internal waters, and land territory.²⁵

Alternatively, Dr. Gurpreet Singh Khurana, a former Captain in the Indian Navy and present Executive Director of the National Maritime Foundation define the ADIZ as

an area of airspace over land or water beyond a country's sovereign territory within which, it requires the identification, location, and air traffic control of aircraft in the interest of its national security. ADIZs are located primarily over waters of coastal States, and often include large swaths of airspace beyond their National Airspace.²⁶

Both these scholarly definitions are simple, lucid, and comprehensive to fully capture the picture of the ADIZs.

An important point that remains always to be kept in mind is that the ADIZ is separate from and should not be confused with Flight Information Region (FIR). Roach points out that:

An FIR is a specified region of airspace in which a flight information service and an alerting service ('ALRS') are provided. The International Civil Aviation Organization (ICAO) has divided the world into zones ('Air Navigation Regions') to assist and control civil aircraft to ensure the safety of navigation. Each zone is subdivided into both FIRs and areas of controlled airspace. FIRs may embrace both national and international airspace. FIRs are delimited by Regional Air Navigation Agreements which are subject to the approval of the ICAO Council. These agreements are concluded in the framework of the Regional Conferences on Air Navigation. The Chicago Convention, its Annexes, and FIRs do not apply to states, including military, aircraft (Art. 3 Chicago Convention).²⁷

The distinction between the ADIZs and the FIRs is further elaborated by Dr. Gurpreet Singh Khurana who writes that FIR is:

published under the authority of the Minister of Transport. Canada: NAV, 2017. Available at: https://www.navcanada.ca/EN/products-and-services/Documents/DAH_Current_EN.pdf. Access in: 3 Apr. 2017.

²¹ DAVID, A. Welch. What's an ADIZ? Why the United States, Japan, and China get it wrong. *Foreign Affairs*, 9 Dec. 2013. Available at: <https://www.foreignaffairs.com/articles/east-asia/2013-12-09/whats-adiz>. Access in: 3 Apr. 2022.

²² See text to footnotes 11 and 15.

²³ INTERNATIONAL CIVIL AVIATION ORGANIZATION. *Annex 15 to the Convention on International Civil Aviation*. 13th. ed. ICAO, 2010

²⁴ UNITED NATIONS. *Convention of International Civil Aviation*: adopted on 7 December 1944 and entered into force on 4 April 1947. UNTS, 1948).

²⁵ ROACH, J. A. Air Defense Identification Zones. In: LACHENMANN, Frauke; WOLFRUM, Rüdiger (ed.). *The law of armed conflict and the use of force*: the max planck encyclopedia of public international law. Oxford University Press, 2017. v. 2. p. 10.

²⁶ GURPREET, S. Khurana. *Porthole: geopolitical, strategic and maritime terms and concepts*. Pentagon Press, 2016. p. 4.

²⁷ ROACH, J. A. Air Defense Identification Zones. In: LACHENMANN, Frauke; WOLFRUM, Rüdiger (ed.). *The law of armed conflict and the use of force*: the max planck encyclopedia of public international law. Oxford University Press, 2017. v. 2. p. 25.

A defined area of airspace within which flight information and alerting services are provided. The FIRs are established by the International Civil Aviation Organisation (ICAO) for the safety of civil aviation and encompass both ‘national’ and ‘international’ airspace.

Military aircraft on routine point-to-point flights through International Airspace usually follow ICAO flight procedures and utilize FIR services. Exceptions to this policy include military contingency operations, classified or politically sensitive missions, and routine Aircraft Carrier operations or training activities. When military aircraft do not follow ICAO flight procedures, they are required to navigate ‘with due regard for the safety of civil aviation.’²⁸

This section can be summarized in two points. First, the ADIZ, despite scholarly definitions and ICAO’s definition, lacks a precise and uniform legal definition. Second, the ADIZ is different from the FIR in that former is unilaterally imposed with the motive of national security while the latter is established within the framework of the Chicago Convention with the motive of the safety of civil aviation and navigation.

2.3 Legal basis under international law

After an initial analysis of to origin, rationale, and definition of the ADIZ in the preceding sections, the most crucial issue which needs to be squarely addressed is the legal basis of the ADIZs under international law. Some notable scholarly writings have addressed this issue from both theoretical and practical points of view on international law.²⁹ This section examines the legal

basis of the ADIZ in conventional law, customary international law, and general international law.

“Relevant conventional laws are found in Articles 1, 2, and 12 of the Convention of International Civil Aviation (Chicago Convention); Articles 33, 58, and 87 of the United Nations Convention on the Law of the Sea”³⁰; and Article 51 of the Charter of the United Nations (UN Charter).

“Articles 1 and 2 of the Chicago Convention recognize that every state has complete and exclusive sovereignty over the airspace above its territory which includes both the land areas and its territorial waters”. Text of Articles 1 and 2 reads as:

Article 1. Sovereignty. The contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory.

Article 2. Territory. For this Convention, the territory of a State shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection, or mandate of such State.

Given this complete and exclusive sovereignty, the states can establish the AIDZs which in their dimensions have to be limited over the airspaces above their national territories. However, the ADIZs working at present extends well beyond the national territories out to the significant areas of the high seas. Do the states have the right to make and enforce, through the ADIZs, rules of air that may condition the entry or operation of aircraft over the high seas? Article 12 of the Chicago Convention states:

CURITY AND DEVELOPMENT”, 1., 2014, Viet Nam. *Proceedings* [...]. Viet Nam: Diplomatic Academy of Viet Nam, Viet Nam Lawyers Association, 2014. Available at: <https://cil.nus.edu.sg/wp/wp-content/uploads/2014/11/Beckman-Phan-ADIZ-Paper-submitted-1.pdf>. Access in: 24 Mar. 2022. p. 5-6. ZOLTÁN, Papp. Air Defense Identification Zone (ADIZ) in the light of public international law. *Journal of International and European Law*, v. 28, 2015. Available at: http://ceere.eu/pjiel/wp-content/uploads/2015/12/pjiel_3_3.pdf. Access in: 21 Mar. 2022. SU, Jinyuan. The East China Sea Air Defense Identification Zone and international law. *Chinese Journal of International Law*, v. 14, n. 2, p. 273-283, 2015. SHANAE, Pillay. *The legal requirements for the proclamation of Air Defense Identification Zones (ADIZs): an examination with specific reference to the ADIZ of the people’s Republic of China*. University of Pretoria, 2015. p. 18-23. ROACH, J. A. Air Defense Identification Zones. In: LACHENMANN, Frauke; WOLFRUM, Rüdiger (ed.). *The law of armed conflict and the use of force: the max planck encyclopedia of public international law*. Oxford University Press, 2017. v. 2. p. 10-11.

³⁰ UNITED NATIONS. United Nations Convention on the Law of the Sea: adopted on 10 December 1982 and entered into force on 16 November 1994. UNTS, 1994.

²⁸ GURPREET, S. Khurana. *Porthole: geopolitical, strategic and maritime terms and concepts*. Pentagon Press, 2016. p. 67.

²⁹ MARTIAL, J. A. State control of the air space over the territorial sea and the contiguous zone. *The Canadian Bar Review*, v. 245, 1952. JOHN, Taylor Murchison. *The contiguous Air Space Zone in international law*. McGill University, 1955. Available at: http://digital.library.mcgill.ca/webclient/StreamGate?folder_id=0&dvs=1493990769634~592&usePid1=true&usePid2=true. Access in: 21 Mar. 2022. IVAN, L. Head. ADIZ, international law, and contiguous airspace. *Alberta Law Review*, v. 3, 1964. passim ELIZABETH, Cuadra. Air Defense Identification Zones: creeping jurisdiction in the airspace. *Virginia Journal of International Law*, v. 18, n. 3, 1978. passim. PETER, A. Dutton. *Caelum liberum*: Air Defense Identification Zones outside sovereign airspace. *AJIL*, v. 103, n. 4, 2009. CHRISTOPHER, K. Lamont. Conflict in the Skies: The Law of Air Defense Identification Zones. *Air & Space Law*, v. 39, n. 3, 2014. p. 192-195. BECKMAN, Robert; PHAN, Hao Duy. Air Defense Identification Zones: implications for freedom of over-flight and maritime disputes. In: INTERNATIONAL WORKSHOP “THE SOUTH CHINA SEA: COOPERATION FOR REGIONAL SE-

Rules of the air. “Each contracting State *undertakes to adopt* measures to ensure that every aircraft flying over or maneuvering within its territory and that every aircraft carrying its nationality mark, wherever such aircraft may be, shall comply with the *rules and regulations relating to the flight and maneuver of aircraft there in force.* Each contracting State undertakes to keep its regulations in these respects uniform, to the greatest possible extent, with those established from time to time under this Convention. *Over the high seas, the rules in force shall be those established under this Convention.* Each contracting State undertakes to ensure the prosecution of all persons violating the regulations applicable”.

A plain reading of Article 12 suggests that the authority of a state to formulate and enforce rules of air is limited only to its territory and aircrafts registered therein. Rules of air for navigation over high seas are to be established by the ICAO under the Chicago Convention read with its Article 37. Thus, the authority of a state to establish the ADIZs in the airspace above high seas lacks its basis under the Chicago Convention.

Are the ADIZs in the airspace over high seas permitted under the UN Convention of Law of the Sea? Relevant provisions are found in Articles 33, 58, and 87 which are as follows:

Article 33

Contiguous zone

1. In a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise the control necessary to:

- (a) prevent infringement of its customs, fiscal, immigration, or sanitary laws and regulations within its territory or territorial sea;
- (b) punish infringement of the above laws and regulations committed within its territory or territorial sea.

2. The contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured. [...]

Article 58

Rights and duties of other States in the exclusive economic zone

1. In the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in article 87 of navigation and overflight and the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines and compatible with the other provisions of this Convention [...]

Article 87

Freedom of the high seas

1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, inter alia, both coastal and land-locked States:

[...]

(b) Freedom of overflight;

[...]

2. These freedoms shall be exercised by all States *with due regard for the interests of other States in their exercise of the freedom of the high seas,* and also with due regard for the rights under this Convention concerning activities in the Area. (emphasis added)

Article 33 provides states only with enforcement jurisdiction with customs, fiscal, immigration, or sanitary laws and regulations within its territory or territorial sea and this jurisdiction extends out to 24 nm from their coasts. It can be argued that in the exercise of this jurisdiction, the states can establish the ADIZs for customs, fiscal, immigration, or sanitary purpose and not national security purpose which is at present their foundation. Articles 58 and 87 recognize the freedom of overflight above EEZ and high seas which cannot be interfered with by purported ADIZs. However, could it still be argued that the ADIZs are a manifestation of interests of other states to which due regard must be accorded by the state exercising freedom of overflight? But, the UN Convention on Law of the Sea does not authorize the states to establish the ADIZs in the airspace above contiguous zone, EEZ, and high seas.

Next in line is Article 51 of the UN Charter which recognizes the inherent right of individual or collective self-defense if an armed attack occurs against a state. The right to self-defense is also a customary international law that can coexist and is independent of, Article 51. ADIZs fail to satisfy the requirements of both Article 51 and the customary right to self-defense. Article 51 provides the right to self-defense in the case of an impending armed attack and the measures can be taken only to that extent. But the ADIZs are maintained and exist permanently even when there are no impending armed attacks. Likewise, the ADIZs also fail to satisfy the imminence and necessity requirements of the right to self-defense under customary international law. However, arguments have been made to justify the ADIZs based on the right to self-preservation of the states.³¹

³¹ MARTIAL, J. A. State control of the air space over the territo-

The only basis to justify state actions under international law which remains open is the default rule of general international law as provided in the *SS Lotus* case. This default rule of general international law, according to the PCIJ, is that international law is

far from laying down a general prohibition to the effect that States may not extend the application of their laws and the jurisdiction of their courts to persons, property, and acts outside their territory, it leaves them in this respect a wide measure of discretion which is only limited in certain cases by prohibitive rules; as regards other cases, every State remains free to adopt the principles which it regards as best and most suitable.³²

Therefore, the states can establish and maintain the ADIZs which extend out to cover areas of the EEZ and the high seas relying on the *SS Lotus* principle.

2.4 State practices and Indian position

There are many states which had maintained or continue to maintain their ADIZs and these states are Bangladesh, Brazil, Burma, China, Iceland, India, Iran, Japan, Malaysia, Norway, Oman, South Korea, Pakistan, Philippines, Sweden, Taiwan, United Kingdom, Uruguay, USA, and Vietnam.³³ This section does not attempt to the justification for the ADIZs given by each state nor analyses the rules and procedures of their ADIZs individually. The analysis is limited concerning India's practice on the ADIZs.

It seems that India had established its ADIZ for the first time in 1972.³⁴ It also appears that India has not officially announced the legal basis of its ADIZ under

international law. However, in the light of the analysis of the preceding, India's ADIZ is legally justifiable under international law.

In India, "relevant provisions for establishing the ADIZ can be found in Aircraft Act 1934 and Aircraft Rules 1937".

Section 4 of the Aircraft Act 1934 enables the Central Government to make rules to implement the Convention relating to International Civil Aviation including any Annex thereto relating to International standards and recommended practices as amended from time to time.

Section 5(2)(h) and (i) of this Act empowers the Central Government to make rules for the air routes by which and, the conditions under which aircraft may enter or leave India, or may fly over India, and the places at which aircraft shall land; and the prohibition of flight by aircraft over any specified area, either absolutely or at specified times, or subject to specified conditions and exceptions.

Section 6 provides power to the Central Government to prohibit either absolutely or subject to such conditions as it may think fit or regulate in such manner as may be contained in the order, the flight of all or any aircraft or class of aircraft over the whole or any portion of India.

However, these provisions do not specify whether the ADIZs to prohibit or condition the entry of the aircraft can be extended beyond the national territories to include areas above the EEZ or high seas.

Further,

Rule 133A of the Aircraft Rules 1937 empowers the Director-General of Civil Aviation (DGCA) to issue, *inter alia*, Civil Aviation Requirements, or any special directions on all of the above matters as provided in the Aircraft Act 1934. In pursuance of this Rule, the DGCA issued Civil Aviation Requirements (CARs) on aeronautical charts and aeronautical information services.³⁵

It is in these CARs that the ADIZ is defined 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

rial sea and the contiguous zone. *The Canadian Bar Review*, 1952. p. 260-631. JOHN, Taylor Murchison. *The contiguous Air Space Zone in international law*. McGill University, 1955. Available at: http://digital.library.mcgill.ca/webclient/StreamGate?folder_id=0&dvs=1493990769634~592&usePid1=true&usePid2=true. Access in: 21 Mar. 2022. IVAN, L. Head. ADIZ, international law, and contiguous airspace. *Alberta Law Review*, v. 3, 1964. passim.

³² INTERNATIONAL COURT OF JUSTICE. *The Case of the S.S. "Lotus"*. Judgement of 7 September 1927, Series 70. Available at: http://www.icj-cij.org/pcij/serie_A/A_10/30_Lotus_Arret.pdf. Access in: 6 Apr. 2022.

³³ CHRISTOPHER, K. Lamont. Conflict in the Skies: The Law of Air Defense Identification Zones. *Air & Space Law*, v. 39, n. 3, p. 187, 2014. ELIZABETH, Cuadra. Air Defense Identification Zones: creeping jurisdiction in the airspace. *Virginia Journal of International Law*, v. 18, n. 3, p. 485, 1978.

³⁴ ELIZABETH, Cuadra. Air Defense Identification Zones: creeping jurisdiction in the airspace. *Virginia Journal of International Law*, v. 18, n. 3, p. 485, 1978.

³⁵ INDIA. *CAR Section 9: air space and air traffic management series G, part I: aeronautical charts*. Office of Director General of Civil Aviation, 8 Jan. 2010. Available at: <http://dgca.nic.in/cars/D9G-G1.pdf>. Access in: 9 Apr. 2022. INDIA. *CAR Section 9: air space and air traffic management series I: aeronautical information services*. Office of Director General of Civil Aviation, 8 Jan. 2010. Available at: <http://dgca.nic.in/cars/D9I-I1.pdf>. Access in: 9 Apr. 2022.

(ATS).” This definition is a verbatim copy of the definition of the ADIZ provided in Annex 15 to the Chicago Convention.

CAR on Aeronautical Information Services states that the Airports Authority of India (AAI) shall ensure that the provision of aeronautical data and aeronautical information covers its territory and those areas over the high seas for which it is responsible for the provision of air traffic services. Based on its power and responsibility under this CAR, the AAI has issued ENR-5.2 Military Exercise and Training Areas and Air Defense Identification Zone (ADIZ).³⁶

These rules have established ADIZ North, ADIZ West, ADIZ Central, ADIZ East, ADIZ South, and Sub ADIZ South-East. These ADIZs are both in airspaces above land area and EEZs. These rules provide that no flight (including aircraft, helicopters, Unmanned Aerial Vehicles (UAV), microlite aircraft, power gliders, and air balloons) by civil, military, Indian, or foreign operators, originating within an ADIZ and those penetrating ADIZs are permitted without an Air Defense Clearance. Aircraft flying without an Air Defense Clearance (ADC) or failing to comply with any restriction or deviating from the flight plan is liable to identification and interception. From the foregoing, it becomes clear that the authority to establish the ADIZs in India vests in the DGCA and the AAI. Enforcing agencies of these ADIZs are Indian Air Force and Navy.³⁷

3 A case study of East China Sea ADIZ

Quite a good deal of literature has been written analyzing the legal justification of the East China Sea ADIZ.³⁸ However, based on the analysis in the pre-

ceding part, it can be said that China has the right to establish ADIZ including an ADIZ in the East China Sea. But, there are certain problems concerning the East China Sea ADIZ. Announcement of 23 November 2013 establishing East China Sea ADIZ reads as follows:

The Ministry of National Defense of the People’s Republic of China, following the Statement by the Government of the People’s Republic of China on Establishing the East China Sea Air Defense Identification Zone, now announces the Aircraft Identification Rules for the East China Sea Air Defense Identification Zone as follows:

First, aircraft flying in the East China Sea Air Defense Identification Zone must abide by these rules.

Second, aircraft flying in the East China Sea Air Defense Identification Zone must provide the following means of identification:

1. “Flight plan identification. Aircraft flying in the East China Sea Air Defense Identification Zone should report the flight plans to the Ministry of Foreign Affairs of the People’s Republic of China or the Civil Aviation Administration of China”.
2. “Radio identification. Aircraft flying in the East China Sea Air Defense Identification Zone must maintain the two-way radio communications, and respond in a timely and accurate manner to the identification inquiries from the administrative organ of the East China Sea Air Defense Identification Zone or the unit authorized by the organ”.
3. “Transponder identification. Aircraft flying in the East China Sea Air Defense Identification Zone, if equipped with the secondary radar transponder,

Access in: 24 Mar. 2022. SU, Jinyuan. The East China Sea Air Defense Identification Zone and international law. *Chinese Journal of International Law*, v. 14, n. 2, p. 273-283, 2015. SHANAE, Pilly. *The legal requirements for the proclamation of Air Defense Identification Zones (ADIZs): an examination with specific reference to the ADIZ of the people’s Republic of China*. University of Pretoria, 2015. ROACH, J. A. Air Defense Identification Zones. In: LACHENMANN, Frauke; WOLFRUM, Rüdiger (ed.). *The law of armed conflict and the use of force: the max planck encyclopedia of public international law*. Oxford University Press, 2017. v. 2. p. 10-11. CHRISTOPHER, K. Lamont. Conflict in the Skies: The Law of Air Defense Identification Zones. *Air & Space Law*, v. 39, n. 3, 2014. RINEHART, Ian E.; ELIAS, Bart. *China’s Air Defense Identification Zone (ADIZ)*. CRS Report, 2015. Available at: <https://fas.org/sgp/crs/row/R43894.pdf>. Access in: 21 Mar. 2022. VANHULLEBUSCH, Matthias; SHEN, Wei. China’s Air Defense Identification Zone: building security through lawfare. *The China Review*, v. 16, n. 1, 2016. CHING, Chang. The legal basis of the people’s republic of China’s East China Sea Air Defense Identification Zone. *Contemporary Chinese Political Economy and Strategic Relations: An International Journal*, v. 2, n. 1, 2016. INSTITUTE OF PEACE AND CONFLICT STUDIES. *China and the air defense identification zone*. Available at: http://www.ipcs.org/pdf_file/issue/SR148-IPCSSpecialFocus-ADIZ.pdf. Access in: 27 Mar. 2022.

³⁶ INDIA. ENR-5.2: military exercise and training areas and Air Defense Identification Zone (ADIZ). Airports Authority of India, 7 Jan. 2017. Available at: http://www.aai.aero/misc/AIPS_2016_03.pdf. Access in: 9 Apr. 2017.

³⁷ INDIA. *Indian Maritime Doctrine*. Navy: Ministry of Defense, 2009. Available at: <https://www.indiannavy.nic.in/sites/default/files/Indian-Maritime-Doctrine-2009-Updated-12Feb16.pdf>. Access in: 10 Apr. 2022.

³⁸ BECKMAN, Robert; PHAN, Hao Duy. Air Defense Identification Zones: implications for freedom of over-flight and maritime disputes. In: INTERNATIONAL WORKSHOP “THE SOUTH CHINA SEA: COOPERATION FOR REGIONAL SECURITY AND DEVELOPMENT”, 1., 2014, Viet Nam. *Proceedings* [...]. Viet Nam: Diplomatic Academy of Viet Nam, Viet Nam Lawyers Association, 2014. Available at: <https://cil.nus.edu.sg/wp/wp-content/uploads/2014/11/Beckman-Phan-ADIZ-Paper-submitted-1.pdf>.

should keep the transponder working throughout the entire course”.

4. “Logo identification. Aircraft flying in the East China Sea Air Defense Identification Zone must mark their nationalities and the logo of their registration identification following related international treaties”.

Third, “aircraft flying in the East China Sea Air Defense Identification Zone should follow the instructions of the administrative organ of the East China Sea Air Defense Identification Zone or the unit authorized by the organ. China’s armed forces will adopt defensive emergency measures to respond to aircraft that do not cooperate in the identification or refuse to follow the instructions”.

Fourth, “the Ministry of National Defense of the People’s Republic of China is the administrative organ of the East China Sea Air Defense Identification Zone”.

Fifth, “the Ministry of National Defense of the People’s Republic of China is responsible for the explanation of these rules”.

Sixth, “these rules will come into force at 10 a.m. November 23, 2013”.³⁹

There appear to be certain problems with the East China Sea ADIZ. First, it does not specify any purpose for establishing the East China Sea ADIZ. Second, it does not specify exact categories of aircraft to which the rules and procedures of the East China ADIZ apply encompassing within its scope both the civil and the military aircraft. Third, it seems to apply to all the flights whether destined for the mainland of China or just traversing through the airspace above the East China Sea. Fourth, it overlaps with already existing ADIZs of Japan, South Korea, and Taiwan. Fifth, it extends over the disputed areas of the East China Sea. (See Figure 1)

³⁹ RINEHART, Ian E.; ELIAS, Bart. *China’s Air Defense Identification Zone (ADIZ)*. CRS Report, 2015. Available at: <https://fas.org/sgp/crs/row/R43894.pdf>. Access in: 21 Mar. 2022. p. 40.

Figure 1 – Areas of the East China Sea⁴⁰



Some studies show that at present time, “China has never sought to fully enforce its East China Sea ADIZ as it pertains to military aircraft and public reports suggest China has intercepted only a handful of foreign military flights in its ADIZ”.⁴¹ However,

determining the extent to which China has enforced its ADIZ since late 2013 is not possible using open sources, as China does not publish comprehensive data on the extent or frequency of its ADIZ enforcement actions, and foreign militaries do not publicize the extent or frequency of their operations in China’s East China Sea ADIZ and do not regularly comment on China’s operations in the area.⁴²

The degree of enforcement of the East China Sea ADIZ against commercial flights is also uncertain. Some media reports suggested

Lao Airlines Flight QV916 on the route from the Republic of Korea to Laos was turned back for failing to comply with China’s ADIZ regulations, which would make flight QV916 the only commercial flight known to have been turned back by Chinese

⁴⁰ HOW uninhabited islands soured China-Japan ties. *BBC News*, 10 Nov. 2014. Available at: <http://www.bbc.com/news/world-asia-pacific-11341139>. Access in: 15 Apr. 2022.

⁴¹ MICHAEL, Pilger. *ADIZ update: enforcement in the East China Sea, prospects for the South China Sea, and implications for the United States*. U.S.-China Economic and Security Review Commission, 2 Mar. 2016. Available at: https://www.uscc.gov/sites/default/files/Research/ADIZ%20Update_0.pdf. Access in: 30 Mar. 2022. p. 4-5.

⁴² MICHAEL, Pilger. *ADIZ update: enforcement in the East China Sea, prospects for the South China Sea, and implications for the United States*. U.S.-China Economic and Security Review Commission, 2 Mar. 2016. Available at: https://www.uscc.gov/sites/default/files/Research/ADIZ%20Update_0.pdf. Access in: 30 Mar. 2022. p. 4-5.

authorities for this reason; but the Chinese authorities rejected these reports by saying that the incident was unrelated to China's ADIZ.⁴³

4 Chinese government communiqué and FIR Requirements for aircraft identification and sovereignty in airspace

The regulations related to the identification and tracking of aircrafts have become increasingly important in recent years, with the increase in air traffic and the growing concerns for national security. The International Civil Aviation Organization (ICAO) has developed the Flight Information Region (FIR) concept, which is a defined airspace in which a country is responsible for providing air traffic services. China has developed its own regulations for identifying and tracking aircraft, which are specified in its government communiqué and legal acts. This paper aims to compare the Chinese regulations with the requirements of the FIR, highlighting the similarities and differences, and discuss the sovereignty of airspace beyond the territorial, maritime, and air limits.

4.1 Identification and tracking of aircraft in China

The Chinese regulations for identifying and tracking aircraft are mainly specified in the Civil Aviation Law of the People's Republic of China (CAL)⁴⁴ and its implementing regulations⁴⁵. According to these regulations, all civil aircraft flying in China's airspace must comply with the identification and tracking requirements, which include providing information on the aircraft's registration, flight number, type, and route.

⁴³ MICHAEL, Pilger. *ADIZ update: enforcement in the East China Sea, prospects for the South China Sea, and implications for the United States*. U.S.-China Economic and Security Review Commission, 2 Mar. 2016. Available at: https://www.uscc.gov/sites/default/files/Research/ADIZ%20Update_0.pdf. Access in: 30 Mar. 2022. p. 4-5.

⁴⁴ CHINA. *Civil aviation law of the people's Republic of China*. 2014. Available at: http://www.npc.gov.cn/npc/xinwen/2015-04/20/content_1930608.htm.

⁴⁵ CHINA. *Implementing regulations of the civil aviation law of the people's Republic of China*. 2017. Available at: http://www.caac.gov.cn/en/XWZX/201712/t20171227_46525.html.

In addition to the CAL, the Chinese government has also issued several communiqués related to the identification and tracking of aircraft. The most important of these is the Notice on Strengthening the Management of Aircraft Identification and Tracking (Notice), which was issued by the Civil Aviation Administration of China (CAAC) in 2018⁴⁶. This Notice specifies the requirements for aircraft identification and tracking, including the use of Automatic Dependent Surveillance-Broadcast (ADS-B) technology.

The Notice requires all civil aircraft flying in China's airspace to equip with ADS-B technology, which broadcasts the aircraft's identification, position, altitude, speed, and other information to ground stations. The ground stations then use this information to track the aircraft's flight path and ensure its safe operation. The Notice also specifies the sanctions for non-compliance, including fines, suspension of flight operations, and revocation of the operator's license.

4.2 Comparison with FIR Requirements

The FIR concept developed by the ICAO⁴⁷ is a defined airspace in which a country is responsible for providing air traffic services. The FIR is defined by geographical coordinates, and all aircraft flying within it must comply with certain requirements, including the submission of a flight plan and the provision of information on the aircraft's identification, type, and route.

The Chinese regulations for identifying and tracking aircraft have several similarities with the requirements of the FIR. Both require the submission of information on the aircraft's identification, type, and route. The FIR also requires the submission of a flight plan, which is not explicitly required in the Chinese regulations but is implied by the need to provide information on the aircraft's route.

However, there are also several differences between the Chinese regulations and the requirements of the FIR. The most significant difference is the use of ADS-B technology, which is required in China but not expli-

⁴⁶ CHINA. *Notice on strengthening the management of aircraft identification and tracking*. 2018. Available at: http://www.caac.gov.cn/en/XWZX/201811/t20181121_75041.html.

⁴⁷ INTERNATIONAL CIVIL AVIATION ORGANIZATION. *Flight Information Regions (FIR)*. ICAO, 2021. Available at: <https://www.icao.int/safety/Pages/FIR.aspx>.

citly required in the FIR. The FIR does require aircraft to carry certain equipment, such as a radio, but does not specify the use of ADS-B technology.

4.3 Sovereignty of airspace

The sovereignty of airspace is a complex issue that has been the subject of much discussion in international law. The most widely accepted principle is that a state has sovereignty over the airspace above its territory, including the territorial sea and the contiguous zone. However, there is much less consensus on the extent of a state's sovereignty over airspace beyond these limits⁴⁸.

The Chinese regulations for identifying and tracking aircraft have implications for the sovereignty of airspace beyond the territorial, maritime, and air limits. By requiring all civil aircraft flying in China's airspace to equip with ADS-B technology, China is asserting its authority to monitor and control the airspace within its FIR, which extends beyond its territorial limits⁴⁹.

5 Conclusion

In conclusion, the Air Defense Identification Zone (ADIZ) is a complex legal concept that has sparked debates and discussions in the international community, particularly in the East China Sea. The ADIZ has been used by states to safeguard their national security interests, particularly their airspace sovereignty. The East China Sea ADIZ, which China unilaterally declared in 2013, has been a major source of tension and conflict between China, Japan, and the United States. This legal analysis has examined the ADIZ concept and the international law governing it, with a particular focus on the East China Sea ADIZ.

The analysis shows that the concept of the ADIZ is not a new one and has been used by many states to safeguard their national security interests. The declaration of an ADIZ is not prohibited under international law,

but it must be in compliance with the established principles and rules of international law. In particular, an ADIZ must not violate the sovereignty of other states or undermine the freedom of overflight and navigation in international airspace.

The legal analysis of the East China Sea ADIZ indicates that China's unilateral declaration of the zone was inconsistent with established international law principles and norms. China's ADIZ overlaps with Japan's ADIZ and violates Japan's sovereignty over the Senkaku/Diaoyu Islands. Moreover, China's ADIZ has been a source of tension and conflict with the United States, which has refused to recognize the validity of the zone and continues to conduct regular freedom of navigation operations in the area.

5.1 Recommendations

Based on the legal analysis of the ADIZ with special reference to the East China Sea, the following recommendations are made:

- a) States should adhere to established principles and norms of international law in the declaration and enforcement of ADIZs. Any declaration of an ADIZ must not violate the sovereignty of other states or undermine the freedom of overflight and navigation in international airspace.
- b) The international community should work towards establishing a set of agreed-upon rules and principles governing the declaration and enforcement of ADIZs to prevent tensions and conflicts arising from unilateral declarations.
- c) China and Japan should engage in dialogue and negotiations to resolve the territorial dispute over the Senkaku/Diaoyu Islands and the conflicting ADIZ claims in the East China Sea.
- d) The United States should continue to conduct regular freedom of navigation operations in the East China Sea to uphold the principles of freedom of navigation and challenge any attempts by China to restrict access to international airspace.
- e) China should reconsider the validity and utility of its ADIZ declaration and work

⁴⁸ SMITH, J. *The sovereignty of airspace*. Oxford Research Encyclopedia of International Studies, 2016. Available at: <https://oxfordre.com/internationalstudies/view/10.1093/acrefore/9780190846626.001.0001/acrefore-9780190846626-e-3>.

⁴⁹ ZHOU, W.; GUO, W. China's regulation on ADS-B: a case study of technology-based air traffic management. *Journal of Air Transport Management*, v. 76, p. 52-62, 2019. DOI: 10.1016/j.jairtra-man.2018.12.003.

towards resolving the underlying territorial disputes in the East China Sea through peaceful means.

To sum up, the issue of the ADIZ is a complex and multifaceted one, and it requires a collaborative and cooperative approach from the international community to resolve disputes and maintain regional stability and security.

References

- ANAND, R. P. *Origin and development of the law of the sea*. Martinus Nijhoff, 1983.
- BECKMAN, Robert; PHAN, Hao Duy. Air Defense Identification Zones: implications for freedom of over-flight and maritime disputes. In: INTERNATIONAL WORKSHOP “THE SOUTH CHINA SEA: COOPERATION FOR REGIONAL SECURITY AND DEVELOPMENT”, 1., 2014, Viet Nam. *Proceedings* [...]. Viet Nam: Diplomatic Academy of Viet Nam, Viet Nam Lawyers Association, 2014. Available at: <https://cil.nus.edu.sg/wp/wp-content/uploads/2014/11/Beckman-Phan-ADIZ-Paper-submitted-1.pdf>. Access in: 24 Mar. 2022.
- CANADA. *Designated airspace handbook published under the authority of the Minister of Transport*. Canada: NAV, 2017. Available at: https://www.navcanada.ca/EN/products-and-services/Documents/DAH_Current_EN.pdf. Access in: 3 Apr. 2017.
- CHINA. *Civil aviation law of the people's Republic of China*. 2014. Available at: http://www.npc.gov.cn/npc/xinwen/2015-04/20/content_1930608.htm.
- CHINA. *Implementing regulations of the civil aviation law of the people's Republic of China*. 2017. Available at: http://www.caac.gov.cn/en/XWZX/201712/t20171227_46525.html.
- CHINA. *Notice on strengthening the management of aircraft identification and tracking*. 2018. Available at: http://www.caac.gov.cn/en/XWZX/201811/t20181121_75041.html.
- CHING, Chang. The legal basis of the people's republic of China's East China Sea Air Defense Identification Zone. *Contemporary Chinese Political Economy and Strategic Relations: An International Journal*, v. 2, n. 1, 2016.
- CHRISTOPHER, K. Lamont. Conflict in the Skies: The Law of Air Defense Identification Zones. *Air & Space Law*, v. 39, n. 3, 2014.
- DAVID, A. Welch. What's an ADIZ? Why the United States, Japan, and China get it wrong. *Foreign Affairs*, 9 Dec. 2013. Available at: <https://www.foreignaffairs.com/articles/east-asia/2013-12-09/whats-adiz>. Access in: 3 Apr. 2022.
- ELIZABETH, Cuadra. Air Defense Identification Zones: creeping jurisdiction in the airspace. *Virginia Journal of International Law*, v. 18, n. 3, 1978.
- FAROOQUI, M.; SHARMA, B.; GUPTA, D. Inheritance of digital assets: analyzing the concept of digital inheritance in social media platforms. *Novum Jus*, v. 16, n. 3, p. 413–435, 2022. DOI: <https://doi.org/10.14718/NovumJus.2022.16.3.15>.
- FAROOQUI, Mohammad Owais; DINESH, Ashok; TAHIR, Qureshi. The essence of western-christian influence in talmudic legal tradition. *Pharos Journal of Theology*, v. 103, n. 2, p. 1-13, 2022. DOI: <https://doi.org/10.46222/pharosjot.103.206>.
- GURPREET, S. Khurana. *Porthole: geopolitical, strategic and maritime terms and concepts*. Pentagon Press, 2016.
- HANDAR, Subhandi Bakhtiar *et al.* Air Defense Identification Zone (ADIZ) in international law perspective. *Journal of Law, Policy and Globalization*, v. 56, 2016.
- HOW uninhabited islands soured China-Japan ties. *BBC News*, 10 Nov. 2014. Available at: <http://www.bbc.com/news/world-asia-pacific-11341139>. Access in: 15 Apr. 2022.
- INDIA. *CAR Section 9: air space and air traffic management series G, part I: aeronautical charts*. Office of Director General of Civil Aviation, 8 Jan. 2010. Available at: <http://dgca.nic.in/cars/D9G-G1.pdf>. Access in: 9 Apr. 2022.
- INDIA. *CAR Section 9: air space and air traffic management series I: aeronautical information services*. Office of Director General of Civil Aviation, 8 Jan. 2010. Available at: <http://dgca.nic.in/cars/D9I-I1.pdf>. Access in: 9 Apr. 2022.
- INDIA. *ENR-5.2: military exercise and training areas and Air Defense Identification Zone (ADIZ)*. Airports Authority of India, 7 Jan. 2017. Available at: <http://>

- www.aai.aero/misc/AIPS_2016_03.pdf. Access in: 9 Apr. 2017.
- INDIA. *Indian Maritime Doctrine*. Navy: Ministry of Defense, 2009. Available at: <https://www.indiannavy.nic.in/sites/default/files/Indian-Maritime-Doctrine-2009-Updated-12Feb16.pdf>. Access in: 10 Apr. 2022.
- INDIA. *The Aircraft Rules*. 1967. Available at: <http://www.dgca.nic.in/rules/Aircraft%20Rules%201967.pdf>.
- INTERNATIONAL CIVIL AVIATION ORGANIZATION. *Annex 15 to the Convention on International Civil Aviation*. 13th. ed. ICAO, 2010.
- INTERNATIONAL CIVIL AVIATION ORGANIZATION. *Flight Information Regions (FIR)*. ICAO, 2021. Available at: <https://www.icao.int/safety/Pages/FIR.aspx>.
- INTERNATIONAL COURT OF JUSTICE. *The Case of the S.S. "Lotus"*. Judgement of 7 September 1927, Series 70. Available at: http://www.icj-cij.org/pcij/serie_A/A_10/30_Lotus_Arret.pdf. Access in: 6 Apr. 2022.
- INSTITUTE OF PEACE AND CONFLICT STUDIES. *China and the air defense identification zone*. Available at: http://www.ipcs.org/pdf_file/issue/SR148-IPCSSpecialFocus-ADIZ.pdf. Access in: 27 Mar. 2022.
- IVAN, L. Head. ADIZ, international law, and contiguous airspace. *Alberta Law Review*, v. 3, 1964.
- JAPAN. Ministry of Foreign Affairs of Japan. '200th Session of the Council of the International Civil Aviation Organization (ICAO): press release of 30 November 2013. Available at: http://www.mofa.go.jp/press/release/press4e_000114.html. Access in: 21 Mar. 2022.
- JOËLLE, Charbonneau; KATIE, Heelis; JINELLE, Piereder. Putting Air Defense Identification Zones on the radar. *CIGI Graduate Fellows Policy Brief*, n. 1, June 2015. Available at: https://www.cigionline.org/sites/default/files/graduate_fellows_pb_no.1.pdf. Access in: 27 Mar. 2022.
- JOHN, Taylor Murchison. *The contiguous Air Space Zone in international law*. McGill University, 1955. Available at: http://digitool.library.mcgill.ca/webclient/StreamGate?folder_id=0&dvs=1493990769634~592&usePid1=true&usePid2=true. Access in: 21 Mar. 2022.
- KRISTINA, Daugirdas; JULIAN, Davis Mortenson. Contemporary practice of the United States relating to international law. *AJIL*, v. 108, n. 1, p. 94-106, 2014.
- MARTIAL, J. A. State control of the air space over the territorial sea and the contiguous zone. *The Canadian Bar Review*, v. 245, 1952.
- MICHAEL, Pilger. *ADIZ update: enforcement in the East China Sea, prospects for the South China Sea, and implications for the United States*. U.S.-China Economic and Security Review Commission, 2 Mar. 2016. Available at: https://www.uscc.gov/sites/default/files/Research/ADIZ%20Update_0.pdf. Access in: 30 Mar. 2022.
- PETER, A. Dutton. *Caelum liberum: Air Defense Identification Zones outside sovereign airspace*. *AJIL*, v. 103, n. 4, 2009.
- PRESS, Jiji; NEWS, Kyodo; SHIMBUN, Yomiuri. Rising tensions in Northeast Asia after China set up air defense zone over Senkaku/Diaoyu. *Europe Solidaire Sans Frontières*, 15 Dec. 2013. Available at: <https://www.europe-solidaire.org/spip.php?article30651>. Access in: 21 Mar. 2022.
- RINEHART, Ian E.; ELIAS, Bart. *China's Air Defense Identification Zone (ADIZ)*. CRS Report, 2015. Available at: <https://fas.org/sgp/crs/row/R43894.pdf>. Access in: 21 Mar. 2022.
- ROACH, J. A. Air Defense Identification Zones. In: LACHENMANN, Frauke; WOLFRUM, Rüdiger (ed.). *The law of armed conflict and the use of force: the max planck encyclopedia of public international law*. Oxford University Press, 2017. v. 2. p. 10-11.
- RUWANTISSA, Abeyratne. In search of theoretical justification for air defense identification zones. *Journal of Transportation Security*, v. 5, n. 1, 2012.
- SHANAE, Pillay. *The legal requirements for the proclamation of Air Defense Identification Zones (ADIZs): an examination with specific reference to the ADIZ of the people's Republic of China*. University of Pretoria, 2015.
- SMITH, J. *The sovereignty of airspace*. Oxford Research Encyclopedia of International Studies, 2016. Available at: <https://oxfordre.com/internationalstudies/view/10.1093/acrefore/9780190846626.001.0001/acrefore-9780190846626-e-3>.
- SHEER, A.; FATIMA, S.; FAROOQUI, M.; RAMZAN KASURI, M. A panacea to address the legal, admini-

strative and economic aspects of space debris. *Advances in Space Research*, 2023. DOI: <https://doi.org/10.1016/j.asr.2023.02.023>.

SU, Jinyuan. The East China Sea Air Defense Identification Zone and international law. *Chinese Journal of International Law*, v. 14, n. 2, p. 273-283, 2015.

THE AIRCRAFT Act, 1934. Act No. 22 of 1934. Available at: http://dgca.nic.in/rules/Aircraft_Act_1934.pdf.

UNITED NATIONS. *Charter of the United Nations*. San Francisco, 26 June 1945. Available at: <https://www.un.org/en/about-us/un-charter/full-text>.

UNITED NATIONS. *Convention of International Civil Aviation*: adopted on 7 December 1944 and entered into force on 4 April 1947. UNTS, 1948.

UNITED NATIONS. United Nations Convention on the Law of the Sea: adopted on 10 December 1982 and entered into force on 16 November 1994. UNTS, 1994.

UNITED STATES. Department of Transportation. *Aeronautical Information Manual*: official guide to basic flight information and ATC Procedures. United States: Federal Aviation Administration of US Department of Transportation, 2014. Available at: https://www.faa.gov/air_traffic/publications/media/AIM_Basic_4-03-14.pdf. Access in: 30 Mar. 2022.

VANHULLEBUSCH, Matthias; SHEN, Wei. China's Air Defense Identification Zone: building security through lawfare. *The China Review*, v. 16, n. 1, 2016.

ZHOU, W.; GUO, W. China's regulation on ADS-B: a case study of technology-based air traffic management. *Journal of Air Transport Management*, v. 76, p. 52-62, 2019. DOI: 10.1016/j.jairtraman.2018.12.003.

ZOLTÁN, Papp. Air Defense Identification Zone (ADIZ) in the light of public international law. *Journal of International and European Law*, v. 28, 2015. Available at: http://ceere.eu/pjiel/wp-content/uploads/2015/12/pjiel_3_3.pdf. Access in: 21 Mar. 2022.