

Article

China's Air Defense Identification Zone (ADIZ) and its Impact on the Territorial and Maritime Disputes in the East and South China Seas*

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Abstract

On 23 November 2013, the Chinese government created the Air Defense Identification Zone (ADIZ) in the East China Sea as 'defensive emergency measures' against the law-breaking conduct of a foreign aircraft. China's unilateral action resulted in a tense situation in the East China Sea, although it guaranteed the freedom of overflight in the ADIZ (Rinehart & Elias, 2015; Carpenter, 2015). This paper discusses two points: (1) the impact of China's ADIZ on the states/parties affected in the East China Sea, including Japan, South Korea, Taiwan, and the United States (U.S); and (2) the possibility of China creating an ADIZ in the South China Sea. In addition, the paper raises the following three points: (1) more time will be required to decisively evaluate the effect of the ADIZ; (2) China, Japan, and South Korea, among others, will need to expedite discussions on a framework of confidence-building measures and on a crisis-management mechanism in the East and South China Sea; and (3) fundamentally, the careful and objective evaluation of China's challenge and/or change of status quo in the region is necessary to understand China's re-rise/return as a power in the region.

Key words: Air Defense Identification Zone (ADIZ); territorial and maritime dispute;
East China Sea; South China Sea.

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Introduction

On 23 November 2013, the Chinese government established an Air Defense Identification Zone (ADIZ) in the East China Sea, with the goal of requiring aircraft flying in the East China Sea ADIZ to abide by specific rules (Aircraft Identification Rules for the East China Sea Air Defense Identification Zone) created by the Ministry of National Defense of the People's Republic of China [Map 1]. The aircraft flying the ADIZ are also required to provide the information on flight plan identification, radio identification, and other perimeters. The most controversial item within China's unilateral legislative action is the third point listed in the Rules:

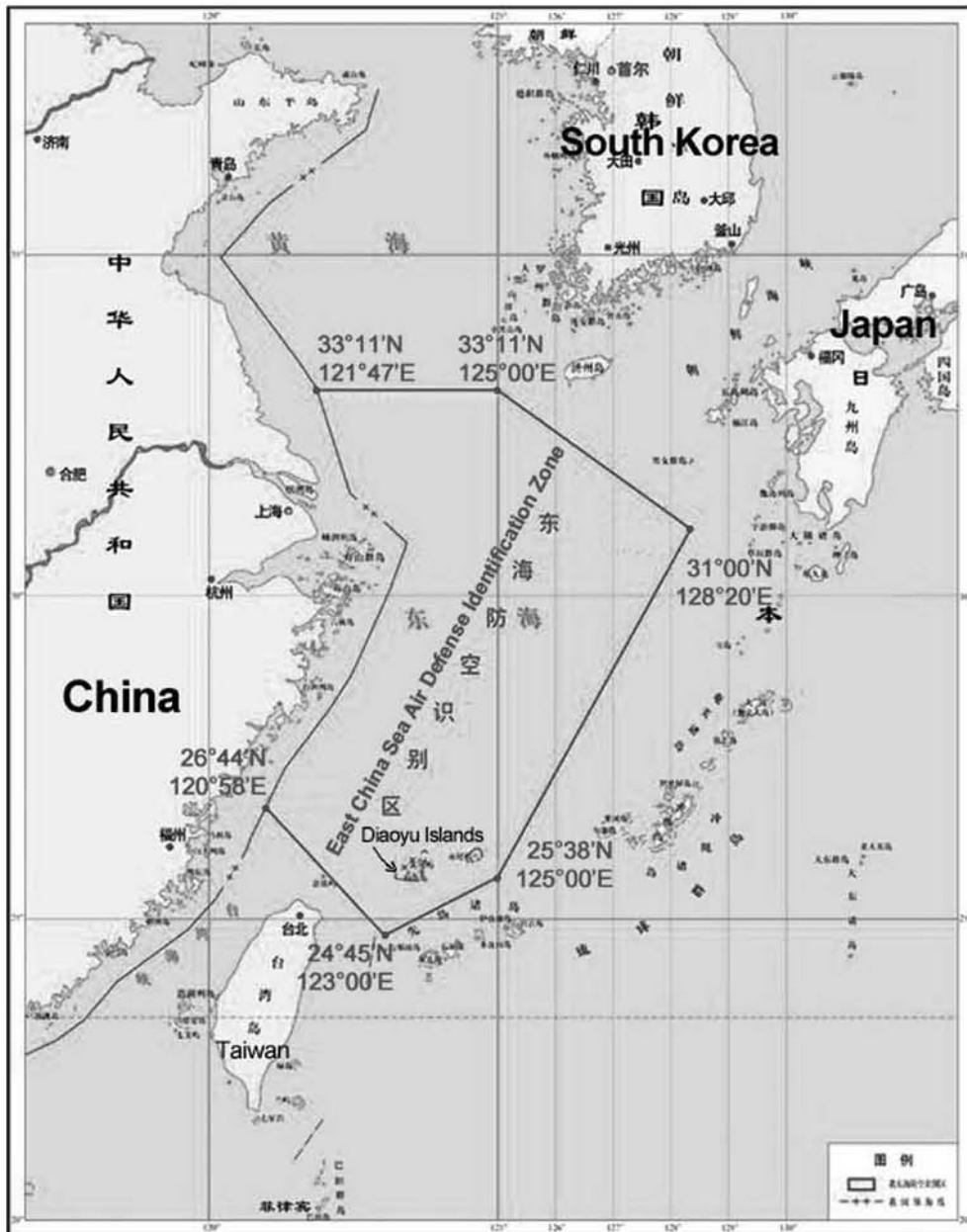
Third, aircraft flying in the East China Sea Air Defense Identification Zone should follow the instructions of the administrative organ of the East China Sea Air Defense Identification Zone or the unit authorized by the organ. *China's armed forces will adopt defensive emergency measures to respond to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

The clear interpretation of China's intention to adopt 'defensive emergency measures' against aircraft that do not comply with its instructions is problematic because a unilateral coercive action of this nature will, as have been widely reported by news coverage, result in a tense situation in East Asia.

Japan and China have been disputing over the attribution of the territorial sovereignty of the Senkaku/Diaoyudao/Diaoyutai Islands, although Japan has not officially admitted to a dispute. Japan lodged a strong protest against China, denying its legality and demanding its withdrawal. South Korea's initial mild protest against China's ADIZ was consequently enlarged to cover some controversially disputed areas in the region. Taiwan, although not regarded as a sovereign state but as part of China, filed a complaint, as the ADIZ would affect its flight administration. The U.S. expressed its deep concern regarding the ADIZ and its impact on the geopolitical and security issues in the region, although it did not take a position with respect to the territorial dispute. Therefore, the outcome of this unilateral action taken by China has widely affected the status quo of the region.

The purposes of this paper are: (1) to examine the impacts of China's ADIZ on the territorial and maritime disputes in the East China Sea, with special reference to existing ADIZs' boundaries and to consider, under international law, how the relationships between China and its neighbouring states have been affected by this action; and (2) to discuss the possible creation of an ADIZ by China in the South China Sea and its impact on the regional political and security situations.

MAP 1



Source: Ministry of National Defense

[Source] *Global Time*, 24 November 2013, at <<http://www.globaltimes.cn/content/827263.shtml>> (accessed 5 January 2016)

I. China's Viewpoint

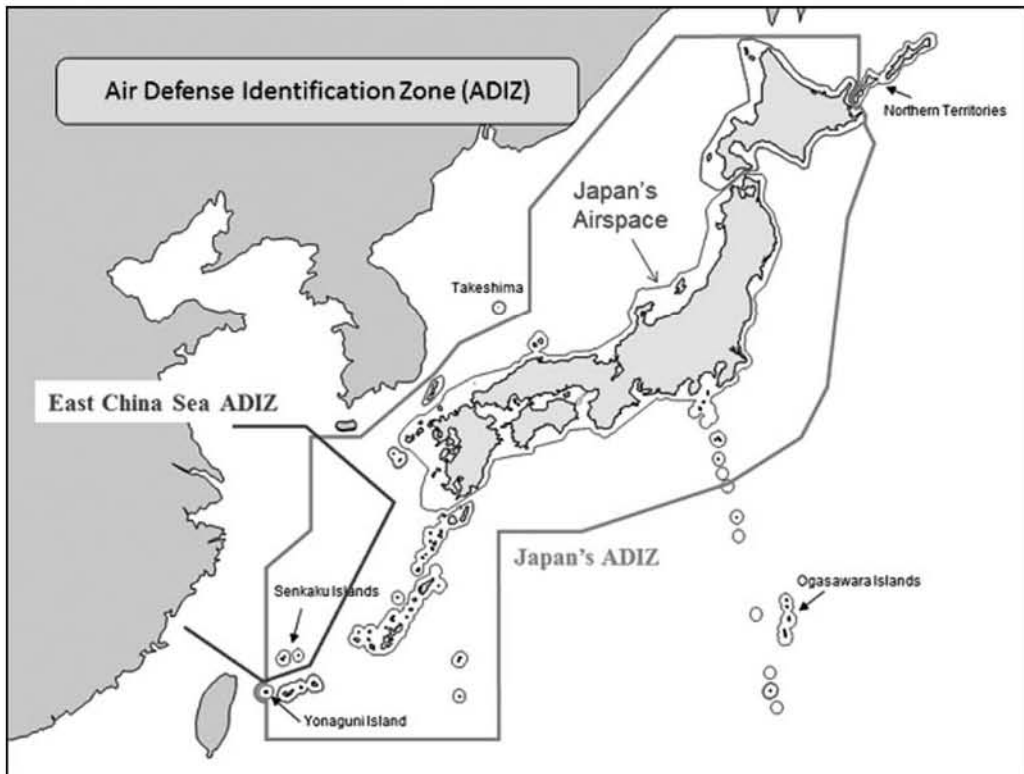
Based on the 23 November 2013 announcement, the legal basis of the establishment of an ADIZ by China is a domestic regulation known as 'the Aircraft Identification Rules for the East China Sea Air Defense Identification Zone' (*Xinhua News* HP). The introduction of the ADIZ in the region is justifiable as part of China's right to self-defence and to safeguard sovereignty over its territory from a threat of foreign attack.

According to some commentators in news media, the purpose of the ADIZ is either to challenge the status quo in the region or to challenge Japan-U.S. security ties to maintain peace and stability in the Far East. Some suspect that China intends to exercise jurisdictional control of the disputed maritime area of the Senkaku Islands. This type of state action may cause neighbouring states to accuse China of its 'creeping jurisdiction' in the region. From a viewpoint of those who support the status quo in the East China Sea, a question arises as to whether China's unilateral announcement of an ADIZ will, in the long run, cause Japan's seemingly uncontested administrative control of the Senkaku Islands to be at risk (Rinehart & Elias, 2015). However, this current tense situation may be due to the fact that a 1972 shelving tacit understanding between Japan and China, although controversial and open to interpretation, was severely damaged, if not completely destroyed, by the Japanese government's purchase, or nationalization, of three privately owned islands in the Senkaku Islands in September 2012. Both sides blame the other for causing the current situation.

Normally, neighbouring states would consult each other in advance regarding the establishment of an ADIZ to avoid conflict. This practice of prior consultation has been common in international society following the Second World War. Therefore, China's unilateral ADIZ was created, apparently, in an unfriendly and unsophisticated manner, overlapping with Japan's ADIZ, which was originally created by the U.S. and was largely succeeded by Japan in the 1950s [Map 2]. It is not surprising that Japan severely condemned China for its coercive declaration of the ADIZ in the maritime area where a tense situation exists due to the conflict over the Senkaku Islands. Interestingly, however, the creation of an ADIZ, per se, is not prohibited under international law, and is not the same as the declaration of a territorial claim over a (disputed) territory.

Although the Chinese announcement may appear to be coercive and threatening, the Chinese government, including the People's Liberation Army (PLA) and the Foreign Ministry, added that '[n]ormal flights by foreign airlines in the Chinese ADIZ would not be affected' (Chinese Foreign Ministry Spokesperson, 2013). If this is really the case, the Chinese ADIZ will not affect the freedom of overflight, which is protected as part of freedom of the high seas under Article 87, paragraph 1, subparagraph (b), of the United Nations Convention on the Law of the Sea (UNCLOS). A spokesman for the Chinese Ministry of National Defense also stated that China's ADIZ is not a no-fly zone:

MAP 2



[Source] Japanese Ministry of Defense, 'China's Activities Surrounding Japan's Airspace', at http://www.mod.go.jp/e/d_act/ryouku/ (accessed 5 January 2016)

China's ADIZ was established to set aside enough time for early warning to defend the country's airspace, with defense acting as the key point. The zone does not aim at any specific country or target, nor does it constitute a threat to any country or region. (CHINADAILY, 2013)

It has also been reported that China's Civil Aviation Administration removed the 'defensive emergency measures' warning from the ADIZ rules in its Aeronautic Information Publication (AIP) in February 2014, although the warning remains in the Defense Ministry of China rules (Kurashige, *Asahi Shimbun*, 28 December 2014). Practically, therefore, no impediment may be found in practice unless one needs a theoretical outlook and structural understanding of the multilateral relations in East Asia. This paper then turns to the legal significance of the notion of ADIZ under international law.

II. ADIZ Under International Law

There is no clear written rule governing ADIZ under international law (Waxman, 2014; Ashley Roach, 2015). In other words, there is no formal agreement on the creation of an ADIZ or procedural controls implemented within an ADIZ, although a certain number of ADIZs were created following the end of the Second World War. State practices concerning the creation of an ADIZ under certain circumstances were first realized when the U.S. created ADIZs during the Cold War in the 1950s in order to ‘manage the air threat from the Soviet Union’ (Hsu, 2014, p. 2). In this regard, it may be said that the ADIZs in East Asia are, in essence, a legacy of the San Francisco Peace Settlement during the Cold War. The precedence of the U.S. ADIZs has been followed by other states in almost the exact same manner. Interestingly, however, US recent practice demonstrates that most violations of the U.S. ADIZ are ‘by the lowest cost and least well-equipped aircraft likely operated by a single crew’ largely due to the misinformation given to those pilots and miscommunication between them and the air traffic controller concerned (Zuschlag, pp. 32-34).

When a state unilaterally creates an ADIZ, tensions between the state and its neighbouring states will be obviously raised. Concerning the state practice of establishing an ADIZ, an overlapping ADIZ is not ‘unusual and can be managed co-operatively as is the case with the U.S. and Canada’ (Valencia, 2013). This is mainly because the states concerned typically consult or negotiate to accommodate the geographical setting of the zones. In other words, the conditions to create an ADIZ basically depend on the relationship between the states concerned. At the same time, it is unimaginable for a state to create an ADIZ unilaterally over another state’s already established ADIZ, and which lies over disputed territory. This subsequent one-way conduct would obviously be threatening and hostile enough to invite an adversarial reaction from opponents. However, one may wonder whether Japan had the initial authority at all to create an ADIZ over disputed land or not. This question will be answered below.

More than twenty countries have created ADIZs over the maritime areas surrounding their territories for security purposes prior to China’s declaration (Calvo, 2013; Lee, 2014). As the precedence of the U.S. ADIZs has been followed, a commentator goes so far as to state that ‘it may be presumed that the right to declare an ADIZ is now recognized as a right under customary international law’ (Ashley Roach, 2015; Lee, 2014). However, the legal basis of this practice is not free from criticism under international law. Another commentator criticises its lack of a legal foundation to justify its use, as the U.S. practice still requires wider and more consistent support in the international society (Valencia, 2015).

In general, an ADIZ may coexist with a Flight Information Region (FIR), which is a ‘specified region of airspace in which a flight information service and an alerting service (ALRS) are provided’ (Ashley Roach, 2015) in accordance with a regional air navigation agreement approved by the International Civil Aviation Organization (ICAO). They substantially differ, in that the former

controls jurisdiction of a certain aerial zone for the state's own territorial security, while the latter administers the safety flight of aircrafts under common rules regulated by the ICAO. The notion of an ADIZ is primarily for the purpose of the state's own security, regardless of its intention to occupy the territory concerned. Therefore, any unilateral action, whether prescriptive or administrative, will easily incur a tension in the concerned region, regardless of what manner the action was taken. In order to seek a third party mechanism of dispute settlement, one might consider the possibility of utilizing the procedures by the ICAO Council under Article 84 of the Convention on International Civil Aviation of 1944. However, this approach would depend on whether ADIZ matters would be within the scope of the function of the ICAO, which primarily oversees civil aviation.

Practically, however, the establishment of an ADIZ in a certain area may imply that the state establishing the ADIZ retains an intention to exert an influential impact upon the covered zone, so that the affected states will be intimidated upon entering or passing. This kind of chilling effect, with the possibility of taking a forceful measure by coastal states, may create tension and/or deteriorate the current situation in the region. Therefore, one can rightly assume that ADIZs beyond the limits of the territorial sea would be 'incompatible with the status of waters beyond the limit of the territorial sea, at least if they involved the application of powers of prevention or punishment in regard to foreign vessels or aircraft' (Brownlie, 2008, p. 198; Crawford, 2012, p. 280).

In summary, the following three points are noteworthy, as the present author once pointed out elsewhere (Ikeshima, 2014, p. 55). First, the legality of an ADIZ primarily depends on how the coastal state implements the defensive measure in reality. Second, relevant rules of international law are not established under the circumstance where national security is under great peril and danger before an eminent urgent situation due to the remarkable development of military technology. Third, UNCLOS, to which the U.S. has not yet acceded, remains dependent on the consequent practice of the states concerned, as UNCLOS parallels customary law.

III. The Impact of China's ADIZ on Neighbouring States in the Region

1. Japan

The Japanese government lodged a protest with the Chinese government soon after the latter made the announcement regarding the establishment of an ADIZ in the East China Sea. The protest was followed by the Japanese government's instruction to its air companies not to abide by China's ADIZ rules, as this would imply that Japan accepted it.

As the Senkaku/Diaoyu Islands dispute between Japan and China was ongoing, the coverage by China's ADIZ of the disputed islands created a tense situation to U.S. interests in the region under the Japan-U.S. security ties (Drifte, 2014). This is partly because China's ADIZ overlaps with the Japanese ADIZ. However, the original of Japan's ADIZ was created by the U.S. in the early 1950s, and Japan succeeded it from the U.S. during the Cold War (Gil, 2013).

The United States' official position with respect to the disputed islands is based on Article V, paragraph 1, of the 1960 Japan-US Security Treaty:

Article V

Each Party recognizes that an armed attack against their Party in the territories *under the administration of Japan* would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional provisions and processes. (Emphasis added)

This provision obliges the U.S. to defend the islands as a Japanese territory, and is applicable to the islands in question on the ground that the U.S. recognizes them to be 'under the administrative control of Japan'. In this regard, the U.S. distinguishes between territorial sovereignty over, and administrative control of, land. It has been reported that Japan has remained vigilant since its Coast Guard observed not a Chinese maritime police boat but a People's Liberation Army (PLA) Navy vessel 'for the first time' navigating in a 'peculiar' manner on the border of China's ADIZ (*Asia Times*, 23 November 2015). One interpretation of this conduct may be that China is conducting reconnaissance activities by examining the boundaries of its ADIZ and is showing off its naval presence therein.

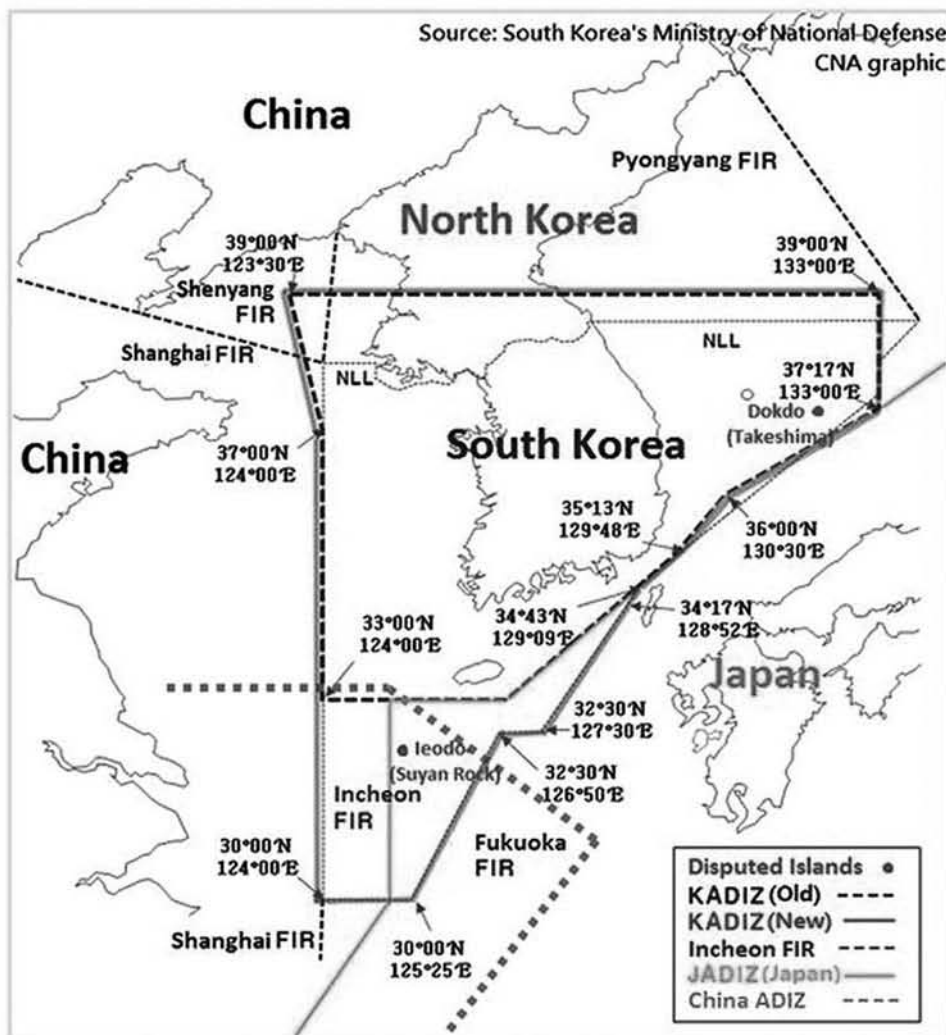
At the same time, however, it is not easy to understand the U.S. policy concerning the disputed islands, under which the U.S. government does 'not take a position on the sovereignty' of them (Manyin, 2013; Drifte, 2014). The U.S. position has been widely criticised and is considered controversial for its ambiguity with respect to the relationship between the territorial sovereignty of the disputed islands and the administrative control of the occupying state. One interpretation for this position may be a diplomatic compromise to utilize practically a theoretical excuse to maintain the status quo without becoming unnecessarily involved in other countries' territorial disputes at the sacrifice of the fully guaranteed satisfaction of the parties concerned. This is why, at the request of the Japanese government, the U.S. Department of Defense has repeatedly and publicly issued the same statement that Article V of the 1960 Japan-U.S. Mutual Security Treaty is applicable to the Senkaku Islands (Hughes, 2015, p. 70). However, there is no practical guarantee regarding the actual response of the U.S. in an urgent and dangerous situation under the provision, due to the vague condition of the paragraph mentioned above, 'in accordance with its constitutional provisions and processes'. This wording may imply that a failure of the U.S. Administration to obtain an endorsement of Congress may block an actual military deployment.

Furthermore, Japan may be open to criticism because of its arbitrary ADIZ and inconsistency in its coverage. The following two points are noteworthy. First, Japan's ADIZ covers neither the so-called Northern Territories off the north-eastern coasts of Hokkaido, whose territorial sovereignty Japan claims against the current occupier, Russia, nor the Takeshima Island, while the Senkaku Islands are within its scope. Neither the Ogasawara Islands, nor the Okinotorishima Island, is

included in the scope of Japan's ADIZ, whereas none of these islands' territorial sovereignty is disputed. The coverage of the Japanese ADIZ is, therefore, deemed to be principally for the purpose of the mainland's security, while avoiding conflict with neighbouring states, including Russia and South Korea, whose effective control over the disputed islands has been apparently stable.

Second, the Japanese ADIZ coexists with the South Korean ADIZ (KADIZ), which was created on 22 March 1951, over the Takeshima/Dokdo Island, which Japan and South Korea have been disputing for more than 50 years (Gil, 2013), even though South Korea does not admit there is any dispute over the island. Following China's ADIZ announcement, South Korea extended its KADIZ to cover the Ieodo/Suyan Rock [Map 3]. Prior to this, the KADIZ did not overlap with

MAP 3



[Source] GlobalSecurity.org, 'ROK Air Defense Identification Zone', at <<http://www.globalsecurity.org/military/world/rok/adiz.htm>> (accessed 5 January 2016)

Japan's ADIZ, but existed side-by-side in the northeastern part of the East China Sea, in particular, sharing a border with the Japanese's ADIZ. In addition, South Korea also enlarged KADIZ southerly to cover the Jeodo, overlapping with both China's and Japan's ADIZs. Therefore, the area where the Jeodo is located has a triple overlap of ADIZs. It is noteworthy that Japan and South Korea jointly conducted naval exercise in December 2013, following China's unilateral announcement of an ADIZ, because this joint naval exercise may mean the maintenance of minimum security cooperation between Japan and South Korea, despite diplomatic conflicts (Green & Cooper, 2015, p. 72).

This paper now turns to the impact of China's ADIZ on the Korean situation in the following.

2. South Korea¹

China's establishment of an ADIZ in the East China Sea also caused the expansion of the KADIZ on 8 December 2013, eliminating the status quo of the tripartite equilibrium in the maritime and aerial zone of that region. This status quo, however, was dependent on a very fragile and unstable situation created by the U.S. during and after the 1950s under the *Pax Americana* established following the Korean War in the Far East when China was still struggling to build its communist economy after the 1949 Revolution.

South Korea's actions were significant because the expansion of the KADIZ took place after consultation with the U.S., China, and Japan, irrespective of gaining a successful consent from its counterpart. This cooperative action may have not created a conflict in the region initially, while overlapping the three countries' ADIZs is now more complicated and requires sensitive coordination among the states to avoid a possible unexpected military incident or accident.

A geographical feature known as Jeodo in Korean, or Suyan Rock in Chinese, is a submerged reef in the overlapping exclusive economic zones (EEZs) of South Korea and China, and has been in dispute not of territorial sovereignty over, but of jurisdiction over, the feature. There appears to be a clear definition regarding the submerged rock in UNCLOS (Churchill & Lowe, 1999), but Article 17, paragraph 2, of UNCLOS stipulates:

Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it has no territorial sea of its own.

A claim over a submerged rock/reef cannot be made, so no actual territorial dispute between these two countries exists; however, maritime jurisdiction remains an issue (Roehring, 2012). South Korea constructed, and has maintained, an ocean research station on a platform above the reef since 2003. China has regularly protested against South Korea's action and its subsequent exercise of jurisdiction based on this construction.

The fundamental concern with Jeodo is the delimitation of the overlapping EEZs between these two countries, leading to the regulation and control of illegal fishing in and around the relevant maritime area in the region. However, the current overlapping ADIZ issue creates a more complicated situation because the overflight of the EEZ for the patrol purpose requires effective coordination between South Korea and China, to avoid a clash between the two countries' fishermen and/or state authorities over the regulation of illegal fishing in the area.

Therefore, the delimitation of the EEZs of these states is closely related to the scope and function of their ADIZs in the East China Sea (Ashley Roach & Smith, 2012, pp. 345-361). Moreover, this practical aspect is more problematic regarding the relationships between the operation of the ADIZ and the application and interpretation of high seas freedom, particularly when a coastal state exercises its jurisdiction in the ADIZ in order to regulate foreign aircraft flying over the EEZ of the coastal state. It is maintained that 'balancing the military interests of all states' is important 'to promote stability and respect within the international community' (Dutton, 2009, p. 709). The legality of the coastal state's regulation in the ADIZ is still yet to be decided, since it depends on the balance between the coastal state's jurisdiction and the freedom of overflight.

3. Taiwan²

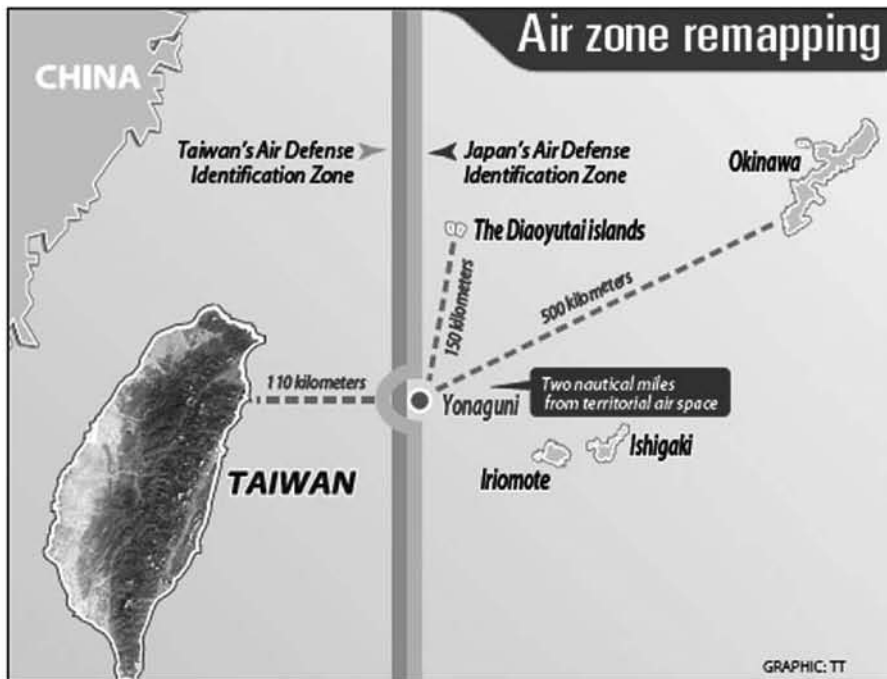
Taiwan also claims sovereignty over the Diaoyutai/Senkaku Islands. In that sense, Taiwan may be regarded as a party in the territorial dispute, only if it is considered so. Among the states in that region, Taiwan is legally part of China, which is intriguing to consider given the current complicated situation in the East China Sea. Taiwan has its own policy to peacefully settle the territorial dispute over the Senkaku Islands with all parties concerned.

Upon the unilateral creation of the Chinese ADIZ, Taiwan instructed its air carriers to follow the regulations of China by submitting flight plans to the Chinese authorities, although it denied the recognition of the ADIZ created by China. In fact, the Chinese ADIZ overlaps with the Taiwanese ADIZ, which was established far in advance of China's ADIZ and partially covers the mainland of China and beyond the Taiwan Strait. It is believed that this overlap is said to be the reason why the U.S. does not recognize Taiwan's ADIZ (Rinehart & Elias, p. 22).

Once again, China's ADIZ overlaps with the ADIZs of neighbouring states, including Japan and Taiwan. Regardless of its protest due to the overlapping with its own ADIZ, Taiwan had suffered from the slight erosion of the ADIZ of Japan in 2010, which was intended, by the extension, to cover the entirety of the Yonaguni Island [Map 4]. This incident implies that the ADIZ is dynamic and extends itself in accordance with the state's intention, policy, and capacity.

For Taiwan, the management of its own ADIZ is not an easy task in terms of its bilateral relations with the U.S. as a protecting state and China as an opposing state. On one hand, the U.S. objected to Taiwan's establishing an ADIZ, which stretched to the Chinese continent since it was concerned about the possible tension over the Taiwanese Strait. On the other hand, there has been

MAP 4



[Source] Shih Hsiu-chuan, 'Japan Extends ADIZ into Taiwan Space', *Taipei Times*, 26 June 2010, at <http://www.taipetimes.com/News/front/archives/2010/06/26/2003476438> (accessed 5 January 2016)

a tacit agreement between Taiwan and China to maintain the status quo not to cross the median line of the Strait, in practice (Rinehart & Elias, p. 22).

Thus, regarding China's ADIZ with respect to its relationship to Taiwan's ADIZ, the question is whether both countries will be able to manage the practicalities to handle the overlapping zones without affecting the bilateral relations. As the overlapping zones do not cover the Diaoyutai/Diaoyudao Islands, there appears to be no direct impact of this double coverage on the territorial dispute of the islands.

4. United States

The U.S. reaction to the Chinese announcement of the creation of an ADIZ in the East China Sea was relatively sound and appeared low-key, despite its unequivocal protest to the Chinese government. For the U.S., which does not recognise China's unilateral action, the establishment of an ADIZ by the Chinese government was regarded as an action to coercively alter the status quo in East Asia. It is intriguing, however, that the U.S. did not demand that China withdraw the ADIZ declaration, despite its non-recognition of the conduct. In the *Hearing on the Rebalance to the Asia-Pacific Region* of the House Armed Services Committee on 28 January 2014, a U.S. official stated that China 'does not challenge U.S. national security'.

What is far more confusing is the fact that, while the U.S. did not fail to question China diplomatically and militarily, it also announced at the very early stages that its air carriers would follow China's instructions to submit flight plans:

The U.S. government generally expects that U.S. carriers operating internationally will operate consistent with NOTAMs (Notices to Airmen) issued by foreign countries. Our expectation of operations by U.S. carriers consistent with NOTAMs does not indicate U.S. government acceptance of China's requirements for operating in the newly declared ADIZ. (U.S. Department of State, 2013)

It is not easy for East Asian states, in particular, to understand U.S. foreign policy concerning the reconciliation between the non-recognition of the Chinese unilateral action and the concession to the declaration and rules. In this regard, China's ADIZ may be variously interpreted, depending on the evaluation of its intention and regional strategy. One commentator presents a wider point of view:

China's regional maritime strategy appears to have as its aim to reverse the tectonic shift brought about two centuries ago by the introduction of superior foreign naval technology and to restore the regional system to its continental past. (Dutton, 2014, p. 4)

It is beyond the scope of the present paper to analyse the historical background of China's regional maritime strategy, but this sort of broader viewpoint concerning a regional order is noteworthy, regardless of its conclusion.

One reasonable interpretation may be that the U.S. had no other choice but to take a pragmatic approach to avoid an undesirable scenario, such as the tragedy of civilian casualties by the shooting down of a civilian aircraft, which did not follow the Chinese ADIZ regulations, for example. This kind of double-standard policy may remind some of the U.S. policy on territorial disputes. Regarding the Senkaku Islands dispute, the U.S. does not take a position on sovereignty issue, whereas, responding to a request from the Japanese government, it repeatedly admits the applicability of the specific provision in the Japan-U.S. Mutual Security Treaty of 1960 to 'act to meet the common danger' in accordance with each party's constitutional provisions and processes' (Art. V). In addition, the U.S. rented one of the islets of the Senkaku Islands as a U.S. bombing range, though this islet has not been in use since 1978.

There has been no actual conflict in the Chinese ADIZ, despite the fact that Japan and the U.S. have jointly increased their reconnaissance and surveillance activities in the region. During his visit in December 2013, U.S. Vice-President Joe Biden urged Tokyo, Beijing, and Seoul to show

self-restraint with respect to the ADIZ-related issues (Daugirdas & Mortenson, 2014, pp. 106-109). The consecutive tripartite reconciliation to recover normal diplomatic relations among the three states has significantly served to bring the relative stability in the East China Sea, except for some minor frictions through the routine patrolling by the state, or naval boats and fleets in and around the disputed maritime areas.

IV. Possibility of a Chinese ADIZ in the South China Sea³

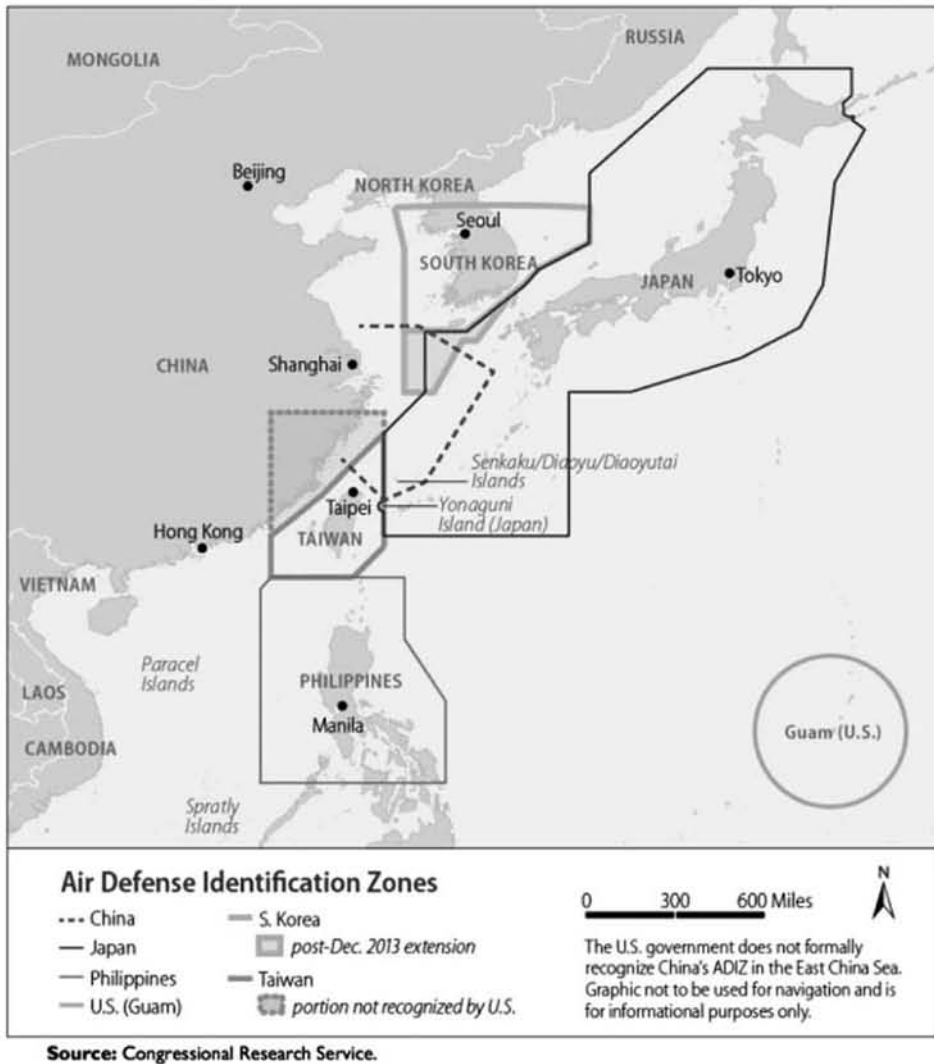
The maritime areas in East Asia and South East Asia are complex due to the overlapping ADIZs in the East China Sea and multiple coexisting ADIZs in this region. In addition to the ADIZs already mentioned, the Philippine and Vietnamese ADIZs are among those in the region which peacefully coexistence [Map 5] [Map 6]. The Philippine ADIZ is side-by-side with the Taiwanese ADIZ, whose southern edge overlaps that of the Philippine's. The Vietnamese ADIZ is located in the South China Sea and thus far is without any conflicts or overlaps with other countries.

Against the background of China's assertive and expansionist attitude in the maritime areas around its coast in East Asia, the next stage of high profile territorial and maritime expansions is the South China Sea, where China's incessant construction and fortification of the artificial islands have attracted attention, resulting in tension with Vietnam and the Philippines, in particular. China's territorial claim over the South China Sea is principally based on the historic background, in addition to relevant legal norms in the region. One cannot easily understand China's viewpoints concerning its claim partly because its territorial claim does not fit in the traditional framework of international law, which is founded on the concept of the Westphalian system. China appears to have a different viewpoint with respect to the development of legal norms governing the former Chinese sphere of influence such as East Asia. A typical example of this type of reasoning may be the so-called nine dash line on which China claims its territorial sovereignty over the maritime area (Ikeshima, 2013).

The U.S. and Japan, among others, have expressed concerns with a series of recent incidents between China, Vietnam, and the Philippines. This tension will heighten as China has recently completed construction of an airstrip on the Fiery Cross Reef of the Spratly Islands in the South China Sea. The aerial sphere of control by China in the South China Sea, as well as the accumulation of the fait accompli, such as the construction of an artificial island, to solidify its territorial claim over the maritime area may increase the risk of military incidents among the states. In this context, China's creation of an ADIZ in this region will be an issue in the South China Sea.

In contrast with what has generally been concerned about, the Chinese government has unequivocally stated that it is not its intention to create an ADIZ in the South China Sea. At the same time, however, China stresses that when and whether or not it will establish one will solely depend upon the degree of threat from abroad.

MAP 5 Air Defense Identification Zones in East Asia

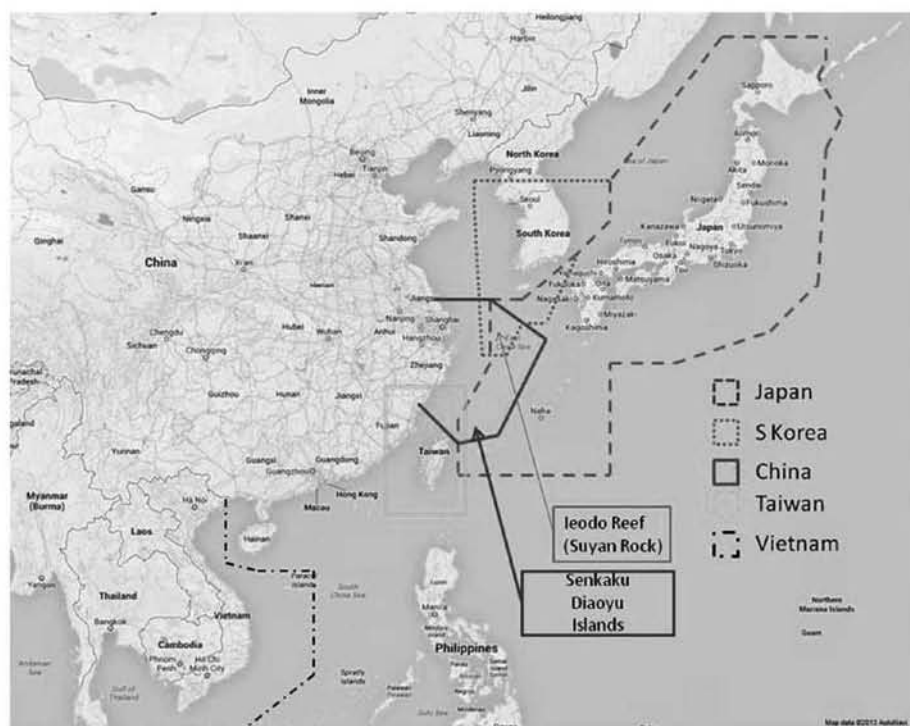


[Source] Rinehart, I.E. & B. Elias, *China's Air Defense Identification Zone (ADIZ)*, Congressional Research Service, R43894, January 30, 2015, p. 8.

‘Hua Chunying responded that China is entitled to set up ADIZs. A decision in this regard depends on whether the air safety is threatened and to what extent it is threatened. A whole range of factors should also be taken into account before establishing an ADIZ, Hua added.’ (China’s Ministry of Defense, 7 May 2015)

From this statement, one can imply that China will remain both passive and responsive, whereas the U.S. and others, who prefer the status quo in the region, will act in an opposite way regarding

MAP 6 Overlapping ADIZ's in Northeast Asia after S Korea Expansion



[Source] Lai, D., 'A Few Questions about China's Air Identification Zone and Its Aftermath', 21 March 2014, U.S. Army War College, Strategic Studies Institute, at < <http://www.strategicstudiesinstitute.army.mil/index.cfm/articles/A-Few-Questions-About-Chinas-Air-Defense-Identification-Zone-and-Its-Aftermath/2014/03/21> > (accessed 5 January 2016).

China's future conduct. If the latter regard China's behaviour and attitude as a threat, then it will react and strike a balance in the region. However, it is not easy to recognize which side is the instigator of a hostile action, as this is similar to the chicken-and-egg question and the security dilemma due to the lack of mutual trust. Although no one is certain of the real intentions of the Chinese government, what is fundamental among the multilateral relationships in the region is the so-called perception gap among them, or mistrust with each other.

It is easy to suspect that there will continuously be a conflict between China and the U.S. over the possibility of China creating an ADIZ in the region, as the situation remains tense. For China, this tension will largely depend on U.S. surveillance and reconnaissance activities in the South China Sea. For other stakeholders in the maritime region, China's asymmetrical military capability with its rapid and intensive reclaiming and muscling activities are the principal factor for the growing tension.

Whether there may be an option of 'Anti-Access/Area Denial' (A2/AD), the possibility of an ADIZ in the South China Sea may serve as a useful and effective alternative for China to check on the movement of the U.S., particularly for China's own security and territorial integrity in the

region. In other words, the exercise of its right or discretion to declare an ADIZ is a diplomatic and political card for China to play, regardless of how unfriendly and/or unsophisticated it may be. China's defensive or coercive nature depends on the practical manner or mode in which the actual measures are taken.

Moreover, China may also have other possible maritime areas to establish an ADIZ, such as the Gulf of Tonkin, the Yellow Sea, and the Taiwan Strait, regardless of the consequences. The gravity of the outcomes would depend on the relationships with Vietnam, South and North Korea, and Taiwan, respectively, in accordance with the scope of the ADIZ's established. If a new ADIZ has no overlap with another country's ADIZ, its establishment will reduce any tension that may arise. Furthermore, its practical use and modality will also depend on the actual impact and the political and diplomatic consequences in the region.

However, the fundamental question is whether the proliferation of ADIZs in the East and South China Seas will contribute to the maintenance of the regional peace and stability. It would be self-evident that nobody desires the aggravated tension in the South China Sea brought about by the proliferated ADIZs therein.

Conclusion

The East Asian states and others that are affected by China's ADIZ need to prudently consider whether the ADIZ established is actually a 'paper tiger' or an actual threat. It may be true that this type of unilateral measure tends to have a chilling effect on the states whose aircrafts enter and/or pass the ADIZ. However, what is more significant is its concrete (non-)effect on the freedom of overflight guaranteed under the law of the sea, including UNCLOS. No significant coercive measure has reportedly been taken by China yet, although a longer timeframe is required to observe China's state action with respect to the ADIZ before any decisive evaluation of the ADIZ and its practical operation. Since the fundamental concern regarding the ADIZ is closely linked to the territorial dispute over the Senkaku Islands in the East China Sea (Calvo, 2013, p. 45), the Chinese government could be pursuing a situation where the Japanese government officially admits the existence of the territorial dispute in order to return to the shelving of the dispute per se. Therefore, one should not be narrow-sighted even after China's ADIZ was declared and has created a tense situation in the region.

A more urgent issue regarding the overlapping ADIZs in the East China Sea is the avoidance of an accidental incident, which may lead to a major confrontation between the states concerned unless any prior preventive measures are taken as a result of cooperative consultation and negotiation. Therefore, China, Japan, and South Korea are, among others, must expedite the discussion on a framework of confidence-building measures and on a crisis-management mechanism in order for them to prevent any minor incidents. Non-proliferation of an ADIZ in the

East and South China Seas, for example, will be required, particularly in the maritime areas where a territorial/maritime dispute currently exists. Otherwise, the tension in East Asia would become worse than the tension during the Cold War era.

In the case of China's ADIZ, what is fundamental is the careful and objective evaluation of China's challenge and/or change of status quo in the region (Ikeshima, 2014). This aspect will lead to questioning how to cope with China's 're-rise' (Armitage-Nye, 2012) and to accept China as 'a returning power' in this region (Kissinger, 2012, p. 546). One should not exaggerate or underestimate China and what it is doing in East Asia. At present, China's development and growth as a re-rising/returning power is unprecedented in world history (Ikeshima, 2013). One may recall a similar but fundamentally different case in the 1945 Truman Proclamations on the continental shelf and the conservation of fisheries, which led to the emergence of customary norm with wide and consistent support in the international society soon after the Second World War. The distinct historical, geographical, and geopolitical background of China as a 'civilization state' (Jacques, 2012) eloquently demonstrates the limits of the Westphalian system of the current situation of Asia and the future prospect of an 'Eastphalian system' (Coleman & Maogoto, 2013) in the contemporary and future world.

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Endnotes

- 1 South Korea, or the Republic of Korea, created a district, known as the Rhee Syngman Line, which this paper does not specifically address.
- 2 The official name of Taiwan is the Republic of China. Its legal status is controversial, but, in accordance with the 1972 Japan-China Joint Communiqué, Taiwan is not regarded as a state in this paper.
- 3 There are actually several states involved in the South China Sea dispute, but this paper does not discuss the ADIZs of all the states concerned in the dispute.