

Air Defence Identification Zone (ADIZ) in International Law Perspective

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Abstract :

Each country has full sovereignty over the airspace above its territory. In protecting its sovereignty and territorial integrity, the country will do several efforts. One of them is by deciding Air Defence Identification Zone (ADIZ). However, ADIZ has not any legal foundation that is explicitly stipulated in International law. Therefore it should value sovereignty of the other countries in order to maintain International peace and security

Keywords : Sovereignty, ADIZ, International law

I. Introduction

After the invention of aircraft and the initial development of air travel, an attempt was made to regulate the phenomenon by means of treaties, meaning that this is an area of the law where this is the most significant source of rules. The most important treaty is the 1944 Chicago Convention on International Civil Aviation, which not only provided the “essential framework” but “established the International Civil Aviation Organization (ICAO)”, a UN-specialized agency headquartered in Montreal.¹ The Convention currently has 190 parties.²

Before that, the Convention makes it clear in its first article that “every State has exclusive sovereignty over the airspace above its territory”, and defines that territory in Article 2 as “the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection, or mandate of such State”. The convention also restricts the operation of state aircraft, in comparison with civilian aircraft, stating that “No state aircraft of a contracting State shall fly over the territory of another State or land thereon without authorization” (Article 3.c)³

The Chicago Convention tries to strike a balance between national sovereignty and the right to self-defense on the one hand, and freedom of aerial navigation and the safety of civilians in the other, when in its Article 3.bis it states that “The contracting States recognize that every State must refrain from resorting to the use of weapons against civil aircraft in flight and that, in case of interception, the lives of persons on board and the safety of aircraft must not be endangered. This provision shall not be interpreted as modifying in any way the rights and obligations of States set forth in the Charter of the United Nations”. Art. 3.b recognizes that a party to the Convention “in the exercise of its sovereignty, is entitled to require the landing at some designated airport of a civil aircraft flying above its territory without authority or if there are reasonable grounds to conclude that it is being used for any purpose inconsistent with the aims of this Convention” while restricting the means of doing this to those “appropriate” and “consistent with relevant rules of international law”. Furthermore, it lays down a duty to publish any resulting regulations.⁴ A problem of course is that it is rather difficult to intercept an aircraft without using or at least risking lethal force if it persists in disregarding the instructions received.

Concerning the tension between national sovereignty and the demands of widespread air travel, the Convention requires authorization by the concerned state before regular scheduled flights can take place. It also allows parties “for reasons of military necessity or public safety” to “restrict or prohibit uniformly the aircraft of other States from flying over certain areas of its territory” (Article 9-a), an important proviso being that such exclusions must affect all countries equally. Also, the resulting excluded areas must be of a “reasonable extent and location as not to interfere unnecessarily with air navigation”.⁵ The Convention does not explicitly refer to ADIZs, which are a later development.

In order to realize the sovereignty over a country’s airspace as a form of Self Defence and monitoring of security in airspace from any form of threats, many countries have established an additional pathway which is called *Air Defence Identification Zone-ADIZ*⁶. ADIZ is an identification zone which obliges civil or military

¹ Anthony Aust,2005 *Handbook of International Law*, (Cambridge: Cambridge University Press), p. 345.

² “Convention On International Civil Aviation Signed At Chicago On 7 December 1944”, website of the International Civil Aviation Organization, available at <http://www.icao.int/publications/Documents/chicago.pdf>

³ “Convention on International Civil Aviation”, Ninth Edition, 2006, website of the International Civil Aviation Organization, available at http://www.icao.int/publications/Documents/7300_cons.pdf

⁴ “Convention on International Civil Aviation”, Ninth Edition, 2006, website of the International Civil Aviation Organization, available at http://www.icao.int/publications/Documents/7300_cons.pdf

⁵ Convention on International Civil Aviation”, Ninth Edition, 2006, website of the International Civil Aviation Organization, available at http://www.icao.int/publications/Documents/7300_cons.pdf

⁶ H.K. Martono dan Amad Sudiro, 2012, *Hukum Udara Nasional dan Internasional Publik*, Jakarta: RajaGrafindo Persada, hlm. 67.

airplane to report flight plan before it enters a country's territory. Application of ADIZ is not intended to expand country's sovereignty over open sea inside ADIZ. ADIZ is formed under security measures, especially for identification of airplane which will enter country's territory

The United States was the first to adopt ADIZ, extending airspace over high seas in 1950; to be later followed by Canada in 1951 (CADIZ). The ADIZ established by the United States (and Canada) in The 1950s was the forerunner of and model for the spread of ADIZ in the Cold War era. Initially, the bipolar world ADIZ was conceived to protect against (nuclear) attacks carried out by long Orange enemy bombers. As military technology evolved, the launching of long-range nuclear missiles became feasible from other platforms, hence the originally identified threat from aircraft gradually receded. The tragic events of September 11, 2001 and the emergence of new security threats, however, reinvigorated the said practice in the United States. To date, ADIZ remains a topical and, in some instances, widely discussed issue; as highlighted by the international reaction to the establishment of the East China Sea Air Defense Identification Zone in November 2013. The creation of the latter ADIZ drew criticism due to the fact that it overlaps with the respective ADIZs of Japan and South Korea, in addition to it covering the airspace over the Senkaku/Diaoyu islands which are claimed by Japan, China, and Taiwan and the airspace over the Ieodo/Suyan reef claimed in turn by both South Korea and China. Canada, India, Japan, Pakistan, Norway, United Kingdom, China, South Korea, Taiwan, and the United States are some examples of countries currently maintaining air defense identification zones.¹

This article outlines as follows to explain : 1) The legal basis for ADIZ under International Law. 2) Relationship between ADIZ and territorial sovereignty.

II. The Legal Basis For ADIZ Under International Law

A. Definition

According to Annex 15 to the Convention on International Civil Aviation the definition of ADIZ (Air Defense Identification Zone) reads as follows: "Special designated airspace of defined dimensions within which aircraft are required to comply with special identification and/or reporting procedures additional to those related to the provision of air traffic services (ATS)."

The definition of ADIZ provided by applicable U.S. regulations specifies the rationale for the adoption of such special rules in the following manner (emphasis added by author): "*Air defense identification zone* (ADIZ) means an area of airspace over land or water in which the ready identification, location, and control of all aircraft (except for Department of Defense and law enforcement aircraft) is required *in the interest of national security*." ADIZ is designated *unilaterally* by a state with the declared purpose of safeguarding national security interests and/or other purposes such as e.g. ensuring the establishment of reasonable conditions of entry into territory of the state that established ADIZ. It should be noted that security considerations of a state are distinct from the well-established and longstanding objective of safeguarding the safety of civil aviation. ADIZ is either established in airspace where a state has complete and exclusive sovereignty or *outside of such airspace* where no state has complete and exclusive sovereignty. However, some recent examples also included partially overlapping ADIZs and in some cases ADIZ was established in the airspace over islands, the legal status of which is disputed (see later, East China Sea ADIZ). The latter development led to an interpretation that ADIZ may also be used to substantiate territorial claims over disputed areas. Through ADIZ states impose reporting and other type of obligations on pilots/operators of aircraft entering such zones. Non-conformance with ADIZ rules results in prompt retaliatory action, including the interception or forced landing of an aircraft violating ADIZ rules (by military aircraft of the state declaring the ADIZ). State practice pertaining to ADIZ is rather mixed. It may be categorized in different ways according to its:²

- a) time duration (temporary or permanent);
- b) personal scope (applied solely to civil aircraft or to civil and military aircraft alike);
- c) material scope (covering only "inbound" flights to the state having established ADIZ or all flights entering ADIZ regardless of their final destination);
- d) territorial scope (covering airspace falling under national sovereignty or international airspace).

B. The Chicago Convention

Consistent with the national security objective of ADIZs, the Chicago Convention fully preserves the "freedom of action" of states to respond to national emergencies and conditions of war. Although the treaty was later amended to expressly prohibit the use of weapons against civil aircraft in flight and provide specific safeguards for interception of civil aircraft, this prohibition did not modify in any way the rights set forth in the United Nations

¹ Zoltán Papp, *Air Defense Identification Zone (ADIZ) In The Light Of Public International Law*, P.33. available at http://epa.oszk.hu/02600/02691/00003/pdf/EPA02691_pjiel_2015_02_028-054.pdf.

² Annex 15 to the Convention on International Civil Aviation: Aeronautical Information Services Fourteenth Edition July 2013 Contents of Aeronautical Information Publication p. 1-2.

Charter, including the right of self-defense under Article 51.¹

The Convention on International Civil Aviation (hereinafter: Chicago Convention) adopted in 1944 is analyzed from the perspective of ADIZ. The term "international airspace" or airspace over high seas will be used to describe airspace areas not subject to national sovereignty, while airspace falling under the exclusive and complete sovereignty of a state will be called "national airspace".²

The Chicago Convention codified customary international law on state sovereignty over airspace. Article 1 of the Convention recognizes that every state (not only contracting states) have complete and exclusive sovereignty over the airspace above its territory. According to Article 2 the territory of the state shall be deemed to the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such a state. The *Chicago Convention* proceeds from *territorial jurisdiction* in national airspace. The territorial Jurisdiction principle basically confers powers on the territorial state, which is the state subjacent to airspace, to enact and enforce relevant (national) rules. The former Powers are also known as "jurisdiction to prescribe" (*prescriptive jurisdiction* or *jurisdiction*), while the latter "jurisdiction to enforce" (*jurisdiction to enforce* or *jurisdiction*). Of course such prerogatives are to be exercised in compliance with the Chicago Convention to ensure that rules are *inter alia* globally uniform to the extent possible, and that the principle of non-discrimination is observed. Air law also recognizes the notion of personal jurisdiction as well as a special form of jurisdiction, the so-called *quasi territorial jurisdiction* (comprising *jurisdiction* and *jurisdiction* alike)-which is the sum of the total powers of state, not only in respect of ships and aircraft registered in that state, but also to all persons and things on board aircraft. Prescriptive jurisdiction is concurrent most of the time, as different states may simultaneously enact laws based on different types of state jurisdiction. In the absence of a treaty or other consensual arrangement whenever conflict arises, the territorial jurisdiction to enforce overrules quasi-territorial and personal jurisdiction to enforce; while quasi-territorial jurisdiction overrides personal jurisdiction.³

C. The United Nation Convention on the law of the sea (UNCLOS)

The United Nations Convention on the Law of the Sea of 1982 establishes several different areas, over which the legal regime differs:⁴

- In *Internal Waters*, the coastal State holds exclusive sovereignty
- The *Territorial Waters* of a State extend to 12 nautical miles from the coastal baseline.⁵ The coastal state may set laws, regulate any use and use any resource there. Maritime vessels are given the right of "innocent passage" through territorial waters, though aircraft are not. Coastal state "sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil." However, "sovereignty over the territorial sea is exercised subject to this convention and to other rules of international law", which would include the Chicago Convention.
- *Straits*. "used for international navigation between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone" are treated differently, even if within the 12-mile territorial seas. In straits, both ocean vessels and aircraft enjoy the right of "transit passage", defined for aircraft as, "overflight solely for the purpose of continuous and expeditious transit of the strait between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone. . . .", though certain limitations are imposed.⁶ Further, aircraft in transit passage must "observe the Rules of the Air established by the International Civil Aviation Organization as they apply to civil aircraft; state aircraft will normally comply with such safety measures and will at all times operate with due regard for the safety of navigation. . . ."
- The *Archipelagic Waters* can be within a coastal State's territory depending on the distance between

¹ Roncevert Almond, *Clearing the Air Above the East China Sea: The Primary Elements of Aircraft Defense Identification Zones*, 2016, Harvard National Security Journal / Vol. 7. P. 143

² Zoltán Papp. Hal 34

³ *Ibid.* Hal. 35

⁴ Paul Stephen Dempsey, Public International Air Law, (Montreal: McGill University Institute and Centre for Research in Air and Space Law 2008). P. 39-40

⁵ United Nations Convention on the Law of the Sea, Art. 3, Dec. 10, 1982, 1933 U.N.T.S. 397 [hereinafter UNCLOS

⁶ UNCLOS Art. 38. 2. Art. 39 provides: 1. Ships and aircraft, while exercising the right of transit passage, shall: (a) proceed without delay through or over the strait; (b) refrain from any threat or use of force against the sovereignty, territorial integrity or political independence of States bordering the strait, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations; (c) refrain from any activities other than those incident to their normal modes of continuous and expeditious transit unless rendered necessary by *force majeure* or by distress; (d) comply with other relevant provisions of this Part. . . . 3. Aircraft in transit passage shall: (a) observe the Rules of the Air established by the International Civil Aviation Organization as they apply to civil aircraft; state aircraft will normally comply with such safety measures and will at all times operate with due regard for the safety of navigation; (b) at all times monitor the radio frequency assigned by the competent internationally designated air traffic control authority or the appropriate international distress radio frequency.

islands. Unlike the States with straits running through them, the archipelagic State may designate air lanes for use by aircraft, which shall enjoy free passage therein.¹

- The *Contiguous Zone*, beyond the 12 mile territorial water limit, extends a further 12 nautical mile from the territorial sea baseline within which the coastal State may enforce its customs, fiscal, immigration or sanitary laws
- The *Exclusive Economic Zone [EEZ]* extends 200 nautical miles from the baseline. Here, the coastal State has exclusive rights over all economic resources. More specifically, it enjoys, "sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or nonliving, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds . . ." Nevertheless, in the EEZ, other States continue to have the rights of overflight and navigation as they would on the high seas. And though it is not specified in UNCLOS, the Chicago Convention clearly provides that the rules in force over the high seas are those established by ICAO.
- The *Continental Shelf* is the natural prolongation of the land not more than 350 nautical miles under the seas. Although the coastal State enjoys exclusive economic rights over the natural resources in the shelf, though they do not possess sovereignty over the shelf itself, "The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters or of the air space above those waters."
- The *High Seas* "are open to all States, whether coastal or landlocked. 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 for coastal and land-locked States: (a) freedom of navigation; [and] (b) freedom of overflight; . . ." This freedom of aerial circulation was first recognized in Article 2(4) of the Geneva Convention of the High Seas. Further, Article 89 of the Law of the Sea Convention provides that no State, "may validly purport to subject any part of the high seas to its sovereignty." Hence, the principle of freedom of the seas pertains to the high seas for both ocean vessels and aircraft.

Air Defense Identification Zones [ADIZs] are not mentioned in UNCLOS, though more than a dozen States claim authority to impose requirements upon aircraft about to enter their territory for security reasons, presumably relying upon the customary international law principle of self defense, and Article 51 of the U.N. Charter.²

But regardless of whether or not ADIZ has become a customary rule, it is still a fact that many states have established and enforced their ADIZs with relatively few objections. It is also true that international law does not prohibit the establishment of ADIZs. On the other hand, it can be argued that an ADIZ does not prohibit or limit the freedom of overflight. It is not a "no-fly zone". It merely requires that a foreign aircraft exercising the freedom of overflight identify itself so as to protect the security interests of the coastal State. Despite the fact that the legality of ADIZs under international law is not clear, most States comply with them because doing so can enhance security and safety by providing clear rules and areas for the operation and possible interception of aircraft

¹ As relevant to aviation, UNCLOS Art. 53 provides:

1. An archipelagic State may designate . . . air routes thereabove, suitable for the continuous and expeditious passage of . . . aircraft through or over its archipelagic waters and the adjacent territorial sea.
2. All . . . aircraft enjoy the right of archipelagic sea lanes passage in such . . . air routes.
3. Archipelagic sea lanes passage means the exercise in accordance with this Convention of the rights of navigation and overflight in the normal mode solely for the purpose of continuous, expeditious and unobstructed transit between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone.
4. Such . . . air routes shall traverse the archipelagic waters and the adjacent territorial sea and shall include all normal passage routes used as routes for international navigation or overflight through or over archipelagic waters . . .
5. Such . . . air routes shall be defined by a series of continuous axis lines from the entry points of passage routes to the exit points. . . . [A]ircraft in archipelagic sea lanes passage shall not deviate more than 25 nautical miles to either side of such axis lines during passage, provided that such . . . aircraft shall not navigate closer to the coasts than 10 per cent of the distance between the nearest points on islands bordering the sea lane. . . .
8. Such . . . traffic separation schemes shall conform to generally accepted international regulations.
9. In designating or . . . substituting traffic separation schemes, an archipelagic State shall refer proposals to the competent international organization with a view to their adoption. The organization may adopt only such . . . traffic separation schemes as may be agreed with the archipelagic State, after which the archipelagic State may designate, prescribe or substitute them.
10. The archipelagic State shall clearly indicate the axis of . . . the traffic separation schemes designated or prescribed by it on charts to which due publicity shall be given. . . .
12. If an archipelagic State does not designate . . . air routes, the right of archipelagic sea lanes passage may be exercised through the routes normally used for international navigation.

² Paul Stephen Dempsey. P. 42

near territorial airspace.¹

D. The Charter of the United Nations (UN Charter)

Murchison argues that Article 51 of the United Nations Charter, which articulates right to your force in the exercise of self-defence, allows for the creation of ADIZs by applying the international laws of self-preservation and necessity. On the other hand Head argues that the right to self-defence is only guaranteed to states in the event of an imminent attack and therefore ADIZs cannot be seen as a form of self defense because they operate during peacetimes as well. He asserts that self-defence cannot stretch so far as to include the right to self-preservation and that such an inflated version of the doctrine could have dire consequences. Head suggests that ADIZs fall under the category of self-preservation which involves taking precautionary measures to protect a state rather than defensive measures.²

On the other hand, Cuadra fears that perhaps measures such as ADIZs are not expressly provided in treaty law because of the availability of the right to self-defence and the risk that states may cloak unlawful activities as lawful under the guise of security or self defense. Cuadra concludes that ADIZs do not qualify as a form of anticipatory self-defence because the requirements of necessity, proportionality, and imminent attack are not met. Lee opines that ADIZs can be seen as a measure to prepare for anticipatory self-defence and the writer agrees that ADIZs may afford a state time to prepare for defensive measures but is it first and foremost a tool for early identification meant to avoid unnecessary use of defensive measures. The writer acknowledges that Article 52 is a rocky basis on which to justify ADIZs however, the writer is inclined to agree with the views of Head and Lee, as their arguments take into account the ultimate purpose of ADIZs, which is to act as a precautionary measure, and reconcile it within the narrower concept of self-defence.³

E. Customary International Law

According to Lee the legal basis is arguably found in customary international law given the fact that states have engaged in ADIZ practice with few objections over several decades.⁴

Abeyratne asserts that the customary law precautionary principle provides the theoretical justification for ADIZs. The precautionary principle is an emerging norm of customary international law and it asserts that states should not be precluded from taking action to prevent harm before it occurs, based on the absence of empirical or scientific evidence⁵. In order for the precautionary principle to apply a state must take measures according to their capabilities and in a cost effective manner, furthermore, a response must only be given to threats which are serious and irreversible⁶. The general concept of ADIZs falls well within the ambit of the precautionary principle. The rationale behind establishing ADIZs is to prevent harm from occurring before the harm manifests and becomes irreversible; furthermore, given the sanctity of the concept of state sovereignty it is reasonable to conclude that ADIZs are aimed at addressing serious and irreversible threats. Therefore the writer agrees with the assertion made by Abeyratne.⁵

III. Relationship between ADIZ and Territorial Sovereignty

Sovereignty is a fundamental principle of international law. Sovereignty must be defined by considering the context and discipline in which it is being used. Dodge notes that sovereignty can be defined in many different ways, but that the most prominent definition is the total or superior control of a territory.⁶ The principle of sovereignty is deemed to be so crucial that it receives protection in Article 2 (1) of the UN Charter, which states: —The organisation is based on the core principle of the sovereign equality of all its members.⁷

The doctrine of absolute sovereignty is entrenched in international law and has been included in the most important air law treaties. Before airspace sovereignty can be understood, airspace must be defined. At present there is no official definition of airspace under international law, however, airspace is defined with reference to its dimensions. Airspace extends vertically and horizontally. The horizontal dimension is determined by states sovereign borders. The vertical dimension is determined with reference to the maximum height needed for the practical use of an aircraft. This maximum height is known as the Karman Line, which is 100 km above sea level.⁸

Aerial sovereignty refers to the right of a state to exercise absolute power over the airspace above its sovereign territory. The first formal recognition of the principle of aerial sovereignty occurred when it was included

¹ Robert Beckman And Hao Duy Phan. *Air Defence Identification Zones: Implications For Freedom Of Overflight And Maritime Disputes*. November 2014, Da Nang, Viet Nam

² 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.2005. p. 21

³ *Ibid.* p. 22

⁴ *Ibid.* p. 22

⁵ *Ibid.* p. 23

⁶ Dugard J *International law: A South African Perspective*: Juta. 2005. p. 126

⁷ Article 2 (1) of the UN Charter

⁸ Dodge M S. *Sovereignty and the Delimitation of Airspace: A Philosophical and Historical Survey* Supported by the Resources of the Andrew G. Haley Archive| (2009) 35 *Journal of Space Law* 5

in the Paris Convention of 1919. The Chicago Convention of 1944 echoes this principle and focuses on the sovereign right of States to regulate national and international air traffic within the airspace over their territory. Article 1 and 2 of the Chicago Convention provide —The contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory|| and—For the purposes of 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|. ¹

This means that a state exercises sovereignty over its territory and the airspace above it, and as Hughes correctly deduces, a state does not exercise sovereignty over the airspace above any land or sea territory which is not under its sovereignty.²

Cuadra notes that the Chicago Convention affirms the principle of aerial sovereignty as customary international law and therefore member and non-member states alike have exclusive sovereignty in the airspace above their territories.³

As previously stated the function and purpose of a standard⁴ ADIZs is to enable air traffic control to request information from civil aircraft relating to identification and location. The purpose gathering this information is to enable air traffic control to identify potential threats *before* they enter sovereign airspace. Based on this rationale it can be deduced that ADIZs are designed to protect sovereignty. The PRC itself has cited the protection of state sovereignty as one the reasons for the establishment of its ADIZ.⁴

|| with the aim of *safeguarding state sovereignty*, territorial land and air security, and maintaining flight order. This is a necessary measure taken by China in exercising its self-defense right⁵

In other words, sovereignty must exist in order to justify the proclamation and subsequent enforcement of an ADIZ. Due to the absence of explicit laws regulating ADIZs states have divergent understandings of what an ADIZ is and therefore they have different rationales and enforcement procedures. As a result of these divergent practices it is asserted that the function and purpose of an ADIZ must be used as a yardstick to determine which practices should be permitted or prohibited.⁶

Lamont distinguishes between two groups of ADIZ proclaiming States. The first group of states understand ADIZs to be purely security instruments. These states do not intend to use their ADIZs to regulate air traffic outside their national airspace. These ADIZ proclaiming states are hesitant to impose strict reporting obligations. An example of a group one state is the United States, which only imposes ADIZ reporting obligations on aircraft intending to enter its national airspace. The second group of states is fundamentally different, this group of states understand ADIZs to be an extension of territorial sovereignty. These states employ broader ADIZ reporting obligations in order to assert administrative control over international airspace in their ADIZs, for example, by imposing the reporting obligations on all aircraft and not only on those intending to enter the their national airspace. Essentially these states exert control over aircraft operating in international airspace without a legitimate reason. Canada may be used as an example of a group two state as it is guilty of imposing its ADIZ procedures on all aircraft including those not intending to enter Canadian airspace.⁷

The question whether or not territorial sovereignty is an indispensable requirement when proclaiming an ADIZ will be answered by using the categories advanced by Lamont and discussing them in relation to the function and purpose of ADIZs.

The first group designated by Lamont are those states that understand ADIZs to be security mechanisms aimed at protecting national sovereignty⁸. The rationale that these states put forward for the proclamation of their ADIZs is in line with the theoretical function of an ADIZ.⁹

Group one states are designated so by looking at the state's rationale for proclaiming its ADIZ and the extent of its reporting obligations and enforcement measures. These factors need to be considered in conjunction with one another in order to determine what the proclaiming state's understanding of ADIZs is. If considered in isolation these characteristics may not be reconcilable.

By limiting the imposition of reporting obligations to those aircraft that have the intention of entering the state's sovereign airspace the proclaiming state is reconciling its enforcement of ADIZ procedures with the purpose of an ADIZ. To these states sovereign territory is crucial to the enforcement of its ADIZ. If no aircraft

¹ Shanae Pillay. *Op. Cit.* p. 25

² *Ibid* p.26

³ *Ibid*

⁴ *Ibid*.

⁵ Defense Spokesman Yang Yujun's Response to Questions on the Establishment of The East China Sea Air Defense Identification Zone,|| Ministry of National Defense of the People's Republic of China, November 23, 2013. Swaine (2014) 43 *China Leadership Monitor* 31. (own emphasis)

⁶ Shanae Pillay. *Op. Cit.* p. 27

⁷ *Ibid*. p.28

⁸ Lamont C K. *Conflict in the Skies: The Law of Air Defence Identification Zones'* (2014) 39 Air and Space Law 191

⁹ Shanae Pillay. *Op. Cit.* p. 28

intended to enter its airspace there would be no need to impose any reporting obligations, because doing so would mean abusing the ADIZ mechanism to exert control in international airspace

The second group designated by Lamont are those states that understand ADIZs to be an extension of sovereignty¹. These states do not boldly claim sovereign control over the airspace encompassed by their ADIZs, such claims would undoubtedly be met with harsh criticism. Instead, these states adopt a broader approach when it comes to reporting obligations. Requesting an aircraft to identify itself may not seem invasive but in reality what the state is doing is exerting administrative control over non sovereign territory without a reasonable justification. To these states sovereign territory is not crucial to the enforcement of its territory because even if no aircraft is intending to enter its national airspace, it still exerts administrative control over aircraft simply passing through the ADIZ. Australia, Myanmar, Taiwan, and Canada are some of the ADIZ proclaiming states that impose their ADIZ procedures on all aircraft entering their ADIZs. Group two states also use ADIZs to advance territorial claims.

IV. Conclusion

ADIZ determination has not been contained yet in international law. However, many countries have obeyed the application of ADIZ according to international law habit which aims at maintaining security and sovereignty of every countries. Writer agrees with ADIZ concept which provides clear guidance on aircrafts which is entering other country's territory. The ADIZ concept is consistent with Chicago Convention and UN Charter in realizing International peace and security. Besides that, according to the purposes and functions of ADIZ, formation of ADIZ is very important to maintain sovereignty. State sovereignty especially over its territory is the main reason of ADIZ formation. However, every action to expand state sovereignty must be avoided. This will make the main purpose of ADIZ is not reached and it will conflicts nationally, regionally, and even globally.

Writer suggests a special rules in ADIZ formation in international law frame in order to maintain country's sovereignty, international peace and security

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¹ Lamont C K . *Op. Cit.*



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