

# *Research on the Legal Issues of Establishing Overlapping Areas in the South China Sea Air Defense Identification Zone*

**Haotian Lai**

*School of Marine Law and Humanities, Dalian Ocean University, No. 52, Heishijiao Street, Shahekou District, Dalian, Liaoning, China  
675331871@qq.com*

**Keywords:** South China Sea, Overlapping areas of the air defense Identification zone

**Abstract:** The air Defense Identification zone (ADIZ) is a buffer zone set up by coastal countries to give themselves early warning time and safeguard air security in the face of possible air threats. Its purpose is to maintain national security, unilaterally delimited areas, other countries' aircraft passing through this area, in accordance with the requirements of the establishment of the State, subject to location, identification and control. Many countries have established air defense identification zones in the world, but due to the conflict of interests among countries, even with the support of international jurisprudence, there is still no uniform and clear international law regulation. Since China established its East China Sea Air Defense Identification Zone in 2013, it has overlapped with the air defense identification zones of Japan and South Korea. The overlapping zone of the air defense security zone is one of the prominent problems in the current air defense identification zone system, and there are security risks in the overlapping zone, which will have an adverse impact on state-to-state relations. If China establishes the South China Sea Air Defense Identification Zone, it will certainly overlap with the existing South Asian Air Defense Identification Zone. This paper provides feasible legal suggestions on the establishment of the South China Sea Air defense Identification Zone, analyzes the existing legal regulations, and puts forward solutions to the overlapping areas of the South China Sea Air defense Identification Zone.

## **1. Introduction**

On November 23, 2013, the Ministry of National Defense announced the establishment of the East China Sea Air Defense Identification Zone (ADIZ) in accordance with the National Defense Law, the Civil Aviation Law and the Basic Rules of Flight. In recent years, the South China Sea disputes have become increasingly complex under the influence of the United States' "Asia-Pacific rebalancing strategy", and neighboring coastal countries are eyeing the South China Sea. The establishment of the South China Sea Air Defense Identification Zone can effectively strengthen China's supervision over the South China Sea, respond to and resolve conflicts in the South China Sea, improve the ability to safeguard China's sovereignty in the South China Sea, and strengthen the

security and stability of relevant waters and airspace.

## **2. Overlapping area of the existing South Asian Air Defense Identification Zone**

The surrounding areas of the South China Sea are of great significance to China, not only the sovereignty of the South China Sea islands, but also the economic benefits associated with the islands. China has not yet established an air defense identification zone in the South China Sea, but officials have not been negative about such a zone. Vietnam and the Philippines have established their own air defense identification zones that overlap almost the entire South China Sea, while Vietnam's ADIZ covers its airspace, the western part of the Beibu Gulf and parts of the South China Sea, with the Philippines' ADIZ roughly overlapping its flight information zone. As coastal countries in the South China Sea, the two countries have carved up almost the entire airspace in the South China Sea, causing huge damage to China's rights and interests. There are many island disputes in the South China Sea itself, which involves the interests of many neighboring countries. It is difficult for China to set up an air defense identification zone in the South China Sea. Moreover, Japan and the United States have repeatedly inserted themselves into the situation in the South China Sea in recent years, and even when China has not set up the South China Sea Air Defense Identification Zone, they said that this act is a unilateral provocation. There will certainly be some overlap with the two countries' air defense identification zones, and these issues are the problems and challenges facing China.<sup>[4]</sup>

## **3. Legal basis for establishing the South China Sea Air Defense Identification Zone**

### **3.1 Basis of International law**

Unlike many existing systems in the international community, the ADIZ system originated from national practice rather than international legislation. Since the United States established the first Air Defense Identification Zone in 1950, although the practice has been more than 60 years of history, the international community still has no explicit treaty to regulate and adjust it, so the international legal status of air defense identification zone has not been unified understanding.

#### **3.1.1 Provisions on airspace rights and obligations in the United Nations Convention on the Law of the Sea**

Although there are already many air defense identification zones around the world, there is still no specific international treaty on air defense identification zones, and their legal status is not uniformly certified. The United Nations Convention on the Law of the Sea defines the concept of exclusive economic zones, within which various aircraft cannot fly freely. Article 58 States shall, in the exercise of their rights and the performance of their obligations under this Convention in the exclusive economic Zone, have due regard for the rights and obligations of the coastal State and shall comply with laws and regulations formulated by the coastal State in accordance with the provisions of this Convention and other rules of international law that are not inconsistent with this part. Article 59 provides in principle that, where this Convention does not ascribe rights or jurisdiction in the exclusive economic zone to the coastal State or other State, and where there is a conflict of interests between the coastal State and any other State or States, such conflict shall be on an equitable basis, having regard to all relevant circumstances. The Convention makes it clear that coastal States enjoy special rights in their exclusive economic zones, so in the corresponding airspace, coastal states should also have the right to establish their own air defense identification zones.

### 3.1.2 Convention on International Civil Aviation

Article 20 of the Convention on International Civil Aviation requires that every aircraft flying in international air shall carry appropriate airframe markings and registration marks, and this obligation is not limited to airspace. This rule can be understood as a legitimate measure to establish an air defense identification zone. Annex 2: The Air Regulations provide that an aircraft under air traffic control shall fly precisely in accordance with the route and altitude assigned to it and shall report its position nodes at all times. This requirement is basically consistent with the rules of national air defense identification zones. Since the aircraft of various countries need to comply with the requirements of Annex II to the Convention on International Civil Aviation, the air defense identification zone, which is basically consistent with the requirements of the Convention, also does not infringe on the legitimate rights and interests of the aircraft of other countries, and it is also in line with the norms.

### 3.1.3 International customs

According to Article 38 of the Statute of the International Court of Justice (ICJ), international custom is "a person subjected to law as a proof of a general rule", that is, international custom is not supported by articles of statutory law, but is accepted as a general practice or general rule of law. This requires that international customs have two elements: first, there must be a general rule, which is called a quantitative factor; second, the general rule must be implied into law by States, which is called a psychological factor. Back to the air defense Identification zone, at present, more than 20 countries have set up their own air defense identification zone, although the number of countries set up is not very large, but it actually affects all aircraft flying over the area, it can be considered that the air defense identification Zone has a wide range of international influence, in terms of quantitative factors can be recognized. However, in terms of psychological factors, the air defense identification zone has not been recognized by all countries at this stage, because air defense identification zones are generally unilaterally declared by countries relying on their domestic laws. There will be a situation where other countries may not recognize the zone, and if a State aircraft does not provide its information as requested by the State of establishment, it is only a violation of the domestic law of the State of establishment and does not bear any international responsibility. This is because of this situation, after China set up the East China Sea Air Defense Identification Zone, the United States, Japan, South Korea and other countries did not abide by China's air defense identification zone rules, so that the air defense identification zone has not formed the psychological factors that should be international custom.

The ADIZ has been developed for more than 50 years, and although it has not yet become an international practice, it has been established by more than 20 countries and most countries have complied with the ADIZ. All these show that the international community acquiesces to the ADIZ. Similarly, if China wants to establish the South China Sea ADIZ, it is also promoting the development of the ADIZ. The situation in the South China Sea is complicated, and the establishment of the South China Sea ADIZ is even more difficult.

## 3.2 General legal principles

### 3.2.1 Residual rights principle

The United Nations Convention on the Law of the Sea does not specify all rights, so there are some vague rights that are the residual rights value in the law of the sea. For example, in Article 58 of the Convention, the obligation of "due regard" is mentioned, and the term "due regard" is a relatively vague concept, which also provides room for the legal basis for the reasonable

establishment of air defense identification zones by States. In order to protect itself, the coastal state establishes an air defense identification zone to identify and monitor aircraft. In the zone, the coastal state only needs the aircraft to provide the necessary information, which does not directly affect the flight rights of each aircraft. This is a reasonable use of the remaining rights. China wants to establish an ADIZ in the South China Sea not to expand its own airspace, but to prevent other countries from carrying out military intelligence gathering activities in China's coastal areas. Today, with the rapid development of aviation technology, if coastal countries do not set up air defense identification zones, their national security will be seriously threatened, which provides the possibility for the scope of the identification zone to the high seas.<sup>[5]</sup> Using the principle of residual rights, the national sovereignty of coastal countries is greater than the restrictions on aircraft in the identification zone, which is also a legitimate measure for modern countries to ensure aviation safety.

### **3.2.2 The principle of self-preservation under the principle of national sovereignty**

With the rapid development of science and technology in recent years, modern equipment has the ability to strike accurately and quickly, especially the rapid upgrading of military aircraft. The establishment of the North American Air Defense Identification Zone is because the traditional air defense system cannot properly maintain national security. Today, more than 60 years later, if the coastal countries do not set up a buffer zone, they will not be able to protect national security. Then national security would not be guaranteed. The right of national self-preservation means that the State can use all the resources it deems reasonable to build its national defense, and it has the absolute right to defend itself when it is violated. In recent years, reconnaissance aircraft of the United States and Japan have conducted reconnaissance and collected relevant intelligence information on China several times a year, which will pose a serious threat to China's national security. The purpose of China's establishment of the South China Sea ADIZ is to effectively deal with air situation and maintain security. After the establishment of the ADIZ, China can stipulate certain control conditions for aircraft of other countries. To reduce other countries' damage to China's state power.

In accordance with the principle of the right of national self-preservation, China has the right to establish an air defense identification zone in the South China Sea. The establishment of the identification zone is not to expand China's airspace, but to safeguard its own national sovereignty. Although the zone may cause some inconvenience to the aircraft of other countries, under the premise of national sovereignty, the establishment of an ADIZ in the South China Sea in accordance with the principle of national self-preservation is an acceptable and legitimate act.

### **3.2.3 Basic principles of international law of non-aggression and peaceful coexistence**

There have been territorial disputes in the South China Sea. China has always adhered to the principle of friendly consultation in handling the South China Sea issue. At present, there are many international air routes in the South China Sea, and the Philippines and Vietnam, which have established identification zones in the South China Sea, cannot fully guide aircraft in the area. The most obvious point of China's establishment of the South China Sea Air Defense Identification Zone is that it can maintain flight order and aircraft safety in the area and reduce unnecessary friction. This is also the basic principle of non-aggression and peaceful coexistence supported by the international community. Since the establishment of the South China Sea Air Defense Identification Zone will not restrict the freedom of flight of aircraft, then its establishment is in line with international law and can be accepted, in this case, should not be opposed by other countries.

### **3.3 Basis of domestic law**

At this stage, there is no unified international law basis for the establishment of ADIZs, and all countries are in the process of exploration, so each country has promulgated domestic laws on ADIZs as its basis. When establishing the East China Sea Air Defense Identification Zone, China announced that the National Defense Law of the People's Republic of China, the Civil Aviation Law of the People's Republic of China, the Air Traffic Management Rules for Civil Aviation and the Basic Flight Rules of the People's Republic of China are the basis for its establishment. At the same time, in the Announcement of Aircraft Identification Rules for the East China Sea Air Defense Identification Zone, it is known that the Ministry of National Defense will supplement and refine the relevant rules in the future to achieve its fullest. These grounds can also serve as domestic legal basis for the establishment of the South China Sea ADIZ. In the absence of uniform international standards, all countries can safeguard their national security within the scope permitted by international law and should not be blamed by other countries.

## **4. Overlapping areas of existing air defense identification zones**

The air defense Identification zone in the airspace of the South China Sea has basically been carved up by Vietnam and the Philippines, and if China establishes an air defense identification zone in the South China Sea, it will certainly overlap with the two countries' areas. The international community has agreed that the ADIZ is not a country's airspace, which means that the rights in overlapping zones do not differ depending on when they were established. However, in the actual operation, there are many countries in the overlapping area of the right to dispute, in the actual operation, each country will conduct military exercises in their own air defense identification zone, once in the overlapping area, it will cause other countries to be vigilant, resulting in potential dangers. Therefore, the peaceful settlement of the contradictions is also the current international concern. The following will analyze the overlapping areas of the air defense identification zone with distinctive characteristics, which have reached the peaceful resolution of the potential overlapping areas of the South China Sea Air defense Identification zone.<sup>[1]</sup>

### **4.1 Overlapping areas of the North American Air Defense Identification Zone**

Due to political and geographical reasons, the United States and Canada adopt the principle of co-management for the overlapping areas of the North American Air Defense Identification Zone, which is different from the contradictory state of most overlapping areas. Although the current mode of co-management is somewhat distant for most overlapping areas, its conflict resolution mechanism is valuable for reference. The two countries have established a joint command to control aircraft operating in the airspace. But even the United States and Canada, which have a joint command, do not agree on all rules. <sup>[3]</sup>For example, the United States does not require foreign military aircraft passing through its aviation identification zone but not intending to enter its airspace to submit to its control, but Canada does require any aircraft passing through its identification zone, whether or not it enters its airspace, to report information. Although the form of each area is different, but through the practice of the North American Air Defense Identification Zone overlapping area, we can learn from its cooperative management mechanism to reduce unnecessary conflicts.

### **4.2 Overlapping area of the China-Japan-ROK Air Defense Identification Zone**

After Japan's defeat in World War II, the Japanese military in the United States established an air



defense Identification zone around Japan, which was returned to Tokyo in 1969. The South Korean air Defense Identification zone, similar to Japan's, was established by the United States and handed over to South Korea. China established an air defense Identification zone over the East China Sea in 2013. At present, the overlapping areas between the three countries are mainly around the Diaoyu Islands between China and Japan, and around the Suyan Reef between China and South Korea. It can be seen that basically overlapping areas exist in the location of territorial disputes, the China-Japan-ROK overlapping area will not be as easy as the North American aviation identification zone to establish a cooperation mechanism, on the contrary, the three countries in the overlapping area has been constantly disputed, but in recent years, the three countries have also reached a certain consensus on the issue of conflict, although no substantive plan has been reached, but at least a good start.<sup>[3]</sup>

## **5. Crisis management in overlapping areas of the South China Sea ADIZ**

If the South China Sea air defense Identification zone is set up, it will most likely be similar to the China-Japan-ROK air defense Identification zone. Considering that there are territorial disputes in the South China Sea at this stage, it will lead to conflicts and contradictions in the overlapping areas. In addition, there is a high probability that countries in the South China Sea will not form a mechanism of cooperation and co-management in a short time, and disputes in the region will affect the interests of relevant countries, which is not the result that countries in the overlapping area hope to foresee. The South China Sea Identification Zone has not yet been established, but we can try to analyze the construction of the crisis management mechanism in the South China Sea overlapping area according to the current situation of the China-Japan-ROK Air defense Identification Zone.

### **5.1 Difficulties and feasibility analysis of crisis management in overlapping areas of the South China Sea ADIZ**

#### **5.1.1 Difficulties**

The serious problems in the existing overlapping areas have threatened the relations between countries, so it is necessary to effectively manage the overlapping areas. In terms of the overlapping area of the South China Sea ADIZ, the difficulties lie in the following aspects: First, without practical experience, how relevant countries in the South China Sea region can take the first step of crisis management is extremely important. Secondly, there are already territorial disputes around the South China Sea, and it is difficult for countries to reach consensus. Finally, the control mechanism needs to be communicated and decided among countries, and whether the result can satisfy all countries is still unknown.

#### **5.1.2 Feasibility**

First of all, compared with the principle of co-management, crisis management and control is more operable. Crisis management and control is only for the conflict crisis in the overlapping area, and it is for each country to respond to the actual conflict, with a very clear purpose. Secondly, there is no international overlapping area legal rules at this stage, and the crisis management and control mechanism can produce the effect of substitution, which is reasonable. Finally, some of the countries concerned in the existing overlapping areas have taken an active attitude towards solving the problem, and some achievements have been made, such as the US-Soviet Agreement on the Prevention of Maritime Accidents and the Japan-Russia Agreement on the Prevention of Maritime Accidents, which were produced in the last century. <sup>[2]</sup>These documents of similar mechanisms indicate that the countries in the overlapping areas want to solve the problem peacefully, so as to

maintain peace and security. It is not entirely non-negotiable.

## **5.2 Ideas for constructing overlapping areas of the South China Sea Air Defense Identification Zone**

The crisis management mechanism in the overlapping areas requires all countries to reach consensus and make full preparations before the start of negotiations. First of all, active communication and exchanges should be carried out with the goal of peace. The part involving territorial disputes can be shelved for the time being and negotiations on the overlapping areas can be conducted first. Secondly, the core issue in the negotiations is to peacefully resolve the conflicts in the overlapping areas, so as to promote the success of the negotiations. In clarifying the specific rules for crisis prevention, it is necessary to first determine prohibited and feasible behaviors in the overlapping area, which will reduce the possibility of crisis, and then establish regular contact rules to ensure that all parties can communicate regularly in the overlapping area to reduce friction.

The specific code of conduct would include the regulation of the conduct of aircraft in the overlapping area, the code of conduct of the States concerned, such as the powers of States in the overlapping area and the right to deal with the safety of aircraft, and the establishment of a safety level assessment mechanism, and the non-use of force for evictions if the danger level is not reached. Finally, a follow-up problem solving group should be established to regularly discuss solutions according to current events in order to achieve the purpose of lasting peace.

## **6. Detailed rules on overlapping areas of the South China Sea Air Defense Identification Zone**

### **6.1 Distinguish between civil and military aircraft**

The establishment of the ADIZ is to protect national sovereignty. Within the ADIZ, different identification mechanisms apply to different types of aircraft, which is also a common international practice. Military aircraft will not report their military information to other countries, but this does not mean that China will not take any measures in the overlapping areas of the South China Sea Air defense Zone. For military aircraft entering the overlapping areas, even in disputed areas, for the sake of China's national defense and security, it should take countermeasures such as identification and warning at the moment it enters the identification zone. After the warning, aircraft should be sent to monitor its flight path to ensure that it does not pose a threat to national security. In addition, China's existing radar cannot cover the entire South China Sea, which makes it necessary for civil or military aircraft to provide flight information to China if they enter the South China Sea ADIZ and overlapping areas. Canada is also subject to identification whenever it enters its air defense identification zone, regardless of whether it enters its airspace. Therefore, it is feasible to set up such rules for the South China Sea Air Defense Identification Zone.

### **6.2 Establish a complete law enforcement system**

China needs to establish a complete law enforcement system in the South China Sea, integrate radar, satellite and other data, and establish a supporting organizational system. The first step is to establish relevant functional departments, which can reduce processing time and improve regulatory efficiency. At the same time to improve the organizational system, China's air defense identification zone management body is the Ministry of National Defense, in order to efficiently supervise, should establish functional departments. Secondly, the establishment of a combat command center with reference to the United States is aimed at controlling the South China Sea Air Defense Identification Zone and responding to violations of China's sovereignty in the overlapping area.

### 6.3 Setting risk levels

In the face of various situations that may occur in the identification zone, we need to formulate danger levels according to their behavior and make reasonable treatment plans. We should prevent the illegal activities of foreign aircraft, and when we encounter unknown air conditions, we cannot directly attack by force, but judge the specific threat level after accompanying and identifying them and take corresponding measures. The specific risk level is as follows: when the aircraft has not yet arrived at the identification zone, it voluntarily submits information, and the information is accurate, it can reasonably pass through the identification zone, but if the submitted information is inaccurate, the aircraft should be monitored. If the information is not submitted directly into the identification zone or even the overlapping zone, it should first ask it to provide flight information through the radio, after determining that there is no response, The active identification information of military aircraft is dispatched, and emergency measures such as interception, forced landing and expulsion are judged on the degree of danger and type of aircraft. In the face of violating the flight route through the South China Sea Air Defense Identification Zone, it should be regarded as not submitting flight information, and quickly respond to ensure the security of national sovereignty. After determining that the aircraft was hostile, it was decided to leave evidence when firing. The problem at this stage is that China does not have a complete electronic system and aviation equipment in the South China Sea, and there are some difficulties in monitoring and law enforcement, which have to be overcome after the establishment of the identification zone.

### 7. Conclusion

If China wants to set up an ADIZ in the South China Sea, it will go through many difficulties. Even if China has not yet set up an ADIZ in the South China Sea, many countries have already criticized it, but China's establishment of the ADIZ in the South China Sea is in line with the spirit of international law. The United Nations Convention on the Law of the Sea and the Convention on International Civil Aviation, as well as some legal principles, can be used as a basis to support the establishment of the South China Sea ADIZ. The purpose of its establishment is to safeguard national security, not to expand China's airspace, and to provide sufficient time to deal with emergency air situations in the South China Sea.

There have always been territorial disputes in the vicinity of the South China Sea, and if the South China Sea Air Defense Identification Zone is established, there will be greater hidden dangers in the overlapping areas. At present, we can try to discuss the establishment of a common management organization before the establishment to ensure peace and stability in the overlapping area, and attract in-depth discussions among countries. The second is to establish the core organization of air defense and set up the danger level to take corresponding measures. The issue of overlapping areas involves the sovereignty of many countries, and it is not only necessary to reach diplomatic consensus, but also to achieve cooperation in various incidents. Whether the international community will harmonize the rules of law in the future is also uncertain. Because of the limited practice, whether the solution proposed in this paper is feasible still needs to be further studied.

If China's establishment of the South China Sea Air Defense Identification Zone is successful in the future, it will be a further practice of the air defense identification zone by China and the international community. On the issue of ADIZ, China should be consistent with most countries in the world, and at the same time pay attention to safeguarding its own interests. While protecting its own sovereign rights and interests, China will also provide experience for the establishment of ADIZs in other waters in the future.



## References

- [1] Cao Qun, Jia Ding. *Current characteristics and legal analysis of Southeast Asian national Air Defense Identification Zones [J]*. *South and Southeast Asian Studies*, 2023, (04):1-13+151.
- [2] Chen Jinggen. *Legitimacy verification of Maritime Air Defense Identification Zone from the perspective of national defense rights: Analysis of the shortcomings of single argumentation method and whole argumentation method [J]*. *Journal of Political Science and Law*, 2021, (02):50-63.
- [3] Ma Xuejiao. *Research on Legal Issues concerning the establishment of the South China Sea Air Defense Identification Zone [D]*. Nanjing University, 2021.
- [4] Cao Qun, Bao Yinan. *On the Hype and misdirection of the West regarding the South China Sea Air Defense Identification Zone: Technical flaws and legal facts [J]*. *Journal of the Pacific*, 2019, 28(12):58-67
- [5] Lin Shangjie. *Legal analysis on the establishment of the South China Sea Air Defense Identification Zone [J]*. *South China Journal*, 2018, (09):69-71.