

Interviewee

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China's Proclamation of its Air Defense Identification Zone and South Korea:

① The International Legal Perspective

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In response to China's recent proclamation of its Air Defense Identification Zone (ADIZ) on November 23, South Korea, the United States, and Japan have voiced their opposition. These three countries even more clearly expressed their hostility to the China's new declaration through U.S. Vice President Joseph Biden's visit to Japan, China, and South Korea from December 2-7, which led China to emphasize the legal validity of its action based on international law. The different stances taken by these countries have become more salient. Meanwhile, the South Korean government has announced the southward expansion of its own Korean Air Defense Identification Zone (KADIZ) to extend to the nation's two southernmost islands (Marado and Hongdo) and Ieodo, a submerged reef that lies within the overlapping exclusive economic zones (EEZ) of China and South Korea. In addition, Ieodo is situated within each of South Korea, China, and Japan's ADIZs, which has led to expectations of heightened tensions and instability over maritime and aerospace rights in the area. On December 10, the East Asia Institute (EAI) invited Professor Min Gyo Koo of Seoul National University to analyze the emerging conflicts over the ADIZ from an international legal perspective and suggest policy recommendations for South Korea.

Q1: What are the implications of the Chinese Air Defense Identification Zone (CADIZ) in terms of international law?

A1: "Because an ADIZ has been declared unilaterally based on "the right of self-defense" under international law, there is no regulatory or international body that can authorize or prohibit a country from establishing an ADIZ."

- An ADIZ is airspace over an EEZ or above high seas outside the outer limit of territorial sea that is usually claimed in the interest of airspace defense. Freedom of navigation in this area is typically guaranteed because an ADIZ is not an aerial domain. Yet, the proclamation of an ADIZ declares a country's intention to respond to foreign and possible hostile aircraft by ordering the unauthorized aircraft to withdraw or shooting it down if its national security is threatened. All aircraft that fly within an ADIZ are required to follow standard flight procedures, such as submitting their flight information and periodically reporting their location. As of 2013, nearly twenty countries have established ADIZs. Russia and North Korea do not recognize the existence of any ADIZ.
- Because civilian airplanes come under the jurisdiction of the country whose airspace they have entered according to the Flight Information Region (FIR) established by the International Civil

Aviation Organization (ICAO), they are already required to report their flight information to the relevant country. Thus, even if an ADIZ is established, civilian freedom of navigation will not be restricted. However, foreign military aircraft will then have to report their flight information when entering this airspace, which can be seen as a violation of international military freedom of navigation. It is also controversial whether or not freedom of navigation should be guaranteed to foreign warships in an EEZ.

- The concept of an ADIZ is similar to a contiguous zone as defined in the United Nations Convention on the Law of the Sea (UNCLOS). It is a type of contiguous air-space zone. The contiguous zone is a band of water extending from the outer edge of the territorial sea until up to 24 nautical miles from the baseline, within which a country can exert limited control for the purpose of preventing or punishing “infringement of its customs, fiscal, immigration, or sanitary laws and regulations within its territory or territorial sea.” Located in between high seas and territorial waters, the contiguous zone alleviates potential conflicts.
- A country’s air force unilaterally establishes and declares an ADIZ for its national security based on the “right of self-defense” under international law. While a contiguous zone is measured 24 nautical miles from the baseline according to UNCLOS, there is no explicit international rule or regulation on the size limit of an ADIZ. Therefore, it is common to declare as large an area as possible. To date, there is no international regulation which authorizes or prohibits the establishment of the ADIZ.

Q2: How would you assess the responses of the parties affected by China’s declaration of its ADIZ from the perspective of international law?

A2: “China tends to minimize the implications of the ‘China threat theory,’ while the U.S. and Japan maximize it. This perception gap made the recent tensions over China’s declaration of its ADIZ even more controversial.”

- The U.S. first adopted its ADIZ in response to the Japanese attack on Pearl Harbor. South Korea’s ADIZ was unilaterally established by the U.S. Air Force in 1951 in order to foil Chinese attacks through the West Sea (Yellow Sea) and the South Sea (East China Sea) during the Korean War.
- It is hard to assess the recent proclamation of the Chinese Air Defense Identification Zone (CADIZ) as a problematic action in terms of international law. First, there are no clear international regulations on the proclamation of an ADIZ. Second, the U.S. and Japan unilaterally declared their own ADIZs in the past without China’s consent or cooperation. Third, since every ADIZ conflicts with freedom of navigation in air space outside of a country’s direct aerial domain, there is no ground to argue that the CADIZ in particular puts more limitations on freedom of navigation. There is some degree of exaggeration in the U.S. and Japan’s threat perception of CADIZ.
- The controversy over ADIZ is closely linked to the issue of maritime boundaries. Resulting from Chinese consideration of the Diaoyu/Senkaku islands, and its first-second-third island chain defense theory, CADIZ is an extension of China’s strategy to protect its core national interests in the sea. In the past, China took a defensive position on maritime boundary issues regarding airspace, contiguous zones, and EEZs due to its limited capacities in naval and air power. However, since 2010, China has embarked on a move to become a full-scale naval power by simultaneously launching multiple offense-related initiatives in the South and East China Seas. The somewhat exaggerated response of the U.S. and Japan to CADIZ was related to China’s recent offensive actions regarding maritime boundary issues.

- While China tends to refute the “China threat theory,” the U.S. and Japan have a tendency to maximize its implications. China has not narrowed this perception gap because it has not made strong efforts to alleviate its neighbors’ concerns over China’s attempts to strengthen its military power. On the other hand, China’s neighbors often perceive China’s actions as always having an ulterior, offensive motive. The tensions and problems in Northeast Asia caused by the declaration of CADIZ can be traced back to the inability to bridge the perception gap.

Q3: What is the prospect of ADIZ conflicts in East Asia?

A3: “There is a theoretical possibility of conflict in a region where ADIZs overlap, but it is highly unlikely. The FIR established by ICAO can be a key to resolving the recent tension by coinciding ADIZ and FIR.”

- When an ADIZ overlaps with another ADIZ that belongs to a neighboring country, the operational conduct of military aircraft then becomes an important issue. If U.S. or Japanese military aircraft enter the CADIZ without prior consent, then a chain of events may unfold that leads to conflict. Each side must scramble fighters to respond to the intrusion of their respective ADIZs. Since combat aircraft can request the withdrawal of the opposing aircraft or warn that opening fire is an option, the possibility of an air war theoretically exists. The U.S. has not acknowledged the ADIZ of other countries regarding the operation of military aircraft. At some points, South Korea, China, and Japan have all dispatched military aircraft on air patrol into the ADIZs of other countries without prior consent.
- However, violent confrontation between regional countries in overlapping areas of the ADIZs is not likely. It is not uncommon for a U.S. reconnaissance aircraft to fly over Chinese airspace and for a Chinese combat aircraft to be sent out in vigilant response. Even before China proclaimed its CADIZ, it dispatched combat aircraft when U.S. aircraft flew over China’s EEZ. Nevertheless, there has never been a single incident in which an air war of nerves actually culminated in actual air combat.
- The U.S.-China aircraft collision incident in 2001 is one example of a tense situation which did not result in open confrontation. At that time, China dispatched combat aircraft in response to a U.S. Navy EP-3 reconnaissance plane on patrol over China’s EEZ near Hainan Island. When the Chinese aircraft approached and requested the withdrawal of the EP-3 or face hostile fire, one of the Chinese jets got caught in the backwash of the EP-3. The Chinese fighter jet crashed into the sea, and the U.S. reconnaissance plane made an emergency landing on Hainan Island. In the aftermath of the incident, Chinese nationalists demanded strong retribution against the U.S. due to the poor U.S.-China relations at that moment resulting from the accidental U.S. bombing of the Chinese embassy in Belgrade, Yugoslavia in 1999. However, political elites in the U.S. and China resolved the serious matter in a discreet manner. It took a long time for China to return the airframe of the surveillance plane to the U.S., but the Chinese government took care to send the American flight crew back to the U.S. as soon as possible. Although there have been many instances in which U.S. and Chinese warships or military aircraft were dispatched at the same time for surveillance, they have never escalated their encounters into a full-scale military confrontation. The 1996 Taiwan Strait Crisis, in which the conflict reached a boiling point, was an exceptional case triggered by the particularly sensitive nature of the Taiwan issue.
- In the short term, it is difficult to resolve the problems caused by the overlapping ADIZs of South Korea, China, and Japan. Even if there were international laws that could mediate this issue, it would be difficult to make a breakthrough regarding the delineation of boundaries. In the case of the overlapping Chinese and Japanese EEZs, there are international regulations codified in UNCLOS. However, the co-existence of two principles acknowledged by UNCLOS has raised tensions. According to the principle of equidistance, Japan argues for an equal division of the

overlapping EEZs between China and Japan based on a line drawn through the middle of the area. On the other hand, according to the principle of an equitable solution, China advocates that the Chinese EEZ should cover more area than the Japanese EEZ due to its larger continental shelf. With the maritime boundary issue unresolved, it is not realistic to expect the resolution of the airspace boundary issue. At this point, the more feasible option might be to condone the establishment of an ADIZ by all countries and refrain from raising tensions.

- FIR, as defined by ICAO, can be a guideline for creating standards to resolve future problems surrounding ADIZs. FIR is not only followed by South Korea, China, and Japan, but it also has no conflicting principles. Therefore, if it is possible to establish an ADIZ in accordance with FIR, it might be an option to resolve this problem.

Q4: What are some policy recommendations for South Korea?

A4: "It was excellent that the issue of jurisdiction over the skies of Ieodo was resolved by matching the KADIZ with FIR without protest from Japan. If South Korea solves the problem of the EEZ with China by utilizing its current diplomatic leverage, it can turn a negative into a positive."

- China's promulgation of its CADIZ provided an opportunity for South Korea to connect the KADIZ with Incheon International Airport's FIR, which had been postponed by Japan's refusal to cooperate. The South Korean government has tried to negotiate with the Japanese government over the inclusion of airspace over Ieodo in Japanese Air Defense Identification Zone (JADIZ), but the Japanese government has complicated the problem by refusing to respond at all or threatening to include airspace over the Dokdo islands in the JADIZ. However, Japan now has to strongly counter China because the recently-established CADIZ overlaps with considerable parts of the JADIZ in disputed areas in the East China Sea. For Japan, it might be too costly and burdensome to argue with South Korea regarding airspace over Ieodo, which is very small compared to the overlapping parts of the Chinese and Japanese ADIZs. Therefore, obtaining Japan's support in extending the KADIZ to cover the airspace over Ieodo was a noteworthy and praiseworthy achievement.
- If South Korea solves the problem surrounding EEZ claims with China by utilizing the diplomatic leverage it achieved from the resolution of the Ieodo situation with Japan, it can turn a negative into a positive. There has been increasing potential for diplomatic conflict over the seas around Ieodo because the boundaries of South Korea and China overlap in that area. The South Korea-China Fisheries Agreement signed in 2000 does not contain a regulation that addresses this issue. The governments of both countries have designated this area as "South Korea-Japan Jointly-Controlled Fishing Zone," which delineates the "water where the current order for fishery operation is maintained as long as there is no separate consensus or agreement between two countries." The South Korean government has requested its Chinese counterpart to initiate negotiations to resolve their overlapping EEZs, but it has not received a positive response. For this reason, both countries have not been able to settle the EEZ boundary. If South Korea can create a diplomatic advantage after China's proclamation of its CADIZ by persuading and pressuring China regarding the EEZ, then it may be possible to secure one long-term national interest of South Korea in the region.
- Borders are one of the most basic institutions in international relations. East Asian nations, however, have not yet developed compromises or agreements over the adjudication of border issues, which has been a fundamental cause for numerous problems within the region. This is why cooperative dialogue in East Asia should start from the settlement of boundary issues.

About the Interviewee

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Min Gyo Koo received his Ph.D. in political science from the University of California, Berkeley. He is currently an associate professor at Seoul National University's Graduate School of Public Administration.