



Redefining the Air Defence Identification Zone in the Framework of Customary International Law

Priyo Hadisusilo¹, Sigit Riyanto², Harry Purwanto³

^{1,2,3}Faculty of Law, Universitas Gadjah Mada

Corresponding author's email: priyohadisusilo@mail.ugm.ac.id

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Abstract

The use of force against other countries is strictly prohibited and has the character of jus cogens. However, this provision is not rigidly applied in the self-defence context codified in the United Nations Charter 1945 Article 51, also in the air defence context through the existence of the Air Defence Identification Zone (ADIZ). This research discusses whether ADIZ embodies the anticipatory efforts in the framework of customary international law. The research results indicate that the determination of ADIZ is not a form of self-defence principle in Article 51, which is the realm of jus ad bellum. Moreover, the conservative self-defence prerequisites in Article 51 are no longer relevant in line with the revolutionary development of aviation and its armament technology. Therefore, ADIZ as a state security practice, constitutes a form of anticipatory efforts within the framework of long-standing state practice as customary international law.

I. Introduction

Every country has sovereignty over its territory independently without any intervention from other countries because independence also means sovereignty (Steinberg, 2004). After the World War II, as the war with greatest victims in history (Adams, 1994), countries began to realise that the importance of peace and cooperation among them by forming the Charter of the United Nations 1945 (UN Charter). UN Charter in its *preamble* emphasises that the member countries live together in unity to maintain world peace and security. Based on this consideration, using armed force on other countries is a crucial decision of a country's foreign policy. This decision is strictly regulated by international law (Rothwell, 2005). Thus, all actions that can interfere with

world peace, including acts of aggression and the unilateral use of force against other countries, are prohibited by the UN. This prohibition is the essential matter as outlined in the UN Charter in Article 2 (4) stating, '*All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state or in any other manner inconsistent with the Purpose of the United Nations*'. Although this article emphasises 'all members' of the UN, this provision has become *jus cogens* and binds on whole countries with a non-derogable character (Hossain, 2005). This provision is a fundamental norm set by the UN in regulating relations among countries in the world (Green, 2010).

However, the provisions in Article 2(4) are not interpreted *stricto sensu*, an exception in Article 51 of the UN Charter states, '*Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations...*' By contrast, the state has an inherent right to carry out self-defence measures when an armed attack occurs against the other state because self-defence is a legitimate reaction to an armed attack (reactive self-defence). This provision in Article 51 applies with the only condition that 'if' an armed attack occurs. Therefore, Newton's third law analogy of 'action-reaction' applies in the textual interpretation of Article 51. That is, the state must wait until the first attack occurs from the aggressor before using force to protect itself (Franck, 2003). This provision from Article 51 requires the occurrence of a threat, and it may be relevant and applicable with conventional hand-to-hand armed attacks in the presence of an actual invasion from the enemy soldier.

Along with the leap of weapon technology, including weapons of mass destruction, an attack no longer requires a large army. The criterion of conventional imminence seems irrelevant if it has to meet the parameters from Article 51, especially in the context of attack through air media. The moment of the devastating air attack initiated by a non-state actor on 11 September 2001 (9/11) in the most populous city of New York, US caused an abundance of fatalities in the iconic skyscrapers of the World Trade Center. The death toll reached 2,753 people, including 184 killed in Washington and 40 in Pennsylvania (CNN, 2021). The 9/11 attack is the second bloody tragedy in the history of the US after the Civil War. An unpredictable attack with a hijacked civilian airliner as a weapon against the ground target is an act of misuse of civil aircraft as a weapon (International Civil Aviation Organization [ICAO], 2002). Aircraft characteristics, such as high speed, range and altitude, cannot provide enough time for the attacked state to defend themselves or take countermeasure actions.

Several decades before this incident, since the Cold War era in the 1950s initiated by the US, many states established the Air Defence Identification Zone (ADIZ) as a specially designated airspace for national security interest. ADIZ was formerly an instrument to detect the threats of feared air intercontinental ballistic missile and strategic air attacks. After the Cold War, the identification function of ADIZ requires that all incoming aircraft identify themselves and may be subject to air traffic control (ATC) if they intend to fly from non-sovereign airspace to sovereign airspace (Dutton, 2009). Aircraft entering ADIZ

are required to comply with special identification procedures and additional obligations of reporting procedures (SARP, n.d.). The determination of ADIZ as a state security practice is still a subject of academic argument regarding its legal basis. The latest as the most controversial is the determination of the East China Sea (ECS) ADIZ in 2013. Some opinions regarding ECS ADIZ establishment as a unilateral action intend to support and expand its jurisdictional claims over the disputed ECS region (Vanhullebusch & Shen, 2016).

After the 9/11 attack, the US added other ADIZ inside the territory, the Washington DC ADIZ and the New York ADIZ, to protect the threat of terrorist attacks from air piracy (Lamont, 2014). The US also expanded the authority of the US Air Force through Combat Air Patrols that cover all US airspace and establishes the Special Flight Rules Area (Reents, 2008). Other countries followed this initiative by establishing ADIZ and tightening their air security regulations. For example, Germany enacted the 'Luftsicherheitsgesetz' (LuftSiG) in January 2015, which authorised the use of force on civilian aircraft that was imminently intended to be used as a weapon. Similar regulations were also set in Thailand through the Act on Treatments Against Aircraft Committing Wrongful Acts 2553 B.E. 2010.

Regarding the legal basis, several argumentations state that ADIZ is a manifestation of self-defence based on Article 51 of the UN Charter as early described by Head (1963). He expressed that ADIZ establishment is unquestionable because a state always has the right of self-defence to preserve its existence. This right is guaranteed to member nations by the UN Charter (p. 191). This thought is followed by Calvo (2013) that ADIZ derives from the inherent right to self-defence. The other kind of argument is put forward by Almond (2016), 'ADIZs arise from the inherent right to self-defense as part of the law of war' (p. 136). Lee and Li (2018) stated a similar point, 'the law which is most resorted for States to establish ADIZ is Article 51 of the United Nations Charter under which the inherent right of self-defense' (p. 12). However, this paradigm must be reconceptualised because it is textually clear that Article 51 of the UN Charter is in the self-defence context in the event of an armed attack and applies the realm of the law of war (*jus ad bellum*).

Past studies are slightly different from those described previously, including the research conducted by Abeyratne (2012) that does not explicitly state that ADIZ is a form of self-defence but emphasises on the precautionary principle for aviation safety purposes. Therefore, in the present study, ADIZ is analysed from a different angle through the framework of customary international law. The other thing to consider is that the imminent self-defence parameters in the Charter seem obsolete when confronted with the new spectrum of modern air threats. Moreover, the role of ADIZ is to identify incoming aircraft, not only warplanes in a hostile time but also the ADIZ work for all aircraft in a state of peace, which has a contrast treatment from wartime. As a state security practice, ADIZ works mainly in a normal situation where it is not part of the law of war. Therefore, ADIZ is a form of anticipatory efforts of a country to properly identify all approaching aircraft for security purposes. On the basis of such a description, this

research formulates two problems. *Firstly*, how does the post-Charter era self-defence imminence parameter deal with the current modern air threat? *Secondly*, what are the fundamental principles in ADIZ as an anticipatory effort that derives from international customary?

This study is a doctrinal legal research by applying qualitative research method, a form of personal investigation that relies on analysing controlled observations from researchers (McConville, 2017), focusing on library research activities (Soekanto & Mamudji, 2001). Legal research starts with the gaps between *sein* and *sollen*, between the norm and reality and between theory and implementation (legal gap) (Asikin, 2004). These gaps are related to the asynchronous understanding of the basic form of ADIZ as the embodiment of a state's right to the self-defence principle through Article 51 of the UN Charter, including gaps in the concept of Charter's imminence parameter as a condition for self-defence in the context of air media threats compared with the pre-Charter era as an international customary.

The data come from the Convention on International Civil Aviation, signed in Chicago on 7 December 1944 (Chicago Convention 1944) and its *Annex*, the UN Charter and the Statute of International Court of Justice (ICJ) 1945, Judicial Decisions of the ICJ in the Nicaragua Case 1948 (Nicaragua v. the US) and in the Oil Platform Case (Iran v. the IS) 2003, Principles of Customary International Law in the Caroline Case 1837, relevant journals and research documents. Data analysis is performed using a qualitative method, which results in a descriptive-analytical description (Hutchinson & Duncan, 2012).

II. Imminence Parameters of Self-Defence Rights

A. Old Self-Defence Paradigm *vis à vis* 'New' War

Self-defence is a natural reaction to an attack on an individual or a country as an inherent right. It was initially known as customary in the pre-Charter era. The post-charter period in Article 51 of the UN Charter is the only source of the state's right to defend itself in international law (Hole, 2003), which aims to maintain world peace after the prolonged World War II. Article 51 allows the use of force as an inherent right of self-defence, but it limits such an inherent right (Sofaer, 2003). The fundamental question arises – does the phrase *inherent* mean that the right to self-defence based on customary law or before the codified period is still recognised after the stipulation of the provisions of Article 51? Or does Article 51 mean that the provisions for self-defence are only subject to those stipulated in the UN Charter?

Customary law also recognises the principle of self-defence as a form of anticipation, which has long been practiced by countries, as seen principally in the sinking Caroline Ship in The Caroline Case 1837. This moment happened when rebels were reinforced by 1,000 armed soldiers against the British colony in Canada brought with the Caroline Ship from American waters to the Navy

Island. Seeing this, Colonel Allan Napier McNab, a British troop commander, decided to destroy Caroline to prevent more troops by attacking the ship and injuring the crew on board and then pulling and directing Caroline to Niagara Falls (Rouillard, 2004). This principle has a customary of character in general and consistent practice followed by states as a legal requirement (Goldsmith & Posner, 1999). The 1945 ICJ Statute also emphasises customary law as a general practice of countries accepted as law. Countries have carried out this self-defence practice before the enactment of the UN Charter, which seems to straighten and invalidate the values contained in customary from the rigid textual meaning of Article 51 that prohibits the anticipatory action concept.

The paramilitary attack on the El Salvador guerrillas between Nicaragua and the US in the Nicaragua Case 1986 of the ICJ is an example of a different viewpoint on the use of force in the self-defence context during the post-Charter era. According to the ICJ, based on Article 51 in this case, the El Salvador guerrilla attack (considering its capacity) excluded armed attacks. The US perspective thus argued that taking action using armed force to deal with the guerrillas had violated the principle of self-defence against this issue (ICJ, 1986). This condition is caused by the narrow meanings of self-defence parameters during the post-Charter era. Another example of a relevant case handled by the ICJ is the Oil Platform Case in 2003. Iran filed a lawsuit against the US for the attack and destruction of three offshore oil production complexes owned by the National Iranian Oil Company for commercial purposes in 1987. The US denied that the attack was carried out as self-defence against an Iranian missile attack on Sea Isle City and the second American attack caused by a reaction to alleged mines planted by Iran against US warships in the Persian Gulf. Against this case, the ICJ believed that the alleged Iranian attack does not qualify as an armed attack that triggers the right to self-defence. The ICJ also emphasised that US' action in destroying Iran's oil production complex does not meet the elements of using force in self-defence.

The previous examples were the old rules of the rigid and textual interpretation of Article 51 of the UN Charter, which the ICJ applied in some of these cases. The threat spectrum at that time was still conventional through the appearance of aggressive armed forces with a shoot of the first bullet. The notion of armed attack in Article 51 must meet the threshold requirement outlined in the Charter. It may be reasonable considering the post-traumatic nature of the world's citizens at that time from the outbreak of war that devastated human lives. However, the development of technology transforms the spectrum of threats, so stiffness in self-defence parameters should be loosened depending on the types and characteristics that may occur. Consequently, if it still refers to the textual meaning in the Charter, then anticipating the 9/11 attack model, which may occur in other hemispheres someday, is challenging.

Nowadays, along with the development of aviation technology, it creates vulnerability in the world aviation industry from the contemporary aviation environment. According to Forest (2007), fragility is caused by (1) the number of airplanes in the sky carrying passengers and cargoes, (2) the sizes of these airplanes (e.g. the new Dreamliner) and (3) the number of locations to which one can now fly (globally interconnected) (p. 11). The misuse of air transport media as a weapon can be devastating and can directly stab a country's centre of gravity with massive casualties. Thus, the old-fashioned paradigm of conventional attacks will no longer be appropriate in the new phase of the transformed threat as a new war phenomenon.

B. The Parameter of Classical Self-Defence is No Longer Relevant.

The Imperial Japanese Navy's sudden attack without any prior declaration of war on Pearl Harbour at the most extensive US Navy base in Honolulu, Hawaii on 7 December 1941 was a day of infamy for the US (Roosevelt, 1941). This incident warns the world that the development of aircraft technology makes it possible to carry out surprise attacks. Six decades later, the 9/11 attack happened within a US territory. This attack was later declared as 'America under attack' by President George HW Bush (Bush, 2001). The 9/11 attack was a moment where the spectrum of threats through the air media grew and involved non-state actors. The war on terror after the incident became a global war to prevent similar recurring incidents. The lesson learned from this incident is that an instrument is needed to predict and identify attacks through air media beyond territory (Dahl, 2013).

After 9/11, the US government officially declared the Bush Administration's National Security Strategy 2002. This strategy allows pre-emptive actions against threats or hostile acts from a state or non-state actor. This strategy is referred to as the 'Bush Doctrine' (Sapto Hermawan, 2021). In this context, Bush revived and modified the anticipatory concept known formerly as the Caroline doctrine by eliminating the imminence threshold in this strategy. This doctrine seems contrary to the traditional paradigm of self-defence as 'a reactive self-defence' where reaction must meet thresholds and parameters of imminence on conventionally armed attacks in the UN Charter (Kelly, 2003). Thus, the fundamental problems contained in the Bush Doctrine are related to unilateral action (unilateralism) (Mulcahy & Mahony, 2006).

Apart from the aspects of the US defence policy after 9/11 that justified the pre-emptive attack, the underlined point is that the concept of conventional imminence contained in Article 51 of the UN Charter is no longer relevant when faced with today's threats. The 9/11 attack was the moment to review the imminence and armed attack concept and the need to adapt the sovereignty

concept to face today's threats (Chainoglou, 2007). What if the misused aircraft is filled with weapons of mass destruction, such as nuclear and biological weapons? Should we wait for the first strike to occur before using these instruments? Higgins (1995) once argued 'the provisions of Article 51 of the UN Charter as "a suicide article" against the threat that may arise from the dangers of nuclear weapons from the air media' (p. 242). From this statement, the imminence interpretation should not be used as a rigid standard when dealing with current threats that potentially bring tremendous destruction if inappropriately anticipated.

Many countries are starting to realise this phenomenon. Germany with LuftSiG arranged to anticipate the misuse of civil aircraft as a weapon. This *gesetz* opens full authorisation to the armed forces to take immediate actions after sufficient analysis and parameters have been carried out on the existence of an aircraft that has a strong intention to endanger human life. Even though it has received a rebuttal from the parliament, at least this country has set an anticipatory measure with this *gesetz*. In addition, Thailand has been thinking ahead in law enforcement in the air, which enacted an Act on 'Treatments Against Aircraft Committing Wrongful Act' B.E. 2553 in 2010. This Act was formulated to deal with any violations by aircraft entering the airspace of the Kingdom of Thailand, especially those that endanger national security and public safety. Act 2553 was also specifically mentioned in Germany, pertaining to aircraft hijacking, sabotage and terrorist attacks.

Based on the description, the imminence concept in classical self-defence from Article 51 of the UN Charter requires actual armed attack as an essential prerequisite for the exercise of the right of self-defence. There must be a fundamental re-conception, especially in the context 'if an armed attack occurs' as the only textual threshold for self-defence that is definitely obsolete in the current threat era. The state can carry out any efforts to prevent airborne threats intending to endanger domestic security that potentially brings massive damage to the country. Air attacks must be held beyond territory or before threats enter the sovereign airspace to protect the country's critical objects as anticipatory measures (Green, 2006). International law should determine and provide a new threshold in the right to self-defence, especially in the face of new threat models that are unconventional threats.

III. ADIZ as a Form of Anticipatory Effort Within the Framework of Customary International Law

ADIZ is a particular zone in airspace with special obligations for aircraft entering an area to comply with identification and reporting procedures and specific requirements set by a country (ICAO, 1984). The Chicago Convention 1944 mentions ADIZ in *Annex 4 'Aeronautical Charts'* and *Annex 15 'Aeronautical Information Services'*, defined

as a unique airspace in a specific area where aircraft are required to comply with special identification procedures and additional reporting procedure obligations to ATC. Furthermore, related to the ADIZ declaration, *Annex 4* and *Annex 15* add to the requirement for ADIZ publication on Aeronautical Information Publication and air navigation map for air traffic users. The difference in state practice in the procedure applied in ADIZ results from the absence of a legal basis in determining ADIZ, which creates problems in state practice (Lamont, 2014). Until now, the legality and consensus in the implementation of ADIZ have not been reached. Some studies mention it as an anomaly (Su, 2015), whereas others suggest the need for advice from the ICJ (Lee & Li, 2018).

Table 1. Differences in ADIZ Procedures as a State Security Practice

No.	Country	Civilian Aircraft to file flight plan/identity	Military Aircraft to file flight plan/ identity	Transit Aircraft	ADIZ covers territory administered by other countries
1.	US	Yes	Yes	No	No
2.	China	Yes	Yes	Yes	Yes
3.	Japan	No	No	No	No
4.	South Korea	Yes	Yes	Yes	No
5.	Taiwan	Yes	Unclear	Unclear	Yes

Source: Rinehart, Ian E., and Bartholomew Elias. 'China's Air Defence Identification Zone (ADIZ).' (2015) (p. 4).

ADIZ is generally held above territorial waters or even far beyond it. The existence of ADIZ beyond territory makes it a buffer zone and a shield from non-sovereign territory to protect sovereign airspace. This buffer zone is a naturally defensive area that must be distinguished from the act of self-defence. ADIZ only applies to objects that fly into a country's airspace before entering sovereign airspace. Inside this zone, specific procedures are followed to ensure that the incoming aircraft does not have hostile intentions towards national security. ADIZ comprises six fundamental elements: (1) Protecting national security; (2) Regulating aircraft entering the airspace; (3) Administration control by applying identification procedure; (4) Applicable to state aircraft and civil aircraft; (5) Law enforcement through interception and (6) Covering ample airspace (Almond, 2016).

Meanwhile, the existence of ADIZ can be in line with the principle of anticipatory effort dealing with an attack that has not happened yet, if a proof of the hostility act from the incoming aircraft shows non-compliance with ADIZ requirements. The primary form of ADIZ is an affirmation of the right to control aircraft in certain airspaces with the possibility of military interception of violators that do not comply with the procedures in ADIZ. When a potential threat from a non-compliance aircraft performs a condition.

For example, if ATC cannot make contact or conduct a two-way communication with an aircraft, deviates from its track, turns off the transponder, then the aircraft most likely has a hostile act. Based on these circumstances, military aircraft interception is necessary. The fighter jet scrambles to intercept the violator for visual identification, directing the violator, diverting out from national airspace and forcing down in the nearest airfield. This measure is not performed in compliance conditions from incoming flights.

This fact shows that ADIZ is not in the realm of self-defence referred in Article 51 of the UN Charter. The existence of ADIZ reflects the customary principles contained in the Caroline Doctrine that shows a necessity that is instant and overwhelming, leaving no choice of means and no moment of deliberation. This principle is known as Webster's formula in the note of US Secretary of State Daniel Webster in 1841 about the Caroline Case (Paddeu, 2020). Briefly, customary law provides the right to perform self-defence in a proportional and necessary situation (Gill, 2006).

Furthermore, the relationship between the proportionality and necessity principles has a causal meaning. When referring to the ICJ decision in the Nicaragua Case 1986, the necessity principle in the use of force depends on the size of the proportionality principle from incoming threats. That is, the significant potential threat further ignites the need for self-defence and even becomes a natural reaction. The necessity principle can be used to assess whether the force is legitimate in the self-defence framework. These two principles are the core of self-defence in international law. Showing that a potential threat is imminent is essential, so that proportional anticipatory action can be performed as a self-defence reaction following the principle of international humanitarian law (Shaw, 2003).

A. ADIZ in the Proportionality Principle

Proportionality represents the relationship between action and reaction as a response, whether the response is proper or excessive. The reaction that arises must also be proportional to the provoking activity. In the criminal law context, the punishment must be commensurate with the act committed. Concerning the anticipatory self-defence principle, ADIZ can be understood as a necessary response that proportionate incoming potential airspace threats. The proportional action is executed gradually through identification, two-way communication, turning on the transponder and location reporting and control. With this instrument, a state can anticipate and deal with threats posed by incoming aircraft. The existence of ADIZ provides sufficient time to assess the hostile intent and nature of threats that may arise. Suppose the incoming aircraft is identified as malicious, a state can intercept the aircraft out of its airspace to reduce the risk posed by the aircraft's speed and potential for destructive weapon payloads (including the potential for weapons of mass destruction). Thus, an anticipatory action, as a form of genuine defensive zone concept in ADIZ, is different from the pre-emptive self-defence concept in the Bush Doctrine.

ADIZ stands for the real anticipation framework. ADIZ procedures do not recognise pre-emptive action as an active attack that goes out of proportion to the proportionality principle. ADIZ is the passive defensive principle where all enforcement measures are only carried out against aircraft that do not want to comply with ADIZ provisions (ICAO, 1984, Chapter 3). Several action points within ADIZ through the visual identification and interception of violator aircraft that demonstrate the proportionality principle are outlined as follows:

Table 2. Aircraft Interception Requirements

1. Visual Identification	<i>Approaches the pilot-side of aircraft and matches speed and heading.</i> An interceptor aircraft performs visual identification.
2. Interception Sign	<i>Flash navigation lights and rocking the wing</i>
3. Warning to the Intercepted Aircraft	Initiates a slow, level turn <i>'Follow me, Fly this way!'</i> The interceptor gives instructions, initiates abrupt turn across nose and may dispense flares. <i>'Warning! Turn now in the direction of the fighter.'</i> In the case where an interceptor aircraft does not heed the warning of hard efforts to cut flying flyway.
4. Enforcing	<i>'Land at this airport!'</i> In certain circumstances, an intercepted aircraft forced landing can be implemented.
5. Breakaway Manoeuvres	In the event that the intercepted aircraft has understood the command, the interceptor performs a manoeuvre to leave.

Source : https://www.faa.gov/news/safety_briefing/2015/media/intercept-procedures.pdf
Accessed 30 October 2021.

The description shows that the intercept procedure in ADIZ is proportionally enforced with the action from the violator aircraft. If at first sight and contact with the interceptor (on visual identification stage) the violator was able to comply with orders and directions, then other stringent interception procedures will not be performed. The ICAO Document 9426-AN/924 First Edition 1984 Chapter 3, 3.3.4 states that the maximum action parameter in the non-compliance condition by incoming aircraft in ADIZ with the imposed provisions generally results in prompt retaliatory actions (interception, forced landing).

During the interception process, using weapons should be avoided as much as possible. Article 3 *bis* in the Protocol Relating to an Amendment to the Convention on International Civil Aviation 1944 strictly prohibits the use of weapons against civilian aircraft in flight and provides special protections for civilian aircraft interception. This article states *'The contracting States recognise 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'. In addition, the '*Rules of the Air*', which formulates the existence of Standard and Recommended Practices (SARPs) associated with aircraft interception (ICAO, 2018) is set in *Annex 2*. Specifically, the interception should not jeopardise the lives of civilian aircraft passengers.

B. ADIZ in the Necessity Principle

International law further recognises the principle of exclusive sovereignty over national airspace. Sovereignty is also related to the authority to regulate national air traffic and determine airspace status. The Chicago Convention 1944 establishes the complete and exclusive sovereignty over the airspace, including rules for aircraft entry into national airspace. Consistent with ADIZ's national security objectives, the Convention in Article 89 fully preserves the state right to control the airspace as a response to national emergencies and in war conditions, even though it was later amended in Article 3 *bis*.

Based on this fact, the need for anticipatory efforts is carried out for several reasons: the possibility of realising threats, the absence of other solutions (exhaustion of alternatives) and consistency with the UN Charter (Sofaer, 2003). Therefore, in this case, ADIZ shows the necessity to protect national airspace from the possibilities of attacks through air media and lacking time to respond. The existence of ADIZ is for state security interests, where the state is allowed to limit or prohibit flights over a defined area within their territory. The state is also authorised to designate danger areas, such as those temporarily designated for military training, weapon training or testing and other national interests. The necessity principle in ADIZ is to prevent the target country from being a victim of an attack whilst an airborne threat approaches. The conditions of necessity required to be fulfilled by the target state have never been so restricted with actual armed attack prerequisites implied in Article 51 of the UN Charter. States faced with perceived dangers of immediate attacks cannot be expected to await the attack '*like a sitting duck*' (McDougal, 1963, p. 587).

Finally, along with the increasing risks from new terrorism modes and the destructive effects of weapons of mass destruction using air media, a solid reason explains the establishment of ADIZ as a necessity for identifying, controlling and preventing potential threats from aircraft operating in national airspace. Aviation activities have an international aspect and function to maintain international relations among countries but can also be misused as threats to world security in general (Abeyratne, 2012). To secure airspace as a form of a country's need to detect national security threats, the existence of ADIZ is a necessity. Ensuring air security can maintain world aviation safety as its function in connecting the world, not as a threat for world peace.

III. Conclusion

Extraordinary threats need extraordinary actions, literally interpreting that current modern threats with tech-leap weaponry through air media requires adequate anticipatory instruments. International law codifies the customary related to self-defence in Article 51 of the UN Charter. However, exactly determining when a state can carry out self-defence remains unclear because of its rigid requirements resulting in the prohibition of any anticipatory action. This fact is challenged with the current condition where conventional armed conflict is replaced with the modern threat. The prerequisite concept of conventional self-defence that requires imminence is no longer relevant, especially on the threat from the air with peculiar high speed and altitude character and loaded with advanced technology, including weapons of mass destruction. Expanding the parameters of conventional self-defence and formulating adequate regulatory instruments as anticipatory efforts is a must to deal with this new spectrum of air threats and avoid becoming a 'sitting duck.'

ADIZ is naturally defensive; however, it must be distinguished with the act of self-defence. Consequently, the existence of ADIZ is not a manifestation of the inherent right to self-defence in Article 51 of the UN Charter, which is related to armed attack circumstances in the scope of *jus ad bellum*. This kind of affirmation has never been concluded in previous research. ADIZ is a state security practice as a form of state sovereignty in the air to control its airspace. It acts as an anticipatory effort that follows the necessity and proportionality principles under customary international law. *First* is the necessity principle for identification and national security interests amid increasing threats from air media, as the early warning zone that provides enough time for a country to repel and prevent airborne threats. *Second* is the proportionality principle, in which the use of force by military aircraft is only carried out in non-compliance situations with the ADIZ provisions that stipulate the identification, two-way communication and position report of the incoming aircraft. Proportionality also exists in the implementation of interception and force landing process. Furthermore, the provisions of Article 3 *bis* of the Chicago Convention 1944 and the SARPs of ICAO are considered.

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