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HOW TO DEVELOP INTERNATIONAL NORMS OF SAFETY ZONES: BASED ON AN
ANALYTICAL FRAMEWORK OF THE LEGAL CHOICE

Abstract

Section 11(6) of the Artemis Accords stresses the need for signatories to develop practices or rules on the safety zone issue. This paper argues that the process of establishing international norms of safety zones is essentially the process by which actors make a series of legal choices concerning the safety zone issue. Based on the rational choice theory, the paper puts forward an analytical framework of the legal choice, which contains legal choices of substance and form. When actors make legal choices of substance, they determine rights and obligations regarding specific international legal issues based on legal lacunae, legal basis, and legal restrictions left by previous international law. Regarding the legal choice of form, actors choose one or more forms of international norms, such as soft law, customary law, and different treaties, to deal with specific international legal issues. These two types of choices are closely linked and mutually influential. After clarifying the framework, the paper uses it to evaluate the legitimacy and effectiveness of legal choices regarding safety zones under Section 11, analyzing whether they have greater legitimacy and effectiveness than alternative choices. As to the legal choice of substance, although not explicitly enumerated, Section 11 attempts to set up six sets of rights and obligations in the future between states that establish safety zones and those that enter safety zones, which will determine the concept and definition of safe zones. The paper argues that the choice does not make full use of legal lacunae, legal basis, and legal restrictions of the Outer Space Treaty, so the content of the rights and obligations should be adjusted. In terms of the legal choice of form, it has higher effectiveness than many alternative choices. However, to further increase the legitimacy, states need to make more diverse legal choices of form. Based on the analysis of legal choices under Section 11, the paper uses the framework to recommend making better legal choices on the safety zone issue, which helps to enhance the legitimacy and effectiveness of relevant international norms. Concerning the legal choice of substance, the paper suggests adjusting the content of the six sets of rights and obligations. It also offers a mechanism of “unifying notification and distinguishing obligations” to balance the interests of establishers and enterers. As to the legal choice of form, the paper proposes three different combinations of choices conducive to addressing diverse international legislative challenges.