

# Research on the Security and Defense Mechanism of Overseas Military Bases from the Dual Perspectives of “Hard Law and Soft Law”

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## ABSTRACT

Legitimacy, legality and conceptual factors are vital variables that affect the security and defense mechanism of overseas military bases. Based on the resolutions of international military organizations and universal documents, international soft law coordinates the political conflicts of interests between the leasing countries of overseas military bases and the host countries, which can safeguard the “legitimacy” of overseas military bases. International hard law focuses on the “legality” of the security and defense mechanism of overseas military bases. In addition, legality requires that the acquisition and operation of overseas military bases not only comply with the constituent elements of modern international law, but also respect the domestic laws of the host country. The conceptual factor emphasizes the host country’s recognition of the base leasing country based on legitimacy and legality. Countries leasing overseas military bases need to coordinate the effectiveness of soft law and hard law based on actual conditions to build a security and defense mechanism for overseas military bases.

## KEYWORDS

Overseas Military Bases; Security and Defense Mechanism; Criminal Jurisdiction.

## 1. CONCEPT OF SECURITY AND DEFENSE MECHANISM FOR OVERSEAS MILITARY BASES

According to the scholar, Robert Jervis, the security and defense mechanism refers to “those principles, rules and norms that allow a country to exercise restraint in its behavior by believing that other countries will reciprocate”.<sup>[1]</sup> The security and defense mechanism of overseas military bases is the international mechanism in which countries rely on overseas military bases based on international rules, international norms and international concepts, so as to safeguard common security interests. The security and defense mechanism of overseas military bases mainly includes the following content:

Firstly, safeguarding the country’s overseas interests is the main purpose of building a security and defense mechanism for overseas military bases. Divorced from the protection of territorial jurisdiction, overseas interests are susceptible. In the tide of anti-globalization, non-traditional security threats such as terrorist attacks and piracy emerge in an endless stream. Building a security defense mechanism for overseas military bases aims to protect the survival and development of the country’s overseas interests.

Secondly, the normative basis for building the security and defense mechanism of overseas military bases includes not only national military legislation and international military treaties, but also international norms such as international soft law. The security and defense mechanism of overseas

military bases mainly consists of national military cooperation, collaborations between the leasing country and the host country on the allocation of base jurisdiction, military assistance and arms trade, etc. Under this circumstance, the resolutions of the host country, the leasing country and the international military organization of overseas military bases are the normative basis for the security and defense mechanism of overseas military bases.

Thirdly, the security and defense mechanism of overseas military bases is an integral branch of the international security mechanism with bilateral and regional characteristics at multiple levels.<sup>[2]</sup> The security and defense mechanism of overseas military bases at the bilateral level refers to the defense mechanism established based on bilateral treaties, which is the joint response of the leasing country and the host country of the overseas military base to “threats endangering the country’s overseas interests and national security”. For example, after the signing of the *Treaty of Mutual Cooperation and Security Between the United States and Japan*, the security and defense mechanism of overseas military bases was based on the US military bases stationed in Japan. The regional security and defense mechanism for overseas military bases refers to the defense mechanism of the overseas military base based on multilateral treaties and member states of international military organizations, aiming to maintain regional security or seek/consolidate regional military hegemony. For example, during the Cold War, the United States and NATO allies relied on the *North Atlantic Treaty* and the overseas military bases of NATO countries as the basis to counter the security and defense mechanism of the overseas military base established by the Warsaw Pact led by the Soviet Union.

## **2. INTERNATIONAL LEGAL NORMS ON THE SECURITY AND DEFENSE MECHANISM OF OVERSEAS MILITARY BASES**

### **2.1. Hard Law Norms for Overseas Military Bases**

Article 38, Paragraph 1, of the Statute of the International Court of the Justice stipulates that international law shall apply to the following occasions: (a) Whether ordinary or special international agreement, a rule expressly recognized by the parties should be established to the litigation. (b) International custom is only accepted as law as proof of general practice. (c) General principles of law recognized by civilized nations. (d) Judicial precedents and the doctrines of the most authoritative public jurists in various countries are used as subsidiary materials for determining legal principles. According to these clauses, it can be concluded that the hard law sources of international law are mainly treaties, international customs and general legal principles. The treaty refers to a specific law recognized by the parties. The custom refers to conventions or general rules, which are general rules perceived as being effective. If this general rule is not observed, there may be some adverse consequences, or at least the violator should bear such consequences. The general principles of law refer to the principles of private law applied by domestic courts, including but not limited to international relations.<sup>[3]</sup> Hard law norms in international law mainly refer to international treaties, international customs and general legal principles. Modern international law does not clearly stipulate the hard law norms for overseas military bases. However, it does not mean a shortage of hard law norms for overseas military bases. According to international practice, the hard law norms for overseas military bases mainly exist in the following aspects:

The first is the basic principle of international law. When the leasing country establishes overseas military bases, it is necessary to abide by the principles of national sovereignty, non-interference in other countries’ internal affairs and prohibition of the use of force. When it comes to the principle of national sovereignty, the leasing country of overseas military bases must obtain the authorization or consent of the host country by means of alliance and assistance to establish overseas military bases in the host country. If the overseas military base is forcibly established in the host country through military conquest, or the overseas military base is controlled by the sovereign host country, the leasing country bypasses the host country and directly signs an overseas military base agreement with the

sovereign country, which violates modern international law. In 2019, according to the *Advisory Opinion on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* proposed by the International Court of Justice, the *Lancaster House Agreement* signed by Mauritius, the host country of overseas military bases, and the leasing country (the United Kingdom) did not convey the true will of the Mauritian people. Therefore, the International Court of Justice ruled that it was illegal for the United Kingdom to cross Mauritius and authorize the US military to establish overseas military bases in Mauritius. Based on the principle of non-interference in the internal affairs of other countries, even if the countries concerned are authorized or allowed to establish military bases in other countries, they should not use military force to interfere in the internal affairs of the host country, nor should they use overseas military bases to interfere in the internal affairs of a third country. *Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States* adopted by the United Nations General Assembly in 1981 stipulates that all countries have the obligation to refrain from taking any measures to strengthen existing military blocs or establish or strengthen new military alliances, alliance arrangements, or deploy relevant military facilities that interfere in the internal affairs of other countries.<sup>[4]</sup>

The second is international customary law. For example, some western scholars believe that the host country or leasing country of overseas military bases should refer to the immunity of diplomatic law and grant jurisdictional immunity to those friendly foreign armed forces.<sup>[5]</sup>

The third is international jus cogens. It refers to the legal norms in international law that are generally applicable to all subjects of international law, and must be obeyed and implemented by subjects of international law without being damaged by agreement. As a special principle and norm of international law, international jus cogens aims to protect the interests and values generally recognized by the international community. *The Vienna Convention on the Law of Treaties* stipulates that jus cogens is a norm accepted by the international community as a whole. During its formation, it deviates and weakens the dependence on the will of individual countries. Meanwhile, it is universally binding in its application. In the formation of jus cogens, the will factor of individual countries is weakened with a universal binding force in application. International jus cogens mainly focus on international humanitarian relief and the prevention of international crimes. *Convention Against Torture* in 1984 urges all countries to take effective measures to prevent acts of torture in any territory under their jurisdiction. Any act of torture that has occurred should be punished as a criminal offence. According to the *Geneva Convention relative to the Treatment of Prisoners of War* in 1949, it is stipulated that forcing prisoners of war to participate in military operations by hostile armed forces and deliberately depriving prisoners of war of their right to a fair trial are prohibited “serious violations.”<sup>[6]</sup> Therefore, overseas military bases may not be operated in a manner that violates international jus cogens or international criminal law. International jus cogens is also a hard law norm for overseas military bases.

The fourth is international treaties, which are the legal sources stipulated in Article 38 of the *Statute of the International Court of Justice* of the United Nations. Korean scholar Liu Binghua mentioned that the problems between the establishment of overseas military bases and foreign garrisons mainly came into being after the Second World War. Based on the emergence of a regional cooperation system and military base system stipulated in Chapter VIII of the *Charter of the United Nations*, a large number of overseas military base agreements and bilateral agreements between garrison status agreements made specific provisions/explanations on the jurisdiction, operation and distribution of overseas military bases.<sup>[7]</sup>

## **2.2. Soft Law Norms for Overseas Military Bases**

Soft laws refer to those legal norms whose effectiveness structure may not be complete. Although they do not need to rely on the compulsory guarantee of the state to implement, they can produce social effectiveness. The image of soft law varies according to different situations. The reason why

soft law becomes the law lies in its basic characteristics of law. In addition, soft law embodies the common characteristics of law in a different way from hard law and plays an important role in the public domain for its unique functions of regulating and adjusting public relations. Thus, it is independent of hard law and becomes a basic manifestation of law. Soft law and hard law can not only complement each other with complicated legal logic in legal functions, but also achieve mutual transformation in legal norms.

As a soft law norm for overseas military bases, it has the following characteristics. First of all, the methods and institutional arrangements of soft law creation for overseas military bases have greater flexibility. The provisions of soft law are relatively general, focusing on inclusiveness. Or it is more abstract, with the types, quantities and extent of behaviors not clearly defined. Or it is more principled without a specific distribution of rights and interests; Or it is vague, allowing a variety of reasonable explanations. Or it is more flexible, leaving room for manoeuvre and adjustment for the public subject game. Or it is softer, focusing on guidance and suggestions without hard and fast rules.<sup>[8]</sup> Compared with the hard law, the soft law of overseas military bases has no clear-cut provisions on the rights and obligations between the leasing country and the host country, which only makes some guiding provisions. Secondly, soft law cannot be implemented through the coercive force of public power or enforcement by the state. The goals of some soft laws mainly rely on social pressures such as public opinion, self-discipline, internal supervision and peer supervision, forcing the subjects to abide by the provisions of soft laws to safeguard the national reputation. Moreover, the realization of some soft law goals largely depends on the incentive mechanism integrated into the soft law system and the induction of interests. Thirdly, although the realization of some soft law goals depends on compulsion, it does not use direct state coercive force, but a kind of self-regulation within the group, such as imposing punishment and deprivation of membership on the personnel who violate the regulations within the group according to the power of self-management. Simply put, the soft law norms of overseas military bases only rely on the influence between military groups or military alliances to force overseas leasing countries and host countries to abide by the provisions of their alliance charters in the formulation of policies/jurisprudence. Fourthly, the rank of soft law norms is not clear and has an obvious normative order with hard law. The hard law norms of overseas military bases have a three-tier system. The first layer is the cornerstone of international legal orders such as the *Charter of the United Nations*. The second layer is the legal basis for not establishing overseas military bases, which is generally stipulated in the form of mutual defense agreements. The third layer is the garrison agreement, which allocates the jurisdiction between the leasing country and the host country.<sup>[9]</sup> Different from hard law norms, the soft law norms of overseas military bases pay more attention to cooperating with the country's political game and foreign policy in the international community. In this case, the soft law norms of overseas military bases show a horizontal parallel relationship, and most of them are equal to each other. For example, soft laws such as overseas military base cooperation documents attached to diplomatic statements, programmatic documents in national strategies, and joint statements between the leasing country and the host country play the same guiding role in the establishment, operation, development and cessation of military use. According to international practice, the soft law norms of overseas military bases are mainly divided into the following categories:

### 2.2.1. Resolutions of the United Nations Security Council

The validity of the UN Security Council resolutions depends on the common national will of the UN member states through compromise and coordination. In other words, the validity of the UN Security Council resolutions ultimately relies on the common consent expressed by the UN member states through the *Charter of the United Nations*. Likewise, the effectiveness of Security Council resolutions is based on the written authorization given by member states through the *Charter of the United Nations*, which sets the legal basis for the Security Council to perform its duties. As for the binding force of Security Council resolutions, its direct legal basis is the *Charter of the United Nations*, especially the provisions of its Article 25: "Member states of the United Nations accept and

implement Security Council resolutions in accordance with the provisions of the *Charter of the United Nations*.”

The use of UN Security Council resolutions as the basis for acquiring overseas military bases mainly exists in peacekeeping operations. UN Security Council peacekeeping operations establish overseas military bases in aided countries in accordance with the *Charter of the United Nations*. The host country of overseas military bases provides military base land to peacekeeping forces according to the *Charter of the United Nations*. Such bases are not based on the transfer of sovereign rights from the host country to the leasing country, but in order to fulfill the obligations of the host country under the *Charter of the United Nations*. According to the peacekeeping resolutions of the United Nations Security Council, the normative provisions for overseas military bases mainly include:

Firstly, there is criminal immunity for peacekeepers at overseas military bases. According to the *Model Status-of-Forces Agreement for Peace-keeping Operations* formed during the 45th session of the United Nations General Assembly in 1990, the personnel of United Nations peacekeeping forces share four categories of jurisdictional immunities. The first is that diplomats in peacekeeping forces enjoy the corresponding immunity of diplomatic envoys. The second is United Nations officials in peacekeeping forces, who perform the functions of the United Nations and enjoy corresponding functional immunity. The third is mainly technical experts in military observer missions and United Nations peacekeeping operations. The fourth is the military personnel of the garrison of the leasing country participating in peacekeeping operations/the troop-contributing country to peacekeeping operations. The immunity of such military personnel is stipulated in accordance with the relevant garrison agreements.

Secondly, to obtain the legal basis for overseas military bases, the resolutions of the United Nations Security Council constitute the internal laws of international organizations. Although such internal laws are different from the internal organic laws of international organizations, such as the functions, components and institutions of international organizations, they are only legally binding internal decisions for members of the organizations. In other words, countries that lease overseas military bases fulfill their obligations of establishing overseas military bases, rather than stabilize hegemony or obtain economic benefits. From this aspect, the UN Security Council resolution provides a legal basis for the acquisition of returned military bases.

Thirdly, the content and purpose of overseas military bases have been specifically stipulated. The main purpose of overseas military bases of United Nations peacekeeping operations is limited to stopping wars. In this case, the contents and purposes of each overseas military base stipulate the purposes of military bases according to its peacekeeping documents, such as overseas military bases to supervise the Palestinian-Israeli armistice according to resolution S/RES/50 (1948), overseas military bases to supervise the India-Pakistan armistice according to resolution S/RES/47 (1948), overseas military bases to supervise the ceasefire and disengagement between Greek and Turkish communities according to resolution S/RES/186, and overseas military bases to supervise the India-Pakistan armistice according to resolution S/RES/211.

### 2.2.2. Diplomatic Statements of the Countries Concerned

The diplomatic statement of the country concerned is also a soft law norm for the country to build overseas military bases that are the product of national political games. In addition, the soft law norms of overseas military bases are intertwined with the country’s political status and political games. Therefore, the diplomatic statement of the country at that time belonged to the soft law norm of overseas military bases. The diplomatic statements of the countries concerned affect the operation of overseas military bases through the following elements:

Firstly, the country formulates international norms according to domestic interests. The country will selectively adapt and internalize international norms for its own interests. Only when international pressure is consistent with domestic interests will the country internalize international norms through

legislation. In other words, the effective connection between international law and domestic law needs to take into account the national credit, national reputation and calculation of the costs and benefits of complying with the agreement in the international community. As mentioned above, national interests are a crucial factor affecting the generation of overseas military base norms. From this aspect, the diplomatic statement of the country concerned is the result of comprehensive consideration according to the domestic environment and national interests. If the operation of overseas military bases is held hostage by the interest groups with special preferences of the country concerned, the interest groups of the country concerned will urge the government to formulate national policies that meet its preferences through lobbying and other means. Also, if the operating system of overseas military bases supports the core national interests of the country concerned, then whether it is from economical, political or security aspects, it is more likely to be determined through the foreign policy/diplomatic statement of the country concerned.<sup>[10]</sup> Secondly, there is ideological convergence and the similarity of cultural traditions among countries. The entry of international norms into countries does not mean that internalization effects will necessarily occur, which also depends on the homogeneity and overlap rate between the norms and the target countries in specific fields. When the soft law norms of overseas military bases are consistent with the security values of the host country, the soft law of overseas military bases will be supported. With all other conditions remaining the same, if the security values embodied in the soft law of overseas military bases are consistent with the host country, it will be easier to gain legitimacy.

For example, on May 3, 2023, the defense secretaries of the United States and the Philippines announced the first *U.S.-Philippines Bilateral Defense Guidelines* (hereinafter referred to as the *Guidelines*), which emphasizes that the *U.S.-Philippines Mutual Defense Treaty* applies to “the Pacific Ocean, including anywhere in the South China Sea. An armed attack on aircraft or ships of the Philippine or U.S. armed forces will invoke the mutual defense commitments stipulated in Articles 4 and 5 of the *U.S.-Philippines Mutual Defense Treaty*.”<sup>[11]</sup> With the release of the *Guidelines*, the United States and the Philippines extended their mutual defense affairs to the South China Sea. Although the *Guidelines* does not provide relevant provisions on the rights and obligations of overseas military bases between the United States and the Philippines, it provides a basic framework for their subsequent base negotiations, thus having an indirect impact on the rights and obligations of bases.

### 2.2.3. Internal Resolutions and Universal Documents of Regional Military Organizations

Haug and Sebastian proposed that there are compulsory power, institutional power, structural power and productive power within international military organizations. (1) The direct influence exerted by the substantive actors of coercive power to promote their interests can be realized through material resources such as economic and military power, or symbolic means such as rhetorical behavior. For example, the highest decision-making groups of the Warsaw Pact are mostly Soviet citizens, and the top leaders of the Warsaw Pact of Soviet nationality implement the national will of the Soviet Union in the Warsaw Pact through direct administrative instructions. Institutional power refers to the indirect control of others by actors, which guides and restricts the actions of others through formal or informal systems as a medium. (2) Institutional power is reflected in how to design or change decision-making processes, so that some actors benefit more than others. Institutional power transfer refers to the changes of the actors that can indirectly affect the action ability of the target actors. Because of its indirect effect, compared with compulsory power, the change of institutional power may be more concealed and long-term. This examples include the indirect influence exerted by actors on NATO issue formulation and policy priorities, thus affecting decisions on which issues should be included or excluded from the agenda. (3) Structural power involves the mutual composition of actors in direct structural relationships, but it does not involve the exercise of coercive measures in itself. Structural power transformation is formed by affecting the relationship positioning of actors, and then affecting the change of their interaction mode. (4) Compared with institutional power, the operation mode of productive power is more indirect. It focuses on creating and modifying norms, customs and social

identities. By exerting influence on the background knowledge of society, productive power can unconsciously provide the basis for the production or composition of social institutions and identities. According to Foucault, productive power “affects not only what actors do, but also what they think and say.” Productive power transfer works by changing the way in which problems are viewed and dealt with in the multilateral context of actors.<sup>[12]</sup>

If the internal resolutions and universal documents of an international military organization are in line with the interests of the leading country of the organization, the leading country hopes to form the internal resolutions and universal documents into a normative character with appeal/binding within the international military organization through the above four powers. In other words, the internal resolutions and universal documents of regional military organizations, as the new normative basis of soft law, have the call for convergence of interests and moral binding force. In order to build a security mechanism under the collective security framework, member states will strictly implement the relevant provisions of internal resolutions and universal documents of international military organizations. In international practice, internal resolutions and universal documents of international military organizations can be used as soft laws to regulate the operation of overseas military bases accordingly. Taking NATO as an example, the strategic reports and meeting minutes regularly released by NATO headquarters are important norms for the operation of NATO overseas military bases. The *2022 Strategic Concept Report* released by the Secretariat of NATO Member States clearly demonstrates NATO’s purposes and principles, core tasks and values, as well as its strategic objectives in a rapidly deteriorating security environment. According to the *2022 Strategic Concept Report*, NATO member states should coordinate to respond to the military threats after the outbreak of the Russia-Ukraine conflict, strengthen military coordination capabilities, and share military strongholds/facilities to assist Ukraine, so as to defend the values of NATO member states.<sup>[13]</sup> NATO resolutions and universal documents have made specific provisions on the cooperation strategy, national security concept, coordinated defense and military deployment of member states. At the same time, some countries are regarded as “imaginary enemies”. Under the deployment of NATO, the general policy of overseas military bases has been implemented. Therefore, this paper holds that the internal resolutions and universal documents of regional military organizations belong to the soft law of overseas military bases.

### **3. FACTORS AFFECTING THE CONSTRUCTION OF SECURITY AND DEFENSE MECHANISMS FOR OVERSEAS MILITARY BASES**

As mentioned above, the normative basis for overseas military bases is mainly divided into “hard law norms” and “soft law norms”. Hard law norms focus on the “legality” of the establishment of overseas military bases, while soft law norms focus on the “legitimacy” of overseas military bases. According to the normative analysis of overseas military bases, this paper holds that the factors affecting the security and defense mechanism of overseas military bases mainly include the “legitimacy” that follows the provisions of international soft law, which focuses on the “substantive justice” in constructing the security and defense mechanism of overseas military bases. In addition, “legality” that conforms to international hard law focuses on the “procedural justice” of constructing security and defense mechanisms for overseas military bases. Besides, the customs and habits of the host countries of overseas military bases and the concept of domestic legislation are vital factors affecting the construction of security and defense mechanisms of overseas military bases.

#### **3.1. Legitimacy: Compliance with the Provisions of International Soft Law**

Legitimacy has the function of defining the objectives and interests of actors. International soft law norms influence the decision-making mode of the country by formulating the judgment criteria of legitimacy. The legitimacy standards formed in international institutional practice can guide and change the formulation of national strategies. In this case, there may be two types of actors who resist

internalization, namely, strong resistance and “forced belief”. First of all, both powerful and weak countries are affected by an effective social order. Although the functionality perceived by these two types of countries is different, and the powerful countries are relatively easy to bear the higher cost of breaking rules, the consideration of gains and losses has changed for both. Powerful powers find themselves constrained by a legitimized social system and unable to act in their preferred ways, even if they themselves participated in its formulation. Legitimate social structures limit the scope of free action of powerful countries, and so do weak countries.<sup>[14]</sup>

The military strategic needs, domestic political influence and economic interest friction of overseas military bases of leasing countries and host countries are the key factors affecting the development of alliances. First of all, the strategic needs of the leasing country are a necessary condition for the establishment and subsequent development of the alliance. If the leasing country does not have a strong demand to use the base territory of the host country and obtain the strategic support and cooperation of the host country in its strategy with hostile powers, there is no need for the host country to establish overseas military bases in strategic competition. Secondly, it is also indispensable for the alliance to establish overseas military bases for the host country to demand the support of the lending country in dealing with internal and external security threats. Whether the external military threats of the host country are compromised and resolved, or the security needs of the host country fail to get a timely response from the lending country, the alliance relationship linked by overseas military bases may change. Furthermore, the limited negative impact of the host country’s domestic politics on overseas military base relations is another important condition. Even if the host country faces security threats and can get strong support from the leasing country, specific leaders and political groups that have gained power in domestic political development may still choose to sacrifice the development of overseas military base relations based on their domestic political interests. Finally, the absence of major friction in economic interests is a positive condition for the development of the alliance. Given the opposition in the domestic politics of the host country and the limited economic friction between the two countries, the leasing country can obtain the cooperation of the host country for its own strategic needs by providing the host country with the necessary assistance to handle internal and external security threats.<sup>[15]</sup> The legitimacy of overseas military bases needs to coordinate the political conflicts of interests between the leasing country and the host country. International soft law regulates matters related to the “substantive justice” of the security and defense mechanism of overseas military bases based on informal legal instruments or the political tradition/interest distribution pattern of the host country and the lending country. In other words, international soft law norms are an integral support for the legitimacy of the security and defense mechanism of overseas military bases.

### **3.2. Legality: Conformity with the Constitutive Requirements of International Hard Law**

The “legality” of the security and defense mechanism of overseas military bases emphasizes compliance with international hard laws and domestic laws of the countries concerned. From the aspect of international law, the establishment of the security and defense mechanism of overseas military bases should abide by the international legal order based on the *Charter of the United Nations*. According to Article 38 of the *Statute of the International Court of Justice*, the sources of international law mainly include international treaties, international customary law, international judicial precedents and general legal principles, and the establishment of the security defense mechanism of overseas military bases should be based on the sources of international law. Although the existing international law does not stipulate the “legality” as a constituent element of overseas military bases, international treaties such as Article 42 of the *Charter of the United Nations*, which stipulates that the Security Council has the right to take “military blockade and other military actions to safeguard world peace” and Article 3 of the *North Atlantic Treaty*, which authorizes contracting parties to build overseas military bases in allied countries, all explain the “legality” as a constituent element of building overseas military bases.<sup>[16]</sup>

The domestic law of the country concerned is also a crucial indicator to assess whether the security and defense mechanism of overseas military bases conforms to the normative elements. If the personnel of the base leasing country violates the laws of the host country, or the leasing country ignores the relevant constitutional and legal provisions of the host country on “prohibiting foreign troops” and forcibly establishes overseas military bases, the “legality” of the security and defense mechanism of overseas military bases will be flawed.

### **3.3. Conceptual Factor: Recognition by the Host Country**

National interests determine the scale and intensity of military access and participation in actions to safeguard overseas interests. From the perspective of intensity and confrontation, the military’s actions to safeguard the country’s overseas interests include both actions that use force and actions that do not use force. The intensity of military operations depends entirely on the purpose of safeguarding the country’s overseas interests. Generally speaking, the greater the national interests, the higher the level, the more urgent the determination to safeguard the national interests, and the greater the scale and intensity of military operations. If the intensity of military action does not match the purpose to be achieved, that is, the size and importance of the country’s overseas interests to be safeguarded, it is not conducive to safeguarding national interests.<sup>[17]</sup> Hence, the establishment of the security and defense system of overseas military bases needs to meet the international security interests and national security concepts of the host country and the leasing country simultaneously.

The recognition of the host country is a conceptual factor composing the security and defense mechanism of overseas military bases. When the overseas military bases can promote the economic growth of the host country or provide international security public goods for the host country and improve the local public security environment, it is easier for overseas military bases to be recognized by the host country, thus reducing the resistance to the construction of security and defense mechanism of overseas military bases by the leasing country.<sup>[18]</sup>

## **4. CONCLUSION**

Legitimacy, legality and conceptual factors are vital variables that affect the security and defense mechanism of overseas military bases. International soft law is based on the resolutions of international military organizations and universal documents, which coordinate the political conflicts of interests between the leasing countries of overseas military bases and the host countries, effectively safeguarding the “legitimacy” of overseas military bases. International hard law focuses on the “legality” of the security and defense mechanism of overseas military bases, which requires that the acquisition and operation of overseas military bases not only comply with the constituent elements of modern international law, but also respect the domestic laws of the host country. Meanwhile, the conceptual factor emphasizes the host country’s recognition of the base leasing country based on legitimacy and legality. Countries leasing overseas military bases need to coordinate the effectiveness of soft law and hard law based on actual conditions to build a security and defense mechanism for overseas military bases.

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