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INDIVIDUAL RESPONSIBILITY TO THE RECONSTRUCTION OF THE CONCEPT OF SOVEREIGNTY IN THE PERSPECTIVE OF RULE OF INTERNATIONAL CRIMINAL LAW

In recent years, the Afghanistan war and the Russian-Ukrainian war which have seriously threatened the stability of the international order have challenged the two mainstream theories of sovereignty, namely, “outdated sovereignty theory” and “absolute sovereignty theory”. The direct purpose of the rule of law is to stabilize and maintain order, establishing stable expectations for human activities. With the deepening development of the rule of law civilization and the establishment of the International Criminal Court, the concept of the rule of law has transcended regional limitations and formed a universal culture around the world. The concept of international rule of law and rule of international criminal law has been formed and established around the world. Individual criminal responsibility orders individual actors to jointly and severally bear the criminal responsibility in order to realize international fairness and justice, which is essentially a denial of state personality. Sovereignty theory should be interpreted in a new way from the perspective of rule of international law. Only by deconstructing the current “absolute sovereignty theory” and “sovereignty obsolete theory” and constructing a new theory of sovereignty that includes the content of “consensus and appropriate transfer of sovereignty by all countries” can there be room for the construction of the international rule of law, so that state power can be controlled by international laws, and national rights and international order can be better protected.

Key words: individual responsibility, denial of state personality, rule of international criminal law, sovereignty.

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Халықаралық қылмыстық құқықтың үстемдігі тұрғысынан егемендік тұжырымдамасын қайта құрудағы жеке жауапкершілік

Соңғы жылдары халықаралық тәртіптің тұрақтылығына елеулі қатер төндіретін Ауғанстан соғысы және Ресей-Украина соғысы егемендіктің екі негізгі теориясына, атап айтқанда, «ескірген егемендік теориясы» және «абсолюттік егемендік теориясына» қарсы шықты. Құқықтық мемлекеттің тікелей мақсаты – тәртіпті тұрақтандыру, ал құқықтық мемлекет өркениетінің дамуымен және халықаралық қылмыстық соттың құрылуымен заң үстемдігі ұғымы географиялық шектеулерден асып, әлемде әмбебап мәдениетті қалыптастырады. Дүние жүзінде халықаралық құқық үстемдігі мен халықаралық қылмыстық құқықтың үстемдігі тұжырымдамасы қалыптасып, орнықты. Жеке қылмыстық жауаптылық жекелеген субъектілерге халықаралық әділеттілік пен әділеттілікті жүзеге асыру үшін қылмыстық жауапкершілікті бірлесіп және жеке көтеруге міндеттейді, бұл шын мәнінде мемлекеттік тұлғаны жоққа шығару болып табылады. Егемендік теориясын халықаралық құқық үстемдігі тұрғысынан жаңаша түсіндіру керек. Қазіргі «абсолюттік егемендік теориясын» және «егемендіктің ескірген теориясын» деконструкциялау және «консенсус және егемендікті барлық елдердің тиісті түрде беру» мазмұнын қамтитын егемендіктің жаңа теориясын құру арқылы ғана халықаралық ережені құруға орын болуы мүмкін. мемлекеттік билікті халықаралық құқық шеңберінде орналастыруға және ұлттық құқықтар мен халықаралық тәртіпті жақсырақ қорғауға мүмкіндік беретін құқық.

Түйін сөздер: жеке жауапкершілік, мемлекеттік тұлғаны жоққа шығару, халықаралық қылмыстық құқықтың үстемдігі, егемендік.

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Индивидуальная ответственность в контексте переосмысления понятия суверенитета с позиции нормы международного уголовного права

В последние годы война в Афганистане и российско-украинская война, которые серьезно угрожали стабильности международного порядка, бросили вызов двум господствующим теориям суверенитета, а именно «устаревшей теории суверенитета» и «теории абсолютного суверенитета». Непосредственной целью верховенства права является стабилизация порядка, а с развитием цивилизации верховенства права и созданием Международного уголовного суда концепция верховенства права преодолевает географические ограничения и формирует универсальную культуру в мире. . Понятия международного правопорядка и верховенства международного уголовного права сформировались и утвердились во всем мире. Индивидуальная уголовная ответственность предписывает отдельным субъектам совместно и по отдельности нести уголовную ответственность в целях реализации международной справедливости и справедливости, что, по сути, является отказом в правосубъектности государства. Теорию суверенитета следует интерпретировать по-новому с точки зрения международного верховенства права. Только путем деконструкции нынешней «теории абсолютного суверенитета» и «устаревшей теории суверенитета» и построения новой теории суверенитета, включающей содержание «консенсуса и надлежащей передачи суверенитета всеми странами», может быть место для построения международного правила, закона, чтобы государственная власть могла быть помещена в рамки международного права, а национальные права и международный порядок могли быть лучше защищены.

Ключевые слова: индивидуальная ответственность, отказ в правосубъектности государства, нормы международного уголовного права, суверенитет.

Introduction

Since the Enlightenment, people got rid of the immaturity imposed on humans themselves, and the rule of law has replaced the rule of man as the basic way of national governance and the construction of international order. Chairman Xi pointed out: “If good laws are established in one country, then a country will be well governed; if good laws are established in the world, then the world will be well governed.”(Ana Margarida Esteves and Majed Abusalama. 2020:73) The rule of law itself is a highly controversial concept and placing the rule of law in the “international community” and “international criminal field” is even more controversial. The mainstream view in the legal community believes that the rule of law is such a meaning, namely, the established law is generally obeyed, and the law that everyone obeys should itself be a good law. According to this logic, state law surpasses classical legal pluralism through its abstractness and formal rationality, strengthens the universal authority of state law, and constrains state power with international law, thereby providing room for civil liberties and economic development. With the deepening of economic globalization, cultural exchanges between countries have also expanded, and the rule of law has transcended

national borders and become a universal culture. As Sir Arthur Watts pointed out: “The rule of law is the equalizer of domestic power, and the international rule of law is the equalizer of independent sovereignty...Sovereignty must be checked, mainly the prohibition of the use of force and the protection of human rights.”(Amina Adanan.2021:1055) David Walker makes a similar statement in the <The Oxford Companion to Law>. Walker believes: “The rule of law includes the international rule of law or the world rule of law, and the point is to limit power and resolve disputes.”(Matthew Sect.2021:263) In addition, surrogate terms for the international rule of law— “rule of law among nations”, “global rule of law”, “universal rule of law”—and other terms appear frequently in international law writings. When former UN Secretary-General Kofi Annan formally proposed the concept of international rule of law(Sher Ali.2020:243) in official documents of the United Nations, international rule of law has become the proposition of the times.

The importance of any proposition lies not in whether it is logically self-consistent, but in its practical effect. Although the international rule of law has become the mainstream discourse in the international community, since the establishment of the Vienna system, national sovereignty has been regarded as the foundation of international relations.

Because sovereignty is supreme and is only limited by prudential factors, international law, which acts as “soft law”, cannot effectively curb the deliberate violation of international law by sovereign states. In order to maintain human well-being and the stability of international relations, the International Criminal Court came into being. The <Rome Statute> clarifies the principle of individual criminal responsibility to “pierce the veil of the state” and hold sovereign actors accountable for violations of IHL, thus making international law, especially international criminal law, practical and enforceable. The purpose of international criminal law is to protect human well-being and international order, and the direct purpose of the international community in building the International Criminal Court is to establish a state of the rule of law in the international criminal field—the rule of international criminal law. Because the rule of law is not only a long-running quasi-constitutional framework containing an atmosphere of legitimacy and legal order, but it also serves as a value orientation that co-exists with concepts such as human rights, justice, freedom, and democracy. Therefore, the rule of international criminal law is not only the orientation of legal theory research, but also the necessity of historical development. Annan passionately said that the establishment of the International Criminal Court is an important step towards universal human rights and the rule of law when the ICC was established. The rule of law that Annan refers to is the rule of international criminal law.

Theoretical Discussion and Previous Studies

1. Sovereignty constrains the exercise of the ICC's jurisdiction

Mainstream jurists and their followers are accustomed to defining politics as the opposite of justice. According to this logic, the “concept of sovereignty” that has an ontological status in politics is in tension with the “rule of international criminal law”. As the international criminal jurist Antonio Cassese said: “You either support the international rule of law or you support national sovereignty. In my opinion, the two are incompatible.”

Jurisdiction is the lifeline of the ICC, and the Court is the basic force for the realization of the rule of international criminal law. When the ICC was established, the <Rome Statute>(hereafter we call it Statute) clearly stipulates that the ICC adopts the “principle of complementarity”, which means that the domestic courts of the contracting states have

priority jurisdiction over the case. The International Criminal Court can exercise jurisdiction over crimes under the Statute unless the state with jurisdiction is “unwilling” or “unable” to actually investigate or prosecute. This article argues that the Statute establishes this jurisdictional principle based on the following two reasons.

First, there is no supranational organization over the international society, and the international community is a “society of nations”(Josef Thesing,2005:98). In this society, norms of international law exist, but these norms are the product of mutual compromise and voluntary acceptance among states, and are binding on contracting states based on the consent of states. Thus, states are pursuing goals set for themselves and bound by voluntary implementation regulations that co-exist in this invisible international community and that rarely conflict with each other. It should be noted that when the international community lacks of the authority of supranational organizations, the interests of nations conflict, for sovereignties are only limited by factors of convenience and prudence, and the role of international law is limited.

Second, the embodiment of the principle of sovereignty. Jurisdiction is the embodiment and important content of a country's sovereignty. The judicial organs of a country have jurisdiction over crimes committed on its territory or by its nationals. The jurisdiction of an international or regional court outside a country that has been established or will be established for a considerable period of time in the future can only arise from the consent or assignment of the sovereign country that established the court, and cannot arise automatically or directly. At the same time, since criminal jurisdiction often involves a country's national security, the fundamental interests of citizens, and the mainstream values of the country concerned, and other major interests, therefore, generally speaking, countries will cherish and protect their criminal jurisdiction much more than their civil jurisdiction, and countries will be more cautious when transferring criminal jurisdiction.

2. The Containment of Two Sovereign Theories on Rule of international criminal law

“Sovereignty” is a complex issue that has been debated in academia for centuries, and no unified opinion has been formed so far. The emergence of national sovereignty can be traced back to the earliest combination of sovereignty and kingship. As modern legal professionals explored in practice

to combine monarchical power with feudal lordship and governance in Roman law, the sovereign status in the modern legal system was established (David Walker.2003:990). Sovereign institutions are still an important cornerstone on which the international system rests. Mainstream academia generally affirms the importance of the sovereign system, so the theory of sovereignty has developed a relatively clear internal stipulation. However, the theory of sovereignty is historical and changing, and has formed many schools. This article will discuss two influential theories of sovereignty in the mainstream discourse, and point out their restraint on the rule of international criminal law.

First, the doctrine of “absolute sovereignty” and its containment of the rule of international criminal law. The “absolute sovereignty theory” was first put forward by the French scholar Bodin. In Bodin’s logic, sovereignty means the highest power within a country, which is essentially eternal and absolute. It is precisely because of this characteristic of sovereignty that a country can be distinguished from other groups such as families and tribes. Grotius, the father of international law, is based on absolute sovereignty, and advocates that sovereignty is a kind of ownership enjoyed by the sovereign, similar to the ownership of goods by individuals. He argues: “A power that is not subject to the legal control of others so as not to be invalidated by the exercise of another’s will.” (Bruce Broomhall.2003:1) The “absolute sovereignty theory” was finally carried forward after the establishment of the “Westphalian system” and became the fundamental theory of modern international law. The theory of absolute sovereignty can be summed up as indivisible, unshareable, absolute and unrestricted absolute power. This “theory of absolute sovereignty” is inherently international anarchist, it is believed that the international community is a field of constant conflict and power struggles, so there are no moral norms that can bind states in the international community, only legal rules that states want to be bound by can restrict state behavior. In other words, each country pursues its own interests and sets its own goals, limited only by factors of convenience and prudence. Obviously, in the logic of the theory of absolute sovereignty, the law only works under the conditions that conform to the interests of the state, and can’t establish the supremacy of the law. And unless in the international community “exists a balance of power...the world will be plunged into chaos and conflict, or controlled by a single superpower.” (Cherif Bassiouni.2006:30) It can be

seen from this that the international community under the guidance of the “absolute sovereignty theory” cannot leave room for the rule of international criminal law.

Second, the “Sovereign Obsolete Theory” and its containment of the rule of international criminal law. The “sovereignty obsolete theory” is closely related to the policy of “neocolonialism” implemented by some Western powers whose purpose is to whitewash the behavior of Western powers interfering with the sovereignty of other countries by taking advantage of globalization. The “sovereign obsolescence theory” can be traced back to Jessup and Jenks after World War II. Based on the international background after World War II, they actively advocated these propositions, namely, weakening of national sovereignty, the establishment of a new international society based on individuals, and the active expansion of the scope of international law. Then, under the interpretation of the American jurist Louis Henkin, the “Sovereign Obsolete Theory” formed a system. Henkin said: “The concept of sovereignty was formed in the age of a national and kingdom system, not a state system, The laws of that time were nothing more than the monarch’s plaything, so sovereignty was an internal concept drawn from the relationship between monarch and his subjects, not an abstract state necessary or appropriate for what we call the state. It is unnecessary or inappropriate to use it to denote the external nature of the state.” (Louis Henkin.1996:31) And in Kazakhstan there are some scholars hold the same opinion as well (Г. Джумаева, А. Бобохонов.2022:23). Therefore, Henkin constructed a theoretical system of sovereign nihilism by denying “absolute sovereignty”, that is, “sovereign obsolescence theory”. Henkin’s theory of sovereignty breaks the containment of the international rule of law by the “absolute sovereignty theory”, and meets the requirements of the times for the deepening of exchanges between countries under the background of economic globalization. At the same time, it also conforms to the nature of international law that sovereign states reach consensus and transfer sovereignty. But the “sovereignty obsolete theory” itself is too radical, because sovereign nihilism despises sovereignty, which is harmful to maintaining the stability of the international order and safeguarding the interests of developing countries. This can easily lead to a situation in which the big bully the small and the strong prey on the weak in the international community. For example, Western developed

countries often interfere with the sovereignty of other countries under the pretext of “human rights over sovereignty”. But the state does not eliminate the narrow selfishness of human pursuit of interests because of its collective nature, because the collective evil is the geometric multiplication of the individual evil. Therefore, it is unrealistic to rely on the will of a superpower to establish the rule of international criminal law, and a sovereign state is likely to affect the independent management of other countries’ domestic affairs and the effective maintenance of the interests of the people based on their interests. This runs counter to sovereign equality in the rule of international criminal law.

Results

It has been pointed out above that the theory of sovereignty is a fundamental element in containing the rule of international criminal law. With the continuous development of the concept of the rule of law, and the wake-up call of “absolute sovereignty theory” and “sovereignty obsolete theory” to the world, the international community has gradually deconstructed the concept of sovereignty to make it conform to the inherent requirements of the rule of international criminal law.

The international community “realizes that people of all countries are interdependent”, and when wars or mass genocide or human rights violations break out, the international community condemns the actions of the relevant countries more from the perspective of international morality, or pursues the responsibility of the countries from the perspective of public international law, but the country as a political entity cannot bear criminal responsibility (Hugo Grotius.1925:28). And limited by the <Vienna Convention on Diplomatic Relations> and a series of diplomatic agreements, diplomatic immunity makes it impossible to realize the individual responsibility for exercising state power and determining its role in state policy. Adhering to these understandings, the ICC regards the pursuit of individual international criminal responsibility as the core task of the Court, with a view to achieve the goal of crime prevention and establish the international criminal law in the international community.

1. The essence of individual criminal responsibility is the denial of state personality

Legal personality exists only in its rights and obligations, and the rights and obligations of states in international law are no different from those of

private individuals, so their legal personality is no different from private personality. So what is state personality? We can find the answer from Rousseau’s social contract theory. As he pointed out in his book, this public personality formed by the union of all individuals, formerly called the city-state, is now called the republic or polity; when it is passive, its members call it a state; when it is active, it is called the sovereign; and when it is compared with its kind, it is called a regime. Hobbes also believed that the artificially created “Leviathan” was a “fictitious person”, but Hobbes believed that sovereign constituted the “fictitious soul” of the whole artificial Leviathan that obtained life and power, “as God can create man, so can man create a fictitious man.” (MingHong Yang, ZhouBo Wang.2022:113) Through the demonstration of political scientists, the state has the same personality as individuals who generally have rights and obligations in law. Although the above theories have laid a theoretical foundation for the state to assume criminal responsibility, the theory of sovereign immunity has also set up obstacles for investigating the criminal responsibility of sovereign actors. “Probably the most common use of the word sovereignty is sovereign immunity—immunity from law, immunity from scrutiny, immunity from justice,” (Louis Henkin.1996:31) Louis Henkin noted.

As a fictional personality in international law, the state usually acts independently in its own name. It is undeniable that under certain circumstances, individuals who represent, support or act in the name of the state are likely to abuse state sovereignty. Such as the historical tragedy caused by fascism. In this case, if only the state is investigated for criminal responsibility, on the one hand, it will be limited by the sovereign equality of the state and cannot be realized. On the other hand, it is ineffective in condemning and preventing state crimes, and allows individuals behind the state to go unpunished. Under such circumstances, the Nuremberg Tribunal, the Tokyo Tribunal, and the ICC after World War II have all established the principle of individual criminal responsibility, in order to pierce the veil of national sovereignty, deny the national personality, and pursue individual criminal responsibility. The establishment of individual criminal responsibility has uncovered the veil of sovereignty shrouded in the state, and the individuals hidden behind the state will be held accountable. Therefore, a new form of responsibility-taking—individual criminal responsibility—has emerged in addition to state responsibility.

The essence of individual criminal responsibility is to pierce the veil of state sovereignty and to investigate the exerciser of sovereign power behind the state, in short, to deny the state personality. We can define the system of national personality denial as follows: The so-called national personality denial system means that individuals who represent, support or act in the name of the state break through the necessary limits by abusing their ruling power, causing damage to the sovereignty or international common interests of other countries and thus constitute an international crime. Therefore, international law obliges the individual actor to bear international legal responsibility for his actions jointly and severally in order to achieve a system of international fairness and justice.

2. Deconstruction of Sovereignty Theory from Individual Criminal Responsibility

With the recent rise of the national self-determination movement, the overemphasis on the supremacy of sovereignty and the profound influence of the concept of nationalism on the principle of state sovereignty, the implementation of many state actions seems to go beyond the scope of law. The absolute sovereignty theory has subsequently gained widespread support in the third world countries. But “absolute sovereignty theory” and “sovereignty obsolete theory” will both have great negative effects, either ignoring the existence of sovereignty, or amplifying the function of sovereignty, and covering sovereignty with a veil of morality and law. With the end of the Cold War and the disintegration of the bipolar pattern, the economic, political and cultural interdependence of countries has gradually increased, and globalization has redrawn the boundaries of political power. The emergence of transnational power has had a profound impact on international law and international politics in terms of functions and concepts. At present, national interests and international law co-exist and form a community at multiple levels. International law is not simply a tool used by countries to safeguard national interests at all levels. In fact, the construction and maintenance of an international legal system itself has become the national interest of most countries. Therefore, neither the “absolute sovereignty theory” nor the “sovereign obsolescence theory” can adapt to the contemporary world with the rapid development of international rule of law, from the logical consideration of constructivism, the international law based on the interaction between states further shapes the state and national

interests. Sovereignty is the core element of a state as a state. The system of denying state personality is closely related to the theory of sovereignty. The establishment of individual criminal responsibility confirms the new trend of the theory of sovereignty from the perspective of international law, that is, on the one hand, the basic principle of international law should be respected, and on the other hand, the supremacy of the theory of absolute sovereignty should be changed, and a more peaceful but with substantial legal effect should be adopted instead. Chinese scholar He Zhipeng pointed out: “The state itself has no ultimate or perfect meaning; Sovereignty is only the result of human beings’ pursuit of order and dependence on authority in society, and has no sacred and immutable attributes in itself.....Although the essence of sovereignty is command and control, it is not insurmountable, indivisible, and inalienable, nor is it an uncontrolled and irresponsible power that must be constrained. Only in this way can the country’s independence and the basic order of the international community be maintained.”(ZhiPeng He, XiaoXu Wei.2003:21) This theory of sovereignty abandons the excessive demonstration of sovereign power in the “absolute sovereignty theory”, and avoids the sovereign nihilism in the “sovereign obsolescence theory”, which regards sovereignty as historical, fluid, divisible and transferable, while recognizing its cornerstone status in international relations. According to this logic, sovereignty is no longer absolute and indivisible, but a system of authority and power. Only when this system is accepted by the world can peace in the international community be sustained. Moreover, sovereignty is not a fixed layer, but constantly evolves with the development of the times and innovation in international governance technology.

3. The Role of “New Sovereign Theory” in the Construction of Rule of international criminal law

Through the above discussion, the “new sovereign theory” can be summed up as-sovereignty can be transferred. International law is the transfer of sovereignty. When a sovereign state surrenders a portion of its sovereignty, the international community can legislate within its authorized scope, and this legislative action provides the possibility for the International Court of Justice to apply international law on an infinitely broad scale. The international rule of law has also become a foreseeable future. The realization of rule of international criminal law requires international

power to implement international criminal law. If there is no enforcement force or authority, then international criminal law will become a castle in the air, and the rule of international criminal law will not be realized. How to realize the authority of international power? The “New Sovereign Theory” provides us with a practical approach, namely the transfer of sovereignty. When the generation of international power depends on the establishment of international law such as the conclusion of treaties on the basis of consensus, the effectiveness of international law in international governance can be truly brought into play. Because the new theory of sovereignty not only respects the sovereign equality of states and the independence and supremacy of sovereignty in the international community, but also takes into account the reality of deepening ties and dilution of sovereignty among countries in the context of globalization, leaving room for the construction of rule of international criminal law.

First, the “New Sovereign Theory” demonstrates the supremacy of state sovereignty and is easily accepted by sovereign states.

The “New Sovereign Theory” emphasizes the separation of sovereignty and sovereign actors, and recognizes that sovereign actors should bear criminal responsibility, and this content reflects the “New Sovereign Theory” to demonstrate sovereignty. First of all, the new sovereign theory pays attention to the connection between countries, so that the sovereign act is no longer a unilateral action, but more of an international cooperation. In other words, sovereign acts are considered to have international legitimacy only if multilaterally permitted; Second, the “New Sovereign Theory” recognizes that the personalities of sovereign actors and sovereign states can be separated under certain circumstances, the national personality denial system can separate the heads of state who are hidden behind the national sovereignty barrier and have decision-making power from the acts of national sovereignty, and realize the internal purification of the operation of sovereign power by imposing penalties on them; Finally, due to the interconnectedness and constraints between states, the exercise of sovereign power has been incorporated into a more stable and orderly international governance mechanism. By denying the national personality and prosecuting the criminal responsibility of the actors of sovereign power, international crimes can be effectively suppressed, criminal acts infringing upon the sovereignty of other countries can be punished, and international common interests can be maintained. At the same

time, punishing individuals who hide behind sovereignty can also prevent the good image of the country from being detracted from individual crimes. The “New Sovereign Theory” that denies the state’s personality through the principle of individual criminal responsibility, although it limits the autonomy of sovereignty on the surface, it essentially places the sovereignty in a safer and more orderly environment, preventing the state’s sovereignty from being arbitrarily manipulated by other states.

Second, the “New Sovereign Theory” limits the arbitrariness of state sovereignty and creates a favorable environment for rule of international criminal law.

With the development of economic globalization, the current international law is developing in the direction from “international law of coexistence” to “international law of human rights”. Due to this trend, international criminal law has flourished. The development of human rights law relies on a stable international order, and the stability of the international order needs to be realized by establishing its universal authority by international law, and the construction of the international legal system depends on the transfer of sovereignty. According to the theory of scholar He Zhipeng: “There is a triangular deconstruction among international power, state power and state rights in the international legal system. During the international conclusion of state rights, many states jointly transfer some state powers through consultation to make the international community form international powers; In the operation stage of international power, international power imposes constraints on state power to promote state rights, that is to say, there is a mutual transformation relationship between state rights and state power.”(He Zhipeng,2022:157) It is precisely because of the existence of the transfer of sovereignty that when state rights or international common interests are violated by state power, the system of state personality denial in the “New Sovereign Theory” can provide judicial relief. The exercise of this kind of international power is completed by the International Criminal Court with a supranational nature. In this sense, the “New Sovereign Theory” imposes certain restrictions on national sovereignty to a certain extent. It should be pointed out that this limitation is established through the concluding of international law through the transfer of sovereignty by states. So how does limiting sovereignty contribute to the rule of law in international criminal law? First, state sovereignty

is bound by international law, and its exercise is no longer arbitrary, but must be exercised within the minimum limits of international law. Because in nowadays neither state can't refuse to accept the basic international rules for the reason of sovereignty, for international cooperation obliges the state to accept some minimum obligations of international law. The "minimum obligation" here is international jus cogens; Secondly, the exercise of national sovereign power should be incorporated into the framework of international rights, which should be judged by international powers. It should be pointed out that international powers can take into account basic human rights, international common order, peace and security, etc., when judging sovereign acts, constantly expand the regulatory role of international law in the international community, and incorporate sovereign acts into the framework of international law. In this way, international law has acquired an authoritative position in the international community, laying the foundation for the establishment of the international criminal rule of law.

To sum up, the principles of restricting sovereign power and manifesting state sovereignty are conflicting in form, but they are unified in essence, just like the dialectical unity of the two sides of a coin in the structure of international governance. The result is bound to further safeguard national interests and international common interests.

Conclusion

The theory of national personality denial is a theory developed after the post-war international law began to regulate state behavior and pursue individual criminal responsibility, and it is a form of restriction on state sovereign power. The traditional "absolute sovereignty theory" and the later "sovereignty obsolete theory" have been proved by practice that they cannot conform to the historical

development trend and realize the construction of the international rule of law. Therefore, an appropriate theory of sovereignty must contain the transfer and limitation of sovereignty. As American scholar Alexander Winter said: "If the mutual recognition of each other's sovereignty by states is regarded as a right, this right is not a feature of individual states, but is shared by many states; The common expectation of the system is that states should not take the lives and liberties of each other's people; International law is actually a part of international politics. Despite the lack of a unified law enforcement agency, all countries should abide by international law, and countries are increasingly recognizing the binding force of international law. Competition between countries is also limited by the sovereign structure recognized by international law."(ZhiPeng He.2021:119) Therefore, the new theory of sovereignty can only make national sovereignty develop in the direction of being free from morality and law, and turn it into a more peaceful evaluation standard with substantial legal effect and an institutional system that can be transferred through negotiation. The cornerstone can effectively solve the complex problems in the current international governance process and safeguard national rights and international common interests.

With the continuous deepening of the international governance level, the theoretical update of the principle of national sovereignty has also become an inevitable requirement of the international criminal law. The creation of international law is actually the transfer of sovereignty in the process of the conclusion of state power. The international power formed by the transfer in turn imposes constraints on state power and imposes sanctions on its illegal acts. In this way, national sovereignty is placed in the framework of international law, and the establishment of international rule of law and rule of international criminal law has become inevitable.

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