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RESEARCH ON THE «THIN» AND «THICK» OF IMPUNITY AND ITS SOLUTION

When discussing the issue of impunity, the ICL academia lacks attention to the concept of "impunity". The understanding of the concept of impunity is limited to its damage to the value and function of criminal law, and ignores the ontological significance of the principle of equality to it. Therefore, it is impossible to explain the fundamental reason why the ICC cannot "end the history of impunity". This paper examines the three dimensions of "impunity". First of all, in the ontological dimension, this paper points out that impunity should be interpreted at "thick" and "thin" levels: "Thin impunity" focuses on the value and punishment function of ICL; "Thick impunity" means that the root cause of impunity is the failure to guarantee "equality before the law". Secondly, from the perspective of epistemology, it is pointed out that the reason why the ICC can't guarantee equality before the law lies in the "selectivity" of the court – "legal selectivity" and "political selectivity". Finally, from the perspective of methodology, it is pointed out that the current situation of the international society in the horizontal/vertical dual structure and the structural defects of the Court decide that the ICC can't end the impunity caused by the "absence of equality", and advocates the introduction of the pioneering but little-known "International Commission against Impunity in Guatemala (CICIG)" model, which provides an effective way to solve the problem of impunity.

Key words: Impunity; Equality; ICC; Rule of Law; Selectivity; CICIG mode.

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Жазасыздықтың «кең» және «тар» түсіндіруін зерттеу және оның шешімі

Жазасыздық мәселесін талқылағанда халықаралық қылмыстық-құқықтық академия «жазасыздық» ұғымына назар аудармайды. Жазасыздық ұғымын түсіну оның қылмыстық құқықтың мәні мен қызметіне зиян келтірумен шектеліп, оған теңдік принципінің онтологиялық мәнін елемейді. Сондықтан Халықаралық қылмыстық соттың «жазасыздық тарихын тоқтата алмайтын» негізгі себебін түсіндіру мүмкін емес. Бұл жұмыс «жазасыздықтың» үш өлшемін қарастырады. Ең алдымен, онтологиялық өлшемде бұл жұмыс жазасыздықты «жуан» және «жіңішке» деңгейде түсіндіру керек екенін көрсетеді: «Жіңішке жазасыздық» халықаралық қылмыстық құқықтың құндылық және жазалау функциясына назар аударады; «Жазасыздықтың» түпкі себебі «заң алдындағы теңдікке» кепілдік бермеу екенін білдіреді. Екіншіден, гносеология тұрғысынан Халықаралық қылмыстық соттың заң алдындағы теңдікке кепілдік бере алмауының себебі соттың «таңдамалылығы» – «заңды таңдау» және «саяси таңдаулылық» деп көрсетілген. Соңында, әдіснама тұрғысынан халықаралық қауымдастықтың көлденең/вертикалды дуальды құрылымдағы қазіргі жағдайы және Соттың құрылымдық кемшіліктері Халықаралық қылмыстық соттың жазасыздықты тоқтата алмайтындығы туралы шешім қабылдайтыны атап өтіледі. теңдіктің жоқтығы» және жазасыздық мәселесін шешудің тиімді жолын ұсынатын пионер, бірақ аз танымал «Гватемаладағы жазасыздыққа қарсы халықаралық комиссия (CICIG)» үлгісін енгізуді жақтайды.

Түйін сөздер: жазасыздық; Теңдік халықаралық сауда палатасы; Заң үстемдігі; Селективтілік; CICIG үлгісі.

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Исследование безнаказанности в «широкой» и «узкой» трактовках и его выводы

При обсуждении проблемы безнаказанности международное сообщество криминологов не уделяет достаточного внимания концепции «безнаказанности». Понятие безнаказанности ограничивается тем, что оно наносит ущерб ценностям и функциям уголовного права, игнорируя при этом само значение принципа равенства, и поэтому не может объяснить, почему Международный уголовный суд не может «положить конец истории безнаказанности». В настоящем документе рассматриваются три аспекта «безнаказанности». Во – первых, в онтологическом измерении в настоящем документе отмечается, что безнаказанность должна интерпретироваться на двух уровнях: «тонкая безнаказанность» фокусируется на ценности и карательной функции международного уголовного права; «Серьезная безнаказанность» означает, что основной причиной безнаказанности является неспособность гарантировать «равенство перед законом». Во – вторых, с эпистемологической точки зрения отмечается, что причина, по которой МУС не может гарантировать равенство перед законом, заключается в «избирательности» суда – «избирательности права» и «политической избирательности». И наконец, с методологической точки зрения, отмечая, что нынешнее состояние международного сообщества в рамках горизонтальной / вертикальной двойной структуры и структурные недостатки Международного уголовного суда обусловливают его неспособность положить конец безнаказанности, порождаемой « отсутствием равенства», Она также выступает за внедрение новаторской, но малоизвестной модели Международной комиссии по борьбе с безнаказанностью в Гватемале, которая является эффективным средством борьбы с безнаказанностью.

Ключевые слова: безнаказанность; Равенство Международная торговая палата; Верховенство права; Избирательность; Модель CICIG.

Introduction

The preamble to the Statute states that the purpose of the ICC is to “end the history of impunity”. The preamble is a common part of important international treaties. Its main role is to explain the background and purpose of the parties to the treaty, and to reflect or emphasize the important principles followed or contained in the specific treaty to a certain extent, so is the preamble of the Statute. Facing of the frequent mass violations of human rights in the post-cold war era, while due to various reasons, those who are primarily responsible for crimes endangering world peace and well-being are rarely punished. The international society expects to establish a unified and independent international criminal justice institution to punish and prevent international crimes and end the history of impunity. However, like other judicial institutions, the ICC isn’t a perfect design, and over time, the international society has questioned its legitimacy and its ability to achieve “impunity”. For example, some scholars believe that “the implementation of the aim of the ICC of ‘ending the history of impunity’ can’t eliminate the crisis of the legitimacy of the Court, because it is at the expense of other values of the Court, such as equality.”(Celestine N. E.2016:449) This Art. believes that the ICC has only been established for more than 20 years, and it is too early to judge its overall ability to end impunity. However, if the international society didn’t conduct in-depth discussion on the concept of “impunity”, it wouldn’t be able to improve the ability of the ICC to fight impunity. At present, the study of the concept of “impunity” by the international society hasn’t yet started, as Mark Drumbl said: “In political and academic discourse, the widespread use of the word impunity is in sharp contrast to its theoretical level.”(Mark Drumbl.2020:238) Therefore, the theoretical study of the concept of “impunity” is not only the need of the development of criminal law theory, but also provides theoretical guidance for the Court to improve its ability to fight impunity.

Theoretical Discussion and Previous Studies

In the theory field of ICL, impunity is a political and legal order issue. Louis Henkin, an international jurist, pointed out that “international law is the normative expression of international politics... the purpose of law is to establish and maintain order... and even further promote other social values.”(Louis Henkin.2004:3) In Louis Henkin’s logic, law should not only be understood from the normative dimension, but also explore its political value connotation, which means that “impunity”

must also be understood from the normative and political values. This paper intends to distinguish the concept of "impunity" into "thick impunity" and "thin impunity" by means of the critical jurist Mark Tushnet's method of distinguishing "thick" and "thin" constitution- Tushnet uses "thick constitution" (normative/legal value) as a tool to realize the research paradigm of "thin constitution" (political value/moral value), which conforms to the basic framework of Louis Henkin's interpretation of international legal norms.

1.Thin impunity

"Thin Impunity" means that in the normative dimension, the ICC has failed to try or punished crimes, thus damaging the values and functions of ICL, and the norms of ICL have been nullified. The ICL and its coercive force bring everyone into the rule system of order, so that everyone's legitimate interests are respected. Such strict norms and strict system can ensure the realization of specific values such as human rights and freedom as well as the functions of ICL. However, when the perpetrator violates the national criminal law and is not punished or even tried, the value and function of the ICL will be absent. First of all, in the sense of the intrinsic value of punishment, impunity means the destruction of the legal order and political failure, because it means that the basic judicial justice – "give it what it deserves"(H. Morris.1968:498) – is abandoned. Secondly, in the sense of punishment tools, punishment has the tool value of realizing the external benefits of "deterring crime, reforming criminals, and preventing crimes in general". However, the realization of these external values requires the force to ensure the certainty and timeliness of punishment, and the frequent occurrence of impunity directly leads to the failure to realize the above values. In addition, in the normative dimension, impunity is not only the failure to sentence the offender, but also the failure to try the offender in a broader sense. Because of the openness of the trial, the external value of punishment doesn't need to completely depend on punishment, but can also be realized through criminal trial or other ways.

This Art. believes that the understanding of impunity in the normative sense (the international mainstream view) is too narrow. Although this interpretation may cover the important use of this concept and provide an important reason for the international society to pay attention to the crime of "penalty vacancy" or "trial vacancy", the understanding focusing on the value of criminal law can't provide a sufficient reason for the international society to "why it is so concerned about impunity". Because of the limited rationality and resources of the ICC, the international society could tolerate a certain degree of impunity, as some scholars said: "As long as a sufficient degree of punishment or prosecution to achieve the goal of punishment (maintain the value and function of criminal law), a certain amount of impunity will not bring major problems to the legal order."(Aaron Chalfin, Justin McCrary.2017:8) Therefore, it's impossible to fully grasp the whole content of impunity only from the normative dimension, especially to explain why the international society is so concerned about impunity. Therefore, it's necessary to understand impunity "thickly" from the dimensions of political justice and moral values.

2.Thick Impunity

"Thick impunity" focuses on understanding impunity from the perspective of political justice and moral values. It mainly focuses on the concept of equality before the law rather than the value of punishment. When there is a huge gap between punishment and crime, or when the crime is not prosecuted or punished, the international society will doubt the value of punishment or criminal law. However, it should be noted that the reason for the doubt of the international society is not only the absence of punishment, but also the departure of the principle of equality in ICL. For example, the claim of "Africa monopolizes international conflicts" is far from the shock of complacency that "this is not a court set up to try the British Prime Minister or the President of the United States"! This shows that when the source of impunity is that there is no equality before the law, we are more concerned about the issue of impunity.

The political failure of the absence of substantial and formal equality before the law is mainly reflected in two ways: unable and unwilling. "Unable" means that the perpetrators belong to groups beyond the reach of the law, thus resulting in impunity caused by the inability of the law to prosecute or punish. In this regard, people aren't concerned about the importance or value of punishing these crimes, but are angry that some social groups or individuals are rarely prosecuted or punished for their crimes, because they have greater power than ordinary criminals. For example, when the British Foreign Secretary Robin Cook asked the media whether the British Prime Minister would worry about the ICC's prosecution of war crimes committed in

Afghanistan, he said scornfully: "The ICC will never try the British Prime Minister or the President of the U.S.A." This naked idea of privilege not only violated the value of ICL, but also showed that only when the situation of impunity includes that certain groups or individuals have privileges beyond the law, can the international society express strong anger and concern about impunity. "Unwilling" refers to the impunity caused by these reasons that the victims belong to the less important groups defined by the court or the law, so when the rights of these groups are violated, the crimes violating their rights are usually not prosecuted. Such impunity means discrimination through legal practice, that is, failure to punish or prosecute certain crimes, which in fact produces "second-class citizens" in law. For example, despite the strong opposition of the international society, the OTP refused to investigate the war crimes (massacre) committed by the British army in Iraq. The reason given by the Prosecutor was "the number of killings is not enough, so it is not serious enough"! In contrast, the OTP launched an investigation procedure against the same situation in Kenya.(William Schabas.2010:550) In this regard, the failure of political equality isn't determined by the fact that criminals are beyond the status of the law, but by the fact that victims are not considered equal and discriminated against by the law.

To sum up, when some individuals and groups are beyond or below the scope of legal regulation, this fact destroys the reasonable imagination of the international society on legitimacy, and also violates the rule of law practice of the nations. Because the basic premise or minimum threshold of the concept of legality and the rule of law is that everyone shall be equally treated before the law.(John Rawls.2009:47) If some individuals or groups aren't subjected to the restriction or protection of ICL, "most basic expectations of the basic values and social behaviors (contained in ICL)"(Alice Ristroph.2013:117) of the international society will fall. When this expectation is broken, the international society will face an urgent political order problem, because the rule of law, rather than the power of specific individuals or groups, is the most basic political expectation of the international society, and may also be the only way for the international society to experience freedom. Therefore, only by thinking about impunity in the perspective of the "principle of equality" can we understand why we accept limited rationality and "thin impunity", but always feel angry at "thick impunity", because "thick impunity" is not only related to the realization of the value and function of criminal law, but also related to the life experience of individuals or groups in the social and political order.

Results

Impunity can't be avoided at the domestic or international level, which is determined by the limited rationality of human beings and the limited judicial resources. However, the ICC which is unable to solve the problem of impunity is based on the "lack of legitimacy" caused by "equal absence". In ICL, the link between ending the history of impunity and creating a legal environment is obvious. As the political philosopher Paul Kahn said, "The fight against impunity is largely understood as an effort to replace the language of power with the language of law."(Paul Kahn.2000:2) In this logic, the impetus for the establishment of the ICC is not only for the ICL to prevent international crimes, condemn crimes or give corresponding punishment to crimes, but also that the establishment of a permanent court will help to create a rule of law environment, so that human rights are not vulnerable to the impact of power emergencies, but are protected by the legal rules equally applicable to all. What could be seen from the above is that the ability of the ICC to end the history of impunity is largely up to its ability to solve the problem of equality before the law. However, the ICC is subject to many restrictions in its legal basis, structure and political dimensions, which urge the OTP to act in a highly selective manner, as a result, the court mainly sued those who were called "low-cost defendants"(Máximo Langer.2017:6) by Máximo Langer. For this reason, although the ICC has made significant contributions to international humanitarian law and the rule of international law, its "selective" prosecution model is equivalent to the establishment of double judicial standards – a serious violation of the principle of equality, resulting in frequent impunity.

1. Legal Selectivity of the ICC

The process of selecting situations for the Court is clearly stipulated in the Statute. According to art. 18 of the Statute, the Court needs to select which situations to conduct preliminary review and investigation. Then art. 54 of the Statute gives the prosecutor the discretion to further choose whether to investigate or prosecute the situation. These two provisions of the Statute seem to endow the Court with extremely strong independence and enable the ICC to choose in a way that doesn't

harm the "purpose of ending impunity". However, paradoxically, the authorization of the SC in Art. 13 and 16 of the Statute harms the independence of the Court.

First, Art. 13 (b) of the Statute stipulates that "the SC may act under Chapter 7 of the <Charter of the United Nations> and submit to the Prosecutor a situation indicating that crimes have occurred". The original intention of this legal design is not only to consider that the SC has the function of maintaining world peace and security, and "to avoid the establishment of ad hoc tribunals by the SC"(Li Shiguang, Liu Daqun, Ling Yan.2006:187) damaging the authority of the ICC, but also to make up for the "complementary jurisdiction" of the ICC, the same with the limitations of the ratione termporis, ratione loci, ratione personae, ratione materiae. It attempts to expand the jurisdiction of the ICC by allowing the SC to transfer situations, thus eliminating impunity and maintaining international justice. However, from practical experience, there is a risk of "damaging the credibility and moral authority of the Court"(Li Shiguang, Liu Daqun, Ling Yan.2006:187) in the design of the jurisdiction of the ICC authorized by the Statute to trigger the ICC's jurisdiction by Security Council as appropriate. Because although the Statute gives the prosecutor the discretion to decide whether to start investigating the situation submitted by the SC and maintains a considerable degree of freedom (Art. 54 of the Statute), well, the reality is that the permanent members of the SC (mainly the U.S. and the UK) often judge based on their own interests, either they do not submit the situation or they refuse to submit the investigation that may endanger their own interests or the interests of their allies. For example, Human Rights Watch stated that the UK and the U.S. committed serious war crimes and crimes against humanity when invading Afghanistan and Iraq, and Israel also committed war crimes in the Middle East. Human Rights Watch.2016) However, as permanent members of the SC, the UK and the U.S. hadn't submitted the situation endangering the interests of themselves and their allies to the jurisdiction of the ICC, so that the scholar Celestine pointed out indignantly: "The SC didn't exercise this power fairly, but only used it to target the weaker countries that are not parties to the Statute and have no vested interests in the permanent members of the SC."(Celestine N. E.2016:465)

Secondly, Art. 16 of the Statute gives the SC the power to limit the jurisdiction of the Court. According to Art. 16 of the Statute, "if the SC adopts a resolution under Chapter VII of the Charter of the United Nations and requests the Court, the Court shall not start or conduct an investigation or prosecution in accordance with the Statute within 12 months thereafter; the SC may extend the request in the same conditions." This provision recognizes the priority given to the SC by Art. 12 of the Statute and the need for coordination between the Court and the SC, and this provision also places the ICC after the action of the SC, which may lead to the occurrence of the situation that "the SC will put an issue on the agenda, which will prevent the Court from performing its functions"(Li Shiguang, Liu Daqun, Ling Yan.2006:208). In addition, the territorial jurisdiction of the ICC may also be limited by the "exclusive jurisdiction" formulated by the SC when it submits the situation, and this "exclusive jurisdiction" may make the ICC unable to use its territorial jurisdiction to counter crimes that aren't subjected to the jurisdiction of States parties. For example, in the situation in Syria(The SC Solution 1970) and the situation in Darfur(The SC Solution 1593), the SC claimed in its resolutions that "the non-parties have exclusive jurisdiction over the acts committed by their officials or personnel in the operations authorized by the SC". The role of the SC in shaping the jurisdiction of the ICC shows that the discretion of the court in the choice of circumstances and cases isn't exercised independently by the court, but is restricted by the external administrator who represents political power rather than law. Although in practice, those may not be the whole reasons why the court investigates, charges or convicts most of the facts are "low-cost defendants", it is undeniable that, this legal system design undermines the basic legitimacy conditions for the ICC to fulfil its purpose of ending impunity.

2. Political Selectivity of the ICC

There are many discussions about political interfering international criminal justice in academic circles, but whether based on the discussion of "invalidation of arrest warrants"(Song Jianqiang.2008:114), "selectivity of justice"(Birju Kotecha.2020:109), or "judicial corruption"(Kenneth Rodman.2014:455), they all define "politics" as "the opposite of law", and try to regard the ICC as a legal fortress which isn't affected by international politics. Their message to the international society is clear and legitimate – the court should stay away from politics and let politics obey the law. However, this Article believes that the ICC itself is political, not only because it is generated by political

decisions and adjudicates crimes related to politics, but also because it relies on a mysterious "political will" to implement its decisions – because the ICC does not have an executive body, and it relies on the international cooperation of sovereign countries to implement its decisions. In short, politics is not something outside the ICC. As Martti Koskenniemi said, "the ICC will not replace politics, but will overcome politics."(Martti Koskenniemi.2001:65) The politics referred to in this Art. is not the "opposite to the law" thing commonly said by the ICL academic circles, but adopts another political definition – "political decision to divide the enemy and friend"(Carl Schmittee.2015:30). Because scholars regard political priori as the antithesis of law, denying the possibility that law may be a part of politics, as international jurist Louis Henkin said: "International law is the law in the international system composed of nation-states, and it must respond to and be shaped by various political and economic forces in the system."(Louis Henkin.2004:1) Although the definition of "the decision to divide the enemy and the friend" confirms the concept of politics, we need to deviate from it in an important aspect. Because law is not political science, we need to define politics in legal terms. For political science, "dividing enemies and friends" constitutes all the contents of politics, but for law, politics means not only the division of enemies and friends, but also the skill of uniting political organizations or political groups. The political definition defined in this Art. has been constantly verified in practical experience and has certain rationality. For example, in the situation of Uganda, the prosecutor claimed: "The ICC has listed the Government of Uganda as a partner (friend) in combating international crime... Only the Holy Spirit Resistance Army, not the government army, will become the object of investigation (enemy)."(ICC-20040129-44-En) Moreover, this standard has also received considerable support in the academic community. For example, when talking about political trial, Otto Kirchheimer, a famous jurist, put his theory on the basis of the division of "enemy and friend". He pointed out that "in the simplest and most brutal terms, the function of political trial is to eliminate the enemies of regime or politics by the court according to some pre-arranged rules."(Otto Kirchheimer.1961:6)

From the above discussion, we can see that the ICC has political characteristics, which means that the ICC must be subject to political constraints, such as feasibility, strategic considerations, risk analysis, diplomatic relations, collateral damage or conflict of interest. From the perspective of law and economics, due to the limited rationality and resources of the ICC, it is the best choice for the ICC to allocate legal resources to cases or situations with higher feasibility. Unfortunately, as an international treaty, the Statute is essentially the transfer of sovereignty. "The treaty is full of political compromises"(Bassio uni.2006:246), which also constitutes the fatal defect of the ICC's reliance on international cooperation. Therefore, when assessing the feasibility of prosecuting cases, the ICC tends to cooperate with the victor and prosecute the defeated party together, rather than prosecute both parties equally. Based on this, "friends" who cooperate with the court often instrumentalize the court and make themselves based on the commanding heights of morality and justice, so as to consolidate their power against internal "enemies" and ensure that they are not punished, such as the situation in Uganda mentioned above.

The court, limited by its own resources and rationality, tends to cooperate with "friends" (usually the victors of armed conflicts) who enjoy cooperation to increase the feasibility of investigation and prosecution and save legal resources, but ignoring the crimes committed by "friends" and only investigating and prosecuting the crimes of "enemies" is same with distinguishing the identity of the groups investigated or prosecuted, it has greatly undermined the feeling of the international society on the principle of equality. It is worth noting that this political selectivity doesn't indicate that the ICC has a political bias against certain criminal groups, but that the Court is in a political environment in which, in order to exercise its jurisdiction, the Court has to reproduce the status quo of power asymmetry within its investigation work, thus taking the form of "victor's justice" rather than "victor of justice". However, this political selectivity makes the jurisdiction of the ICC unable to point to power, which has seriously impacted the principle of equality. As a result, the ICC is not only unable to eliminate impunity, but may "coordinate with the repressive political system"(Van der Wilt.2020:315), resulting in more impunity.

Conclusion

From the above discussion, we can see that the court's ability to end the history of impunity largely relays on its ability to solve the problem of equality. When the court tries to develop the peoples' feeling of equality, rather than being ruled

by naked power, it will maintain the legitimacy environment. However, as pointed out above, the provisions of Art. 13 and 16 of the Statute on the authorization of the SC and the implementation of its decisions by relying on international cooperation are essentially the compromises and concessions of the parties to the plane/vertical dualistic structure of the international society – they can't judge or punish the major powers and their allies that control the resources of the international society, but also need to respect the sovereignty of the cooperating countries. In other words, in today's international society, there is still a considerable market for power politics (it is impossible to truly achieve equality). The national sovereignty advocated by sovereign countries to safeguard their own interests is still the cornerstone of the international order. Moreover, when sovereignty is considered supreme, the ICC, which relies on international cooperation, can't achieve its purpose of "ending the history of impunity".

International crimes have seriously violated the human rights of victims, but the "constant emergence of impunity" shows that the ICC can't provide basic justice for victims, thus laying hidden dangers for social stability. As the scholar Kingsley Moghalu said, "The basic cause of all kinds of instability in modern society is the phenomenon of impunity."(Kingsley Moghalu.2007:198) Therefore, for the sake of guarantee the value of human rights and maintaining world peace and stability, international criminal justice institutions must overcome the difficulties of "absence of equality" and "structural defects of the ICC", so as to achieve the goal of "ending the history of impunity". In the practice of international criminal justice, the pioneering but little-known International Commission against Impunity in Guatemala (CICIG) has provided us with successful experience. Compared with similar international criminal justice hybrid mechanisms, CICIG has the characteristics of "high degree of integration into local judicial system" and "focus on promoting the right of prosecution and institutional reform". The establishment and operation mechanism of CICIG has overcome the "absence of equality" caused by "interference of major powers", equally respected the sovereign of all countries around the world, and expanded the concept of rule of international law. It is an important way to effectively solve impunity problem and maintain world peace and stability.

1. Main tasks of CICIG

Guatemala is almost one of the countries with the most serious violent crimes in Latin America. For example, in 2008, "6338 Guatemalans were killed by violence, with an average of 16 murders per day"(Radio Nederland.2008). But it was shocking that "only 131 of these murders were prosecuted, 83 were convicted, and 48 were acquitted, with a conviction rate of only 2.06%"(Comision de Derechos Humanos de Guatemala.2009). In the face of Guatemala's lack of legal resources, government corruption and the infiltration of illegal and secret security organizations, the Secretary-General of the UN signed a bilateral agreement with Guatemala to end the serious violations of human rights in Guatemala and established CICIG.

CICIG's mission is to support and assist the Guatemalan judiciary in identifying, investigating, prosecuting and eventually disbanding its illegal domestic security agencies and secret security organizations. CICIG has five main powers to carry out its tasks: (1) Investigate any person, officer or entity; (2) To file criminal charges with the Guatemalan prosecutor and participate in criminal trials as a private prosecutor; (3) Accuse civil servants of administrative crimes and participate in the disciplinary process as a third party; (4) Provide suggestions on public policy, law and institutional reform; (5) Require cooperation from government officials or entities. These five powers can be roughly divided into two categories, namely, the power to promote prosecution and the power to reform the system of the host country. CICIG was established in accordance with the agreement between the Guatemalan government and the Secretary-General of the United Nations. It operates entirely in the Guatemalan domestic legal system. It combines the independent investigative power and limited procuratorial power of the mixed court with the unique domestic judicial system of the Commission. Therefore, it is neither completely national nor completely international, and not only avoids the inequality caused by political interference of major powers, It also safeguarded the independent judicial sovereignty of the host country. At the same time, this unique setting enables CICIG to work side by side with local judicial institutions at each stage of the prosecution process, train local personnel in judicial construction capacity, and make CICIG a catalyst for Guatemala's internal legal and political reform.

2. CICIG is a successful case of combating impunity

As the situation that the ICC is unable to effectively curb impunity has intensified, the international society has gradually turned to "hybrid tribunals", such as the Special Court for Serious Crimes in East Timor, the Special Court for Sierra Leone and the Cambodian courts. The hybrid court was established by a bilateral agreement between the Secretary-General of the United Nations and the host country, avoiding the structural defect that the ICC was influenced by the politics of the major countries. At the same time, the hybrid court embedded international criminal justice into the domestic judicial system of the host country, respected the judicial sovereignty of the host country, and was easy to be accepted by the host country. From the perspective of the practice of hybrid courts in the past, "because of the constraints of the inefficient judicial system in the host country, the efficiency of mixed courts is relatively low"(Aaron Fichtelberg.2015:4). But as an innovative model, CICIG, on the basis of inheriting the advantages of hybrid courts, has three innovations, effectively combating impunity on the basis of avoiding the "dilemma of equality".

Creation 1: promote the power of prosecution. CICIG has shown in its work in the previous two years that a hybrid mechanism fully embedded in the host country's legal system can achieve success in promoting criminal prosecution, although its capacity for law enforcement and independent prosecution is limited, and CICIG's investigation and prosecution work has been widely contacted with the host country's domestic society, and its work has been subject to the widest public review, which has greatly guaranteed judicial justice and disseminated the concept of the rule of law. CICIG's promotion of prosecution is mainly manifested in three aspects: First of all, CICIG has proved that Guatemala's judicial system can operate effectively, broke its claim that "international crimes were able to be prosecuted", objectively proved the legitimacy of the intervention of the international criminal justice system, and laid a political and public opinion foundation for CICIG to work; Secondly, CICIG tried powerful criminals in the host country in Guatemala, such as Alfonso Bertillo, the former head of state. The trial of the former head of state is of great symbolic significance. It not only means that international criminal justice is no longer "victor's justice", but also means that international criminal justice is determined to fight impunity; Finally, CICIG has effectively improved the efficiency of litigation by promoting the strategy of prosecuting administrative crimes to prosecute those who committed international crimes in Guatemala's internal armed conflict. For example, CICIG finally brought it to justice by prosecuting General Pinochet of Chile and former President Alberto Tensen of Peru for embezzlement and misappropriation of public funds. CICIG has effectively prosecuted criminals with great power in Guatemala through flexible means, effectively alleviating the phenomenon of impunity in Guatemala.

Creation 2: the power of CICIG to reform its organization. Although the Guatemalan people and the media have paid attention to CICIG's prosecution activities, CICIG's achievements in promoting Guatemala's institutional reform have had the most lasting impact on Guatemala. It is not enough to prosecute criminals. "It needs to leave a legacy"(Comision de Derechos Humanos de Guatemala.2009) – CICIG provides specific proposals to civil society through "legislative proposals" for the reference of the National Congress of Guatemala, and formulates "administrative discipline" to remove corrupt officials from public officials. CICIG cooperated with Guatemalan government agencies to promote prosecution and institutional reform, and created a platform to publicly denounce the obstruction of government officials' behavior. This creation of promoting institutional reform based on the mixed court mechanism is a major innovation in the international criminal justice cooperation mechanism, as the United Nations High Commissioner for Human Rights said: "In the past measures taken in Kosovo, East Timor and Sierra Leone, the issue of heritage has not been included in the mandate... the lack of provisions on heritage or capacity-building usually means that prosecutors or judges are only focused on hearing cases."(Detlev Mehlis.2005)

Creation 3: CICIG's role in building the capacity of Guatemalan national institutions. In order to successfully prosecute crimes, CICIG made every effort to cooperate with the Guatemalan police system, the internal government and the inspection system. For example, "in 2008, the Ministry of the Interior of Guatemala established a joint force with CICIG and assigned 30 police officers to it; in September 2008, CICIG set up a special prosecutor's office (SPO) in the Guatemalan inspection system, and sent several international prosecutors, investigators and 20 police officers reviewed and trained by CICIG. The SPO and CICIG worked together to investigate

and prosecute cases."(Andrew Hudson, Alexandra Taylor.2010:337) CICIG has greatly enhanced the capacity of the Guatemalan judicial system through the "demonstration effect" and provided a large number of talents with advanced international judicial work experience for the Guatemalan judicial system.

The success of the CICIG model has provided a very innovative path for the international society to combat impunity. It uses its own power to combine the promotion of prosecution and institutional reform. Through successful investigation and assistance in the prosecution of symbolic cases, it has established the rule of law belief among Guatemalan people, and it has also helped Guatemala establish a fair and effective political system, which provides a platform for Guatemala's judicial practice in the future. Of course, the CICIG model isn't a perfect international criminal justice practice. Although it maintains the independence, objectivity and professionalism of the international mechanism, it, like other "hybrid tribunals" – the deep-rooted nature of the hybrid court – depends on the cooperation of the host country. Although reliance on Guatemalan cooperation has largely restricted CICIG's work, CICIG's institutional reform and efforts to build the capacity of government institutions have made great contributions to combating impunity and reshaping judicial justice in Guatemala. In addition, the CICIG model also has another limitation, that is, "the bilateral agreement between the Secretary-General of the United Nations and the relevant countries may only succeed in combating domestic criminal activities. The international society should be cautious when creating similar mechanisms in cases involving international conflicts and international criminal acts"(Andrew Hudson, Alexandra Taylor.2010:337).

Although CICIG has some limitations, the structural defects of the ICC and the demands of the international society for criminal justice determine that the United Nations must help the ICC consolidate the rule of law in ICL. In other words, we must improve the CICIG model and make it more widely applied to the international society.

First of all, at the domestic level, the biggest challenge of CICIG mode is to rely on the domestic judicial system of the host country. CICIG was established on the basis of the bilateral agreement between the Secretary-General of the United Nations and the Government of Guatemala. Therefore, if the Secretary-General and the host country formulate clear guidelines in the bilateral agreement to specify which cases fall within the scope of CICIG's mandate, the host country may, based on the authority of the United Nations and the pressure of international public opinion, comply with the agreement and try to cooperate with CICIG's work. In addition, CICIG should actively develop social relations with the host country's citizens, formulate a clear outreach strategy, and exert public pressure on individuals or entities who "shield" or "block" the work of judicial institutions through criminal justice publicity to reduce work resistance.

Secondly, at the international level, the CICIG model and similar "hybrid tribunals" model lack experience in dealing with international conflicts, but this doesn't mean that this model can't be applied to the practice of international conflicts. This paper believes that the premise of the application of hybrid courts to international conflicts lies in the conviction of the parties to the conflict in the belief of "international rule of law" and "there can be no permanent peace without justice"(Song Jianqiang.2010:337). For the rule of international law, there is evidence that the rule of international law order is shaping. In recent decades, many international documents and statements have dealt with the concept of "rule of law". For example, the 1970 Declaration on the Principles of Friendly International Legal Relations and Cooperation among States in accordance with the Charter of the United Nations mentioned that "the Charter of the United Nations is essential in promoting the rule of law among States"; Or in the resolutions of the SC, some scholars counted that "in the resolutions of the SC from 1998 to 2006, the word 'rule of law' appeared in at least 69 resolutions"(Jeremy Farrall.2008:22). Moreover, at the practical level, with the deepening of international social and economic exchanges, countries are closely connected with each other. "Good governance and the rule of law are crucial to the sustained growth of the economy"(World Summit Outcome.2005), "promoting the rule of law at the national and international levels, and ensuring equal access to justice for all"(UN Doc A/69/L.85) have even become the goal of sustainable development. From the experience of international practice, the international rule of law is not only the decoration of development, It is also an important source of progress. However, at present, the rule of international law hasn't become the general consensus of the international society, and the current situation that the politics of major countries affect the independence of the ICC has hindered the implementation of the international rule of law. The

United Nations and the ICC should publicize CICIG as a model of successful experience of hybrid courts, so that the international rule of law can win the hearts of the people, and lay the ideological foundation for the CICIG model to solve international conflicts and eliminate impunity.

Conclusion

Ban Ki-moon said passionately at the 67th United Nations General Assembly: "The rule of law is like the law of gravity. It is the rule of law that ensures the unity of our world and our society and makes order overcome chaos. The rule of law unites us around common values and anchors us in common interests."(Secretary-General of the United Nations. UN Doc A/67/PV.3) The rule of law, as an important symbol of civilized society, is not spontaneously generated. As an important aspect of the rule of law, the international criminal rule of law requires the joint efforts of the international community. The primary goal of the international criminal rule of law is to maintain human well-being and world peace, which is an important prerequisite for the development of the international community. Impunity is the main obstacle to the development of the international criminal rule of law process. In view of the current situation of the lack of research on the concept of impunity in the international society, this paper uses the research paradigm of Tushnet to divide the concept of "impunity" into "thick impunity" and "thin impunity". It is also pointed out that only "thick impunity" – the root cause of impunity lies in the "absence of equality", not just the "absence of value/function" of ICL – can explain why impunity has been widely concerned by the international society, and we can understand why the ICC can't truly achieve the aim of "ending the history of impunity". As a successful international criminal justice practice, CICIG's bilateral agreement establishment model not only avoids the political interference of major countries, but also respects the judicial sovereignty of the host country by its operation model embedded in the domestic legal system. At the same time, CICIG's institutional reform function also provides guidance for the host country to establish an advanced judicial system and lays an institutional foundation for the host country to eliminate impunity. However, the CICIG model has no experience in solving international conflicts, so the international society should be cautious in creating similar mechanisms in cases involving international conflicts and international criminal acts.

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