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# THREE DIMENSIONS FOR SCO TO IMPROVE LEGISLATION

The 21st century is the "era of international organizations". the SCO is facing a realistic dilemma of "insufficient rule orientation", "imperfect international law system" and "uneven level of rule of law among its members". International law has its own structural dilemma of uncertainty, which lies in structure, language and doctrine, and overturns the existing international law system. Within the framework of the SCO, the traditional normal way can't quickly and effectively establish legislation. The argumentative paradigm is rooted in the "intersubjectivity" of the international community, reshaping the effectiveness and source scope of international law, and using this paradigm can quickly and effectively build a set of international law system for SCO. This paradigm needs value guidance in line with universal rationality. The "community with a shared future for mankind" proposed by the Chairman Xi Jinping is expected to achieve the multi-dimensional goals of common prosperity, universal security, openness and win-win results, equality and inclusiveness, and joint construction, which can provide a value orientation for the development of SCO international law. This paper focuses on the SCO, tries to elaborate the problems faced by the SCO from the perspective of international law, and puts forward the research paradigm of improving the construction of SCO international law and the value orientation of "community with a shared future for mankind" on the basis of its system, in order to further clarify the direction of efforts to build the SCO legal system. Under the guidance of the theory of community with a shared future for mankind, the SCO's practice of argumentative international law can improve the legal system construction within the organization on the basis of maintaining regional peace, and then contribute to the SCO's participation in world governance and the promotion of the rise of Asia.

**Key words:** norms, indeterminacy, argumentalism, community with a shared future, SCO.

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## ШЫҰ-ның заңнамасын жетілдірудегі үш өлшем

XXI ғасыр – халықаралық ұйымдар дәуірі. ШЫҰ жеткіліксіз ереже бағдары, жетілмеген халықаралық құқық жүйесі және мүшелері арасындағы заң үстемдігінің біркелкі емес деңгейі деген шынайы дилеммамен бетпе-бет келіп отыр. Халықаралық құқықта құрылымда, тілде және доктринада жатқан және қолданыстағы халықаралық құқық жүйесін бұзатын белгісіздіктің өзіндік құрылымдық дилеммасы бар. ШЫҰ шеңберінде дәстүрлі қалыпты әдіс заңнаманы тез және тиімді түрде бекіте алмайды. Дәлелдемелік парадигма халықаралық қоғамдастықтың интерсубъективтілігіне негізделген, халықаралық құқықтың тиімділігі мен бастапқы көлемін қайта қалыптастырады және осы парадигманы пайдалану ШЫҰ үшін халықаралық құқық жүйесінің жиынтығын тез және тиімді құра алады. Бұл парадигма әмбебап ұтымдылыққа сәйкес құндылық бағдарын қажет етеді. Төраға Си Цзиньпин ұсынған адамзаттың ортақ болашағы бар қоғамдастық ортақ өркендеу, жалпы қауіпсіздік, ашықтық пен жеңіс нәтижелер, теңдік пен инклюзивтілік және бірлескен құрылыс сияқты көп өлшемді мақсаттарға қол жеткізеді деп күтілуде. ШЫҰ халықаралық құқығының дамуына құндылық бағдары. Адамзат үшін ортақ болашағы бар қауымдастық теориясының жетекшілігімен ШЫҰ-ның дәлелді халықаралық құқық тәжірибесі аймақтық бейбітшілікті сақтау негізінде ұйымның құқықтық жүйесін құруды жақсарта алады, содан кейін ШЫҰ-ның әлемдік басқаруға қатысуына ықпал етеді. Азияның көтерілуіне жәрдемдесу.

**Түйін сөздер:** ережелер, белгісіздік, полемизм, ортақ болашақ қауымдастығы, Шанхай ынтымақтастық ұйымы.

 

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**Три аспекта совершенствования законодательства ШОС**

XXI век – это эпоха международных организаций. Шанхайская организация сотрудничества сталкивается с реальной дилеммой недостаточной ориентации на правила, несовершенной системой международного права, неравномерного уровня верховенства права в государствах-членах. Структурная дилемма, связанная со структурой, языком и принципами международного права, подрывает существующую систему международного права. В рамках ШОС традиционный нормальный подход не позволяет быстро и эффективно формировать законодательство. Парадигма работы уходит корнями в межсубъектность международного сообщества, изменяет сферу действия и источники международного права, используя эту парадигму для быстрого и эффективного построения системы международного права ШОС. Эта парадигма должна соответствовать ценностной ориентации универсальной рациональности. В данной статье основное внимание уделяется ШОС, предпринята попытка разработать проблемы, с которыми сталкивается ШОС, с точки зрения международного права, а также выдвинута исследовательская парадигма совершенствования конструкции международного права ШОС и ценностной ориентации «сообщества с единой судьбой человечества». на основе ее системы, с целью дальнейшего уточнения направления усилий по построению правовой системы ШОС. Под руководством теории сообщества единой судьбы человечества практика аргументированного международного права ШОС может улучшить построение правовой системы внутри организации на основе поддержания регионального мира, а затем способствовать участию ШОС в мировом управлении и содействие возвышению Азии.

**Ключевые слова:** правила, неопределенность, аргументизм, сообщество судьбы, ШОС.

## Introduction

With the end of the cold war and the collapse of the bipolar pattern, the international rule of law has increasingly become the focus of the international community. In the face of the gradual disorder of the international community, Kofi Annan, the former Secretary General of the United Nations, once said with passion: “attach importance to the rule of law and create a favorable environment for sustainable economic growth!”(2012) Law is the beginning of governance. The rule of law can promote all actors in the international community to respect the common values of mankind, such as humanism, harmonious coexistence, sustainable development, etc., and promote the international community to take this as the logical starting point and value criterion to construct “a model and structure that spans the national level and restricts their behaviors, establishes mutual relations, defines their rights and obligations, and handles related affairs”(Zhipeng, 2009). In the process of building the international rule of law, comprehensive and professional organizations, multilateral and regional organizations have played an important role. As David W. Kennedy said, “the international community in the 20th century is an international community ‘towards organization’”(David, 1987). The motive force of the Shanghai Cooperation Organization (SCO) is to fill the power vacuum caused by the collapse of the geopolitical center in Central Asia after the collapse of the Soviet Union. In essence, it is a cooperation mechanism based on political mutual trust and security dependence. However, with the revival of East Asia, especially China’s economy, the legal mechanism of economic and trade cooperation within SCO has stronger vitality than the traditional legal mechanism of political security. The experience of nearly a hundred years tells us that the most prominent feature of the upgrading of the global governance model is the progress of system construction towards the ideal of rule of law, which has promoted the improvement of the rule of law level of international economic and trade governance. However, due to the uneven level of the rule of law in Party States, the emphasis of emerging countries on their own sovereignty and the characteristics of the organization’s operation mechanism (the SCO is not generally a top-down construction like the EU, but a public product agreed by Party States through consultation), the efficiency of the SCO in the legislative dimension lags behind, which hinders the possibility of further cooperation among party states within the SCO. Therefore, to achieve the long-term development of the SCO and even the global economy and society, improving the rule of law within the SCO has become an important issue.

The SCO's GDP accounts for one quarter of the world's total, which plays an important role in driving the development of the world's economy, and the creation of SCO's laws requires repeated communication and consensus among member states under the principle of sovereign equality. Therefore, it's rash, at least not serious, to rashly provide a draft law for the SCO. However, in his speech "promoting the 'Shanghai spirit' and building a community with a shared future" delivered at the 18th meeting of the Council of heads of SCO party states in 2018, the Chairman Xi Jinping put forward the proposition of "SCO community with a shared future", which "conforms to the development trend of the times, faces the common challenges facing mankind, and guides the development of international relations with advanced ideas"(Yan 2018), which is not only of great guiding significance to the development of international relations, it also provides value guidance for improving the construction of international rule of law within SCO.

## Theoretical Discussion and Previous Studies

Since the establishment of SCO on June 15, 2001, it has only been more than 20 years. In the face of the profound changes unseen in a century, the young SCO inevitably has more or less defects in the construction of the rule of law. Law is the beginning of governance. Promoting the rule of law in global and regional governance is a universal consensus to promote economic prosperity. The shaping history of international law in the international community over the past century also provides experience for us to examine the lack of rule of law within SCO. This paper believes that the lack of rule of law in SCO is mainly reflected in the following three aspects: macro dimension, the legal system of SCO is not perfect; Micro dimension, lack of rule orientation; In the subject dimension, the level of rule of law in Member States is uneven.

*1. The impacts of legal system of SCO in content dimension*

As pointed out above, the motive force for the establishment of SCO is to fill the power vacuum caused by the collapse of the political center in Central Asia after the collapse of the Soviet Union. Looking back on the development of the rule of law of SCO in the past 20 years, the core of its legal system construction has always focused on security cooperation, focused on military and political cooperation among governments, and lacked a complete economic and trade treaty system. Even though the design of the legal system of SCO has involved the fields of economy, trade and humanities, its breadth and depth have been unable to meet the growing economic, trade and cultural needs among Party States. Specifically, the imperfection of the SCO legal system is manifested in the following two aspects: First, the SCO's legal system focuses on military security and lacks economic, trade and humanistic legal regulations; Second, the legal construction within the SCO excessively relies on government cooperation and ignores the care of private and personal exchanges.

First of all, SCO member states have successively joined the WTO, realizing regional convergence and promoting the rapid development of regional economy. Especially after the revival of China's economy in the new century, the trade pattern with China as the core has been formed, and the advantageous resources among member countries have also been effectively allocated. For example, so far, the SCO's economic aggregate has reached US $20 trillion, accounting for a quarter of the world's economic aggregate, and its total foreign trade has reached US $7 trillion (2021). Because member states are highly complementary in the field of trade, the trade development potential of SCO remains strong. However, less than one tenth of the more than 20 SCO legal documents involve economic and trade cooperation, and economic and trade cooperation is concentrated in the field of energy. For example, the SCO charter regards economic and energy cooperation as an important area of SCO cooperation. The constitution of the SCO energy club adopted in Moscow in 2007 has become a programmatic document for SCO energy cooperation. It is undeniable that SCO still lacks a specialized legal system in the field of economy and trade, and the economic and trade cooperation among member states still relies mainly on WTO or other multilateral international legal mechanisms. Zhang Yi, a Chinese scholar, pointed out that "the 'cooperation' of SCO starts from the need for security, and thrives on economic, trade and cultural cooperation."(Yi 2018) Therefore, improving the construction of legal system in the field of economy and trade has also become an important condition for SCO to play a role in promoting regional economy.

Secondly, the current legal system of the SCO lacks care for people and individuals. Traditional international law mainly regulates the relationship among sovereign states, and international academia generally defines international law as a legally binding rule governing the relationship among states. However, it is undeniable that with the in-depth

development of the rule of law and the international human rights movement, individuals have gradually attracted the attention of international law, and human rights conventions such as the Universal Declaration of human rights and the International Covenant on Civil and political rights have gradually gained the status of international jus cogens, which also shows that the immortal human value is the common rationality among different civilizations, countries and races, which also leads some scholars to believe optimistically: "With the development of the international community, the status of individuals will eventually become the most important, and gradually international law will be directly applied to individuals."(Binghua, 1997) Looking at the legal system of SCO, its legal construction mainly depends on the cooperation between governments, and the attention to individual and non-governmental exchanges is obviously insufficient, which leads to the low level of legal regulation of individual rights and obligations of SCO, which is significantly lower than the current development level of international law.

*2. The impacts of legal system of the SCO in norm dimension*

From the practice of international law in the past century, it can be seen that sovereign equality is the basis for the stability of the international order, but it is undeniable that the horizontal logic of international law is full of contradictions in reality, because the international community is faced with the gap between sovereign states in the mainstream discourse and universal imperial political practice. "Empire is used to describe a super large political entity that exists universally in history. It is not only a stable order containing internal complexity and diversity, but also a philosophical thought and political effort in pursuit of universalism."(Shigong 2019) They use legal means to build an international order that appears to be "sovereign equality" through the free imperial system compiled from scientific, technological, financial, legal and cultural concepts, But in essence, "there is always a central and marginal imperial order in the global economic system."(Shigong, 2019) the major powers take geopolitical measures against countries that are not subject to them politically and economically, and exclude these countries from the trading system. "In the current era of globalization, if any country or company is isolated from globalization and becomes an economic and political island, which is unable to participate in globalization, it means that it is deprived of the basic right to develop and even survival in this world."(Shigong, 2019) Therefore, although the Charter of the United Nations explicitly stipulates that all countries in the world are equal in sovereignty, legal equality cannot ignore the gap in strength among countries, which is also the status dual-track structure of the international community (horizontal equality and vertical inequality). "Law is politics."(Louis, 1995) international law is the normative expression of international politics. Sovereign States fight for their own political interests. As the transfer of sovereignty, international law is often subverted because countries give up self-restraint. Therefore, international law is in a passive and passive defensive position. How to change the way of exercising national sovereignty and realize de politicization in order to achieve the rule of law? The most important condition is that the international community should establish perfect international law, make countries and international organizations change from power orientation to rule orientation, and restrict the exercise of state power with stable expectations and reliable rules. This is what Montesquieu said, "the exercise of power will not stop until there is a border."

Reviewing the construction of the legal system of SCO, the development process of its rules is relatively slow. From the Charter of the Shanghai Cooperation Organization to the Joint Communique following the 20th Meeting of the Council of Heads of Government, it can be seen that the legal system of the SCO is dominated by the declaration, joint declaration and other framework and principled legal texts. Although the simplified power and responsibility system can provide value guidance for a wide range of dispute issues, it is slightly inadequate in the operation of law enforcement. Secondly, as pointed out above, SCO is not a top-down construction, but a public product based on political mutual trust and security dependence. Its legal system is built on the basis of equal consultation. Although this consultation method is conducive to safeguarding the sovereignty of Member States, it is also unable to effectively and timely handle some outstanding issues to a certain extent, The important force to ensure the effectiveness of international law is the effective implementation of law. Therefore, how to depoliticize the exercise of SCO power and properly resolve disputes among member states under the guidance of rules has also become an urgent problem to be solved to strengthen the respect of rules by SCO member states and realize the legalization of economic and trade cooperation.

*3. The level of rule of law in Member States is uneven*

The rule of law can provide effective guarantee for social operation, including economic and social development, which has become an indisputable proposition. But "the concrete and suitable rule of law for a country is not a set of abstract principles and rules without background, but involves a knowledge system. A living and effective operation of the rule of law society needs a lot of constantly changing specific knowledge "(Li, 1995). In other words, the rule of law is local. However, this does not mean that the rule of law is just a shell filled with local knowledge, which contains a number of values accepted by the common rationality of mankind, and countries use this value as a benchmark to shape their own concept of rule of law. In this sense, the rule of law has become a concept of "non-nationalization", "standardization" and "convergence", which also provides an objective standard for measuring the level of rule of law among countries.

The majority of SCO member states are emerging countries with a low level of rule of law. For example, armed conflict broke out from January 1 to 9, 2022, resulting in 225 deaths, including 19 law enforcement agency personnel; The disputes and conflicts between India and Pakistan over the territory of Kashmir have lasted for more than half a century; Another example is the military conflict between Russia and Ukraine. These armed conflicts undoubtedly pose a great threat to world and regional peace and restrict the economic and cultural development between regions. Although the rule of law can't avoid war and armed conflict, but "at the national level, the rule of law provides predictability and legitimacy for national actions" (2012). Therefore, how to improve the level of rule of law in SCO member states is not only related to the prospects of cooperation among Member States, but also related to the vital well-being of the people in the region. It is also the key for SCO to achieve the goal of rule of law.

"From the perspective of legal development, international legal norms and domestic legal norms not only achieve internal harmony and consistency within their respective legal systems, but also are interrelated, infiltrating and promoting each other in general " (Long & Xigen, 2001). To improve the level of the rule of law in SCO member states, Member States should not only learn from the advanced experience of the rule of law, but also realize the innovation and development of their own laws in combination with their local cultural traditions. Taking the legal construction in the field of economy and trade as an example, SCO member states have joined the WTO one after another. The WTO is regarded as a model of contemporary international organizations. By weakening the influence of power in the international trade order and strengthening the effectiveness of rules to properly solve trade disputes, it objectively deepens the respect and belief of member states in the rule of law, and then realizes the rule of law in the international trade order. SCO members have gradually realized the docking with the current WTO rules in the WTO. SCO member states should fully absorb the advanced experience of WTO rule of law construction, comply with the international development trend, and strive to build a higher level of international economic and trade law rules on the existing level of SCO economic and trade rules. At the same time, as pointed out above, any model regulation of rule of law construction is limited by limited rationality, and it is impossible to exhaust all the information and knowledge of legal activities in a society, and it is impossible to make scientific creation on the complex civilizations in the world. It is hasty, even unscientific, to regulate an effective modern rule of law system without investigating the particularity of local civilization and relying solely on the successful rule of law templates of other countries. Therefore, SCO member states must, on the basis of absorbing the advanced experience of the WTO in the rule of law in economy and trade, apply their rationality in social life, and seek ways to solve various legal conflicts that can maximize their interests, "and on this basis, in people's interaction, that is, mutual adjustment and adaptation, and gradually form a set of rule system that is compatible with their development and changes in social life" (Li, 1995).

**Method**

The rule of law can create a favorable environment for the sustainable development of SCO, but how to promote the legislation of SCO requires lawyers to contribute their wisdom in combination with the current development status of international law. For a long time, "normativity" has been seen as the basic attribute of international law, and has formed a profound academic tradition, which has established the positive, scientific and judicial characteristics of international law. Undoubtedly, ruleism attempts to bring all international relations under the governance of international law, partially realizing the de-politicization of international governance. However, ruleism overemphasizes the

positivity and scientific of international law, which not only ignores the reality of the dual-track structure of the international community, but puts jurists in a passive position, limiting their ablities to understand and handle world politics. It hinders scholars' concern about the real world. Especially with the rise of critical international law, understanding and overcoming the uncertainty of traditional ruleism and reconstructing the disciplinary boundary and legitimacy of international law research have become another mainstream of the international law in the new century, profoundly changing the paradigm of international law research and creation, and emphasizing the "intersubjectivity" of International law has become the mainstream. This paper argues the adoption of the argumentative paradigm is in line with the experience and political imagination of SCO.

*1. Critical on ruleism*

In the early modern society, the international society was regarded as disorderly, and the relationship between countries and between people was in a state of war. With Grotius' pioneering rule governance in the theory of international relations, international law was gradually transformed into a practical legal language system. In the process of positivization and scientification of international law, international law has constantly conquered international politics and tamed national sovereignty, and the international community has also been moving towards civilization. However, the rule of international law emphasizes the scientificity and positivity of the articles of law, and the international law, as the transfer and compromise of sovereignty, is inevitably open and uncertain, which also leads to the challenge and challenge of the rule of international law from the second half of the 20th century.

First, international law has the structural characteristics of uncertainty. International law is different from domestic law. The essential characteristics of compromise and decentralization determine the openness, fuzziness and contradiction of legal terms. Because international law is the transfer of the sovereignty of the Contracting States, the treaties concluded by the Contracting States must be flexible, even vague, in order to safeguard their own interests, and then give their political acts the appearance of legitimacy through free interpretation; Secondly, the international community has never produced a supranational central organization, which directly leads to the inevitable conflict of laws among the endless global conventions and regional treaties. For example, the conflict between the "individual criminal responsibility" clause in the Rome Statute and the "principle of sovereign equality" in the Charter of the United Nations, and the difference in the scope of terrorist acts between the Shanghai Convention on combating terrorism, separatism and extremism and the Convention on the prevention and punishment of terrorism. The second paragraph of Article 1 of the Shanghai Convention on combating terrorism, separatism and extremism clearly defines acts that threaten political stability such as "undermining public security or forcing political organs or international organizations to commit or not to commit certain acts" as terrorist acts, while the Convention on the prevention and punishment of terrorism focuses on the field of "personal, property and public security". As Li Ming, a Chinese scholar, pointed out, "the decentralized structure of the international community has greatly exacerbated the uncertainty of international law and made uncertainty a structural feature of international law "(Ming 2020).

Second, the mixed nature of international law determines that there is no clear boundary between international law and morality, politics and policies. In 2012, the Secretary General of the United Nations pointed out in his speech to the General Assembly on Justice: a programme of action to strengthen the rule of law at the national and international levels: "The rule of law is the core concept of the organization's mission... This concept calls for measures to ensure compliance with the following principles:... Separation of powers···"(2012). This means that in order to realize the international rule of law, the legislative power, judicial power and administrative power must be distinguished, but the subject of international law is mainly the state, and the international community doesn't have a central authority, so the state is both the legislator and the law applicator. The creation of law is a political process, while the application of law is an objective process. Therefore, the goal of separating international law from politics, policy and morality is objectively impossible to achieve.

Third, the rule doctrine attaches importance to hard law, ignores soft law, emphasizes the judicial center, and ignores the multiple application of international law. The rule doctrine pays attention to the positivity and scientificity of legal texts. It believes that only the rules of formal resources specified in Article 38 of the statute of the International Court of justice are effective international law, and the corresponding international soft laws need to find their normative significance from the hard law.

For example, customary international law needs to be legally confirmed and codified by the General Assembly resolution before it has independent normative significance (1996), or the resolution of the United Nations General Assembly can also be used as a proof of the legal certainty of the international community on specific legal issues (1986). The fundamental reason why ruleism pays attention to the positivity and scientificity of the rules of international law is that traditional international law focuses on "judicial trial", thus ignoring the international soft law that occupies an absolute volume and has no coercive force in international law. The ruleists believe that the main function of international law is the function of adjudication, while international soft law doesn't have coercive force, so it doesn't belong to international law. However, it is worth noting that the application of international law by international judicial organs is an exception rather than a normal situation in the international community. In fact, the application of international law in most cases is manifested in the unilateral invocation of international law by States, or the submission of their own claims of international law in international disputes. For example, since its establishment, the International Criminal Court has only examined 31 situations. Since its establishment in 1945, the main role of the International Court of justice has been to provide judicial opinions to member states rather than judicial decisions. In contrast, it is common for countries to invoke international law and unilaterally put forward their own international law claims. For example, in the conflict between Russia and Ukraine, China proposed a peaceful solution of political rather than judicial solution, which was recognized by the vast majority of countries in the world, and both Russia and Ukraine put forward corresponding international law claims for their sovereign acts.

Fourth, the rule-based approach of international law has covered up the realistic order of national competition with universalism, which is a gap with the practice of international law of large countries. The ruleism assumes that the meaning of international law is universal and common, and the international law understood and applied by sovereign states is the same discourse system and has the same meaning. This seemingly value free attitude actually implies such a logic that international law has and only has one narrative and one interpretation. However, in the practice of international law, sovereign states, especially large countries, often don't determine their rights and obligations from the perspective of rules, but by integrating their own policies into the language of international law and expressing their interests in the form of law, so as to provide legal legitimacy for their own policies and political actions. In this sense, "the main function of international law isn't rule enforcement and dispute settlement, but to allow countries to turn their individual interests, demands and foreign policies into universal legal claims "(Yifeng, 2023). For example, Pierucci, a French Alstom employee, pointed out in the book American Trap that the United States maintains its economic interests through political action by internationalizing its FCPA. Therefore, the method of international law based on rules cannot build a unified ideological foundation of the international community, nor can it solve the contradiction between the universalism of rules in the mainstream discourse and the practice of international law of great power competition.

*2. Introduction of argumentative international law method*

Post-modernity is a common challenge for all social sciences, as is international law. With the rise of critical jurisprudence, the deconstruction of hegemonism by the TWAIL, and the start of postcolonial research, the traditional rule doctrine attempts to regard international law as a neutral, value free, universalist rule form, which is already unsustainable. Emerging countries criticize the Eurocentrism of international law, trying to improve their voice in the international community, and then, the "intersubjectivity" of the international community has become a structural problem that international law must face. The argumentalism of international law is to criticize ruleism and reconstruct international law under this background by using the concepts of philosophy of language, debate theory and debate practice. It holds that "the debate of international law is a dialectical process between standardization and concreteness, and mutual cancellation. The objectivity of international law is difficult to achieve". "International law is a debating practice aimed at persuading target groups such as courts, peers, politicians and readers of legal texts of the legal correctness of the positions they defend, that is, legitimacy, justice, permissibility and effectiveness."(Matti, 2019) The logical starting point of argumentalism lies in the "intersubjectivity" of the international community, which recognizes that a state is both the maker and executor of international law; International law is not only hard international law, but also soft international law such as declarations, agreements and declarations; The

function of international law isn't limited to judicial decisions, but diversified; Countries' understanding of international law isn't uniform and universal, but they interpret and create international law according to their respective interests. From the perspective of argumentalism, international law is no longer a static objective rule, but a dynamic process in which multiple subjects interpret, confront and compete for the right to speak. According to the logic of argumentalism, international law is no longer the confirmation of law and illegality, but the debating practice of legality and illegality. Its focus is from the confirmation of rules to the political, legal and technical strategies used to compete for the right of legal interpretation. The key to judge whether the behavior of a State conforms to international law is whether it can strengthen, promote and persuade or force other countries to accept the political process of individual interpretation. "It is a war of words related to the construction of the world and the distribution of power "(Jean, 2012).

From the above brief description of argumentalism, it can be seen that it is deeply rooted in the reality of the international community. It isn't a simple objective description of the transformation of international law from static to dynamic, but a revolution in the paradigm of international law. From the epistemological point of view, the "persuasive skill" of argumentalism overcomes the drawbacks of the essentialism understanding of international law by ruleism, and instead understands and applies international law in the way of constructivism. In other words, international law isn't an objective and universal rationality, but a subjective construction of the legitimacy of action given by state actors through the discourse of international law, which has the characteristics of relativism; From the perspective of methodology, the core of argumentalism isn't the rules of international law, but the subject of international law who creates and interprets rules. As a "skill of language/persuasion", argumentalism believes that the main role of international law is how state actors talk to and persuade other countries in international exchanges. In a word, the argumentative approach to international law deconstructs the tradition of ruleism from an internal perspective. It not only respects the status dual-track structure of the international community, but also integrates philosophical and linguistic theories into the knowledge system of international law, fully explains the legitimacy basis of unilateral legislative actions, law enforcement acts and force measures of States, and broadens the research vision of international law.

*3. The debating method conforms to the legislative mechanism*

As pointed out above, the SCO's legislative path is carried out by consensus among member states under the principle of sovereign equality, and the SCO's economic and cultural legal system has been unable to meet the growing economic and cultural needs of Member States. In other words, there is an urgent need to build the SCO's legal system with the ruleism international law method, but the formulation efficiency is low. Argumentalism is different from the essentialism understanding of international law by ruleism. It doesn't require all Member States to reach a complete consensus on the economic and trade legal system of the SCO. Member states can adjust the economic and trade relations among member states through bilateral agreements or multilateral agreements. This doesn't require the full consent of all Member States to a proposal. It only requires the consent of the countries participating in the agreement, or the proponent to persuade other countries not to object. Argumentalism fits perfectly with the legislative mechanism of SCO.

First of all, argumentalism widens the scope of the sources of international law, effectively improves the law making ability of the subjects of international law, and can make up for the lack of SCO economic and trade legal system in a short time. The traditional rule doctrine believes that the source of international law is limited to international treaties and international customs, and a large number of declarations, agreements, protocols and other legal practices that haven't yet reached the standard of empirical law are excluded from the source of international law, while the argumentalism believes that any individual precedent can be a powerful evidence when the subject of international law invokes international law and endows its political action with legitimacy. In this sense, the source of international law isn't a standard to define law and illegality, but a tool by which the subject of international law can confirm the legitimacy of its political action. "The application and creation of international law are integrated "(Yifeng, 2023). when the subject of international law invokes the rules of international law and convinces other countries, it is creating the rules of international law, and this creation will be invoked by later ones. Such legal rules growing in international practice are sufficient to form. In view of the lack of economic and trade legal system within the SCO and the increasingly frequent economic and trade activities among Member States, it has become a general trend to quickly form an effective economic

and trade legal system, and the introduction of the argumentative method of international law can effectively solve this dilemma.

Secondly, argumentalism helps all SCO members to participate in the creation of international law and avoid hegemonic practice of international law. The argumentalist approach to international law is different from the universalist understanding of international law by ruleism. It opposes the simple realization of international rule of law through the formal rule of law, and believes that the fundamental reason for the uncertainty of international law lies in the conflict of interests among countries over the distribution results brought about by rules. Therefore, the argumentative method bases the creation of international law and the distribution of interests on the interests of sovereign states. Any country can review its own diplomatic and international law practice, so as to confirm the current effective rules of international law. This way can better reflect the unique interests of all countries, and provide political space for opposing the monopoly of the discourse power of international law by major powers and pursuing international fairness and justice. The status of SCO member states is complex. Its member states include not only world powers such as China and Russia, but also small regional countries such as Uzbekistan and Kyrgyzstan. Argumentalism can fully reflect the interests of small countries and promote their active participation in the construction process of international law.

Thirdly, argumentalism meets the demands of emerging countries for the maintenance of sovereignty, and more fully expounds the constitutive relationship between international law and sovereign power. The SCO member states are all emerging developing countries. The traditional rule of law believes that the main role of international law is to restrict sovereign power with international law, so as to build a stable international rule of law order. In other words, the rule doctrine believes that international law and sovereign power are antagonistic, including Kofi Annan, the former Secretary General of the United Nations. For example, Annan once pointed out: “The rule of law is the core concept of the organization’s mission. This concept refers to the governance principle that all people, institutions and entities, whether belonging to the public sector, including the state itself, are publicly released, equally implemented and independently adjudicated, and maintain consistent legal responsibilities with international human rights norms and standards. This concept also requires measures to ensure compliance with the following principles: the supremacy of the law, equality before the law, and respect for the law and legal responsibility, fair application of the law, separation of powers, participatory decision-making, legal reliability, avoidance of arbitrariness, and procedural and legal transparency.”(2005) However, this romantic liberal imagination conceals the legitimization of international law on colonialism, violence, war and aggression during the expansion of early capitalism, as well as the political reality of contemporary hegemonic countries using the discourse power of international law to build a “world empire”(Shigong, 2019) and legitimize their economic colonization. All SCO member states oppose imperialism, but it must be recognized that the international community is still in a competitive state of “the relationship among countries is the same as the relationship among wolves”. Therefore, when SCO signs international treaties with other imperialist countries outside the organization, it can limit the autocracy and arrogance of the power of great powers to a certain extent by using the method of rational dialogue and restraint.

Finally, the argumentative method emphasizes the “intersubjectivity” of the international community, which can better clarify the social distribution function and operation mechanism of international law. Aristotle pointed out as early as 2000 years ago: “Justice can be divided into distributive justice and corrective justice. The former is embodied in public law, while the latter is embodied in civil law and criminal law... In the field of distributive justice, the focus is to give everyone what they deserve ”(Carl, 2021). That is, law is a rule about the distribution of interests. There is no doubt that Aristotle’s argument is about domestic law, but in the field of international law, Aristotle’s argument is equally valid. For example, the Plaza Accord between the United States and Japan was signed to safeguard the economic interests of the United States, and the unequal treaties signed by China since modern times, such as the Nanjing Treaty and the Beijing treaty. In the practice of international law, argumentalism insists that international law is not only a set of argumentation skills, but also contains the significance of distributing the wealth, resources, leadership, reputation and other interests of the international community through argumentation. In this sense, international law has changed from the pure basis of judicial decisions to the daily norms for the construction of power relations and distribution principles among States, which also makes international law more easily accepted by

more countries and establishes the foundation for the construction of international rule of law.

**Results**

Argumentalism rose at the end of the last century and hasn't yet developed a systematic and mature theory. As the debating method of international law is a competitive and antagonistic way of law making, it means that there are value ambiguity, interest confrontation and position opposition among the argumentative parties. How to build an argumentation platform that allows participants to have rational dialogue and seek consensus? This requires us to create a basic consensus so that the debating parties can debate and make laws under the basic consensus. "By global ethics (basic consensus), we don't mean a global ideology, nor a single unified religion that transcends all existing religions, nor does it mean that one religion governs all other religions. By basic consensus, we mean a basic consensus on some binding values, some irrevocable standards and personality attitudes" (Hansi & Kuschel, 1997). Without such a basic consensus as a value orientation, the debating parties will inevitably fight for their own interests until the death, and the society will be threatened by chaos or dictatorship sooner or later. The debating parties, especially small countries, will feel hopeless sooner or later.

*1. The value connotation of the community with a shared future for mankind*

In 2013, the Chairman Xi proposed the ideology "community of shared future for mankind" to protect rule of law and the well-being of all mankind. Since the proposal was put forward, it has aroused the keen attention of international jurists. Law, the beginning of governance, "the construction of a community with a shared future for mankind has an inherent and inevitable connection with the realization of the international rule of law "(2018). Look at the initiative from the perspective of international law. The essence of "community with a shared future for mankind" is to create a beautiful world of lasting peace and common prosperity, which is in accordance with the concept Tian Xia Yi Jia and the aims the Charter of the United Nations, and linked by the common interests of mankind, through the efforts of all countries and mutual cooperation among countries. From this perspective, the community with a shared future for mankind initiative not only contains the goals of human society and the advanced concept of new international relations, but also provides value guidance for the creation of international rule of law.

On the one hand, the ideology proposed by Chairman Xi fully embodies the "principle of sovereign equality", which is in accordance with the determination of emerging countries to safeguard their sovereignty, and is also consistent with the law-making mechanism of the SCO. The five purposes of a community with a shared future for mankind complied with the principle of "sovereign equality". First of all, sovereignty is the foundation to the construction of the international order. The experience of international exchanges over the past hundreds of years has shown that the most important criterion for regulating relations among countries and maintaining lasting peace is to respect the sovereignty of other countries, which is also the criterion commonly observed by the United Nations and all agencies and organizations; Secondly, universal security is the premise of common prosperity, and the premise of security reflects principles of "not threatening with force" and "respect for the sovereignty of other countries" stipulated in the Charter of the United Nations; Finally, openness, inclusiveness and co-construction of a beautiful world can only be achieved through the cooperation of all countries in the world on the basis of mutual respect, and respect for sovereign equality is its due meaning. The construction of SCO's legal system requires repeated consultations and communication among member states under the principle of sovereign equality, and ultimately reach an agreement. The "community with a shared future for mankind" initiative focuses on the sovereign equality of Member States, "developing friendly international relations based on respect for the principle of equal rights and self-determination of peoples, and promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion "(Zhipeng, 2017). It can be seen that the ideology initiative not only conforms to the value of the Charter, but also meets the SCO member states' pursuit of the value of sovereign equality, and endows the SCO member states with a higher value pursuit.

On the other hand, the "community with a shared future for mankind" initiative put forward by the Chairman Xi Jinping is not only universal rational, but also rooted in the multicultural reality of Asia, with obvious Oriental wisdom. In the dimension of universal rationality, the theory of community with a shared future for mankind considers the future of the world from the perspective of all mankind on the

basis of respecting national sovereignty and equality, highlighting the theoretical breadth of the idea of ideology, which is based on the overall development of the human beings and also pays attention to individuals; In the characteristic dimension, the ideology fully demonstrates the connotation of "harmony culture" in Asia. Under the help of the grand ideals of tian xia yi jia, the philosophy of yi he wei gui, yu lin wei shan and yi lin wei ban, the values of ren ai, ji suo bu yu, wu shi yu ren, and the great power feelings of yi tian xia wei ji ren and tian xia zhu yi, the ideology has developed and transformed the existing international law, and has adopted the thinking mode of Confucian philosophy The ideal of pursuing creativity has put forward the political concept of equality and cooperation, the economic concept of win-win cooperation, the cultural concept of inclusiveness and mutual learning, the ecological concept of harmonious coexistence, and the security concept of co construction and sharing, which has injected Oriental wisdom and Asian characteristics into the development of international law.

*2. the value standard of the laws of SCO member states*

The international law method of argumentalism provides a path for SCO to improve its legal system and efficiency legislation, while the theory of "community with a shared future for manking" establishes the value standard for the argumentation procedure of SCO member states and points out the direction for SCO in the legislative dimension. These values include politics, economy, culture, ecology, security and other aspects, as follows:

First, the political view of equality and cooperation. The theory of "community with a shared future for mankind" caters to the "intersubjectivity" of argumentalism, and advocates that countries should actively build a partnership rather than alliance , advocate dialogue rather than confrontation. This means that all countries should respect each other's sovereign equally and, through active coordination, enable each country to cooperate and respect each other, in order to achieve common development. Both the ancient Silk Road and China's active diplomacy today have provided powerful opportunities for the development of relevant countries, which also reflects the Confucian culture of "harmony among all nations"(xie he wan bang). The community with a shared future for mankind advocates the international view of equality, justice and harmonious coexistence, which reflects the Confucian culture of "the world is for the public"(tian xia wei gong). The initial mission of SCO is to maintain regional security, maintain and strengthen peace, security and stability in Central Asia and East Asia, and jointly combat terrorism, separatism and extremism in all forms. Although argumentalism is conducive to countries' pursuit of their own interests, the international view of harmonious coexistence requires Member States to abandon confrontation, adhere to cooperation, and not sacrifice the security of other countries for their own interests. "Harmony is the Tao of the world"(he ye zhe, tian xia zhi da dao ye). Confucian culture stresses peace, good neighborliness and friendship, and pacifies other countries through a comprehensive and accessible way of behavior, which also reflects the non-expansion and non-excessive elements in Asian culture.

Second, the economic idea of win-win cooperation. Marx once said, "everything people struggle for is related to their gains and losses "(Karl & Engels, 1995). The positive experience of economic globalization and the painful lessons of the two world wars tell us that countries around the world have become an inseparable community of interests in international exchanges. Confrontation and plunder between countries will only continue to squeeze the space for human survival and development. Peace and development are the historical themes for realizing the common well-being of all mankind. The theory of community with a shared future for mankind is based on the current international political situation. On the one hand, it recognizes the positive role of major countries in promoting regional and global development. On the other hand, it also emphasizes the "value both justice and interest", pays attention to dividend distribution, and strives to narrow the development gap and solve the problem of unbalanced development. First of all, the "cake" of global interests must be enlarged, and the enlargement of the "cake" requires major countries to assume more responsibilities. It is undeniable that "whether it is the promotion of economic globalization or the construction of EU integration, if we lose the strong impetus of developed countries in the past half century, the global economic development will be much worse" (Bingxi, 2007). Developed countries, or big countries, have higher technological and economic capabilities, can promote technological progress in economic development, and provide more possibilities for world economic development. In the SCO, with the economic rise of China and Russia, China and Russia should assume more responsibilities in the relevant legal and economic fields to help the economic development of other

SCO member states. Confucian culture advocates that "when you are not satisfied, you should take care of your moral cultivation. when you are satisfied, you should strive to benefit everyone in the world." Since ancient times, Confucian culture has been full of beautiful vision for the future society, and is committed to building a shared and co-constructed "Great Harmony Society". In other words, the "cake" of global interests should not only be bigger, but also be divided properly. Since the rules of international law are just the normative expression of the distribution of interests in the world, the theory of community with a shared future for mankind requires the international community to pay attention to the distribution of interests and strive to solve the problems of inequality between the rich and the poor. Although the traditional international order led by European and American countries has promoted the leapfrog development of the international community, they also monopolize most of the development dividends. "At present, hundreds of millions of people in the world are still in extreme poverty and most are in underdeveloped areas " (2019). Therefore, the theory of community with a shared future for mankind opposes the exclusive sharing of interests by major countries. Instead, it wants to "combine justice and interest"(yi li bing zhong) and "enrich people with interests"(li yi feng min). Only by distributing development dividends fairly, narrowing the development gap between countries, finding common interests of all parties, and creating inclusive and mutually beneficial development prospects, can countries live in harmony and develop together to maximize their interests.

Third, the cultural concept of inclusiveness and mutual learning. Culture is the foundation of a nation's sustainable development. At present, the world is full of various cultures, and the conflicts and divisions caused by culture are increasing day by day. Samuel Huntington, an American scholar, pointed out: "In the post-Cold War world, the most important difference between people isn't ideological, political or economic, but cultural... In this new world, the most common, important and dangerous conflict is not between social classes, the rich and the poor, or other groups divided by economy, but between people belonging to different cultural entities "(Samuel, 2010). Although the traditional order of international law recognized that international law applied equally to all States in terms of rules, the word "civilized" was added before the concept of "states" in Article 38, paragraph 1, item 4, of the statute of the International Court of justice. This article attempts to exclude the application and interpretation of international law by "uncivilized" nations through the classification of nations. Combined with the long-term practice of international law, Europe and the United States proudly regard backward regions such as Asia, Africa and Latin America as "the white man's burden" (William, 2008). The western world has long excluded many civilizations except Europe and the United States from "civilized countries", and cultural discrimination has also become the institutional foundation of traditional international law. The theory of community with a shared future for mankind is based on the Confucian concept of "all things grow together without harming each other"(wan wu bing yu er bu xiang hai), and advocates the cultural concept of inclusiveness, mutual learning, and mutual integration. This idea of inclusive culture is in line with the purpose -"all civilizations are equal"- of the Charter of the United Nations. The SCO member states have huge cultural differences, including Islamic civilization, Orthodox civilization, Confucian civilization, etc. the theory of community with a shared future for mankind requires Member States to recognize the legitimacy of the cultural development of each nation, respect and fully accommodate the cultures of other countries. At the same time, the theory of community with a shared future for mankind requires that civilizations should exchange and learn from each other. Only by establishing the concept of civilization of equality, mutual learning, dialogue and inclusiveness can civilizations eliminate barriers between each other and truly realize the cultural integration among SCO member states.

Fourth, the ecological concept of harmonious coexistence. The rule of law is an important prerequisite for the protection of human rights, but the "term human rights often refers to individual human rights in the western context" (Zhongfa & Diyang, 2022), ignoring the dimension of collective human rights. As a basic human right, environmental right is an important part of collective human rights. However, environmental law, as an international soft law, has no coercive force, which also opens the door for powerful countries to seek their own development and damage the human rights of other countries. For example, the philosophical basis of traditional international law is the modern western world outlook of "subject-object dichotomy", which regards man as an absolute subject and reduces nature to the object of cognition and practice. Therefore, the relationship between man and nature also inherits the relationship between possession and

being possessed – the bourgeoisie wantonly destroys ecology in pursuit of its own interests, leading to serious ecological problems and threatening the ecological security and sustainable development ability of its own country and other countries, thus seriously violating human rights. The concept of human rights advocated by the theory of community with a shared future for mankind includes not only individual human rights, but also collective human rights. While protecting individual human rights, it also takes into account the balance and common development of collective human rights, and opposes some subjects such as specific countries, classes and interest groups from seizing the dominant position of the people as a whole and enjoying the interests originally belonging to the people. In terms of ecological protection, the theory of community with a shared future for mankind advocates that man and nature are an organic unity, and the Confucian thought of "exploiting resources according to the laws of nature"(zhi tian ming er yong zhi) is deeply embodied in the theory of community with a shared future for mankind. This theory advocates that man should follow the natural law in his interaction with nature, and shouldn't arbitrarily seize natural resources, threaten the ecological balance, and thus damaging the environmental rights and interests of other countries.

Finally, the security concept of co-construction and sharing. As mentioned earlier, in the hundreds of years of development of international law, its essence is to build an international order around the interests of major countries, and the international order itself has become a tool for major countries to safeguard their own interests and drive small countries. In order to compete for interests, big powers often ignore the rules of international law, wantonly interfere in the internal affairs of other countries, and even take armed action, which seriously threatens international security. Universal security is an important aspect of the theory of community with a shared future for mankind. The theory advocates "striving to build a world free from fear and universal security... In the face of increasingly complex and comprehensive security threats, it isn't good to fight alone, let alone to believe in force. We should adhere to the new security concept of common, comprehensive, cooperative and sustainable, and create a security pattern of fairness, justice, co-construction and sharing "(Jinping 2014). Consultation means listening to the opinions of many parties, because in the face of increasingly complex security threats, almost all major international events need to be negotiated by all countries. Only in this way can we build a more democratic international order and eliminate potential security risks; Co-construction emphasizes the cohesion of multiple forces. In the context of globalization, the relationship of mutual benefit among countries is more obvious. Building a new international order requires efforts from many aspects. This is not only the adherence to the principle of international sovereign equality, but also the due meaning of promoting the SCO member states to assume responsibility and jointly build the SCO international legal system. Only through goodwill, fraternity, mutual assistance and democratic co-construction can conflicts be avoided and eliminated.

## Conclusion

With the increasing advancement of globalization, global issues related to the interests of mankind have emerged one after another. The construction of the SCO community with a shared future provides a good strategy for the peaceful and stable development of central and East Asia. The SCO has always maintained and practiced the concept of universal security, which plays an important role in promoting lasting peace, development and stability in the region and even in the international community. However, the legal system construction of the SCO in the fields of economy, trade and human rights development isn't perfect. In view of the fact that SCO member states are all emerging developing countries and the unique law making mechanism of SCO, it is necessary for SCO to adopt the argumentative paradigm that advocates "intersubjectivity" to improve its legislation efficiency. The argumentative paradigm of international law opposes the false universalism of international law and dispels the Western centrism of international law, which not only conforms to the trend of "rising in the East and falling in the west" in today's international society, but also promotes the legal culture consciousness of SCO member states- "Any existing legal system and its related legal order can't be justified only on its own... It must be considered according to the relationship between the existing legal system, legal order and the nature or trend of the whole social order of a country in a specific time and space"(Jinping, 2014).

The argumentative paradigm of international law recognizes the "intersubjectivity" of international law, fully clarifies the relationship between international law and sovereign power, and can better clarify the social distribution function and operation mechanism of international law. However,

the argumentative paradigm of international law pays too much attention to argumentation skills, so it needs to be guided by the value norms. The theory of community with a shared future for mankind is a new type of civilization program contributed by China. The "political concept of equality and cooperation", the "economic concept of win-win cooperation", the "cultural concept of inclusiveness and mutual learning", the "ecological concept of harmonious coexistence" and the "security concept of co-construction and sharing" presented by that theory are not only the development of the Charter of the United Nations, but also the Asian program for world peace and development.

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