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CRIMINALIZATION OF ECOCIDE ACTS FROM THE PERSPECTIVE OF DOGMATIK

In the face of the globalization of risk society and the increasingly serious ecological crisis, the international community proposed to formulate the ecocide in the Rome Statute in response to the public's physical security. However, the environmental legal interest is abstract, and the responsibility of the infringer of legal interest is difficult to distinguish. The reckless formulation of the ecocide leads to the absence of legal interest protection mechanism, which is symbolic legislation. Symbolic legislation, in order to reflect legislators' concern for social issues, is very easy to subvert the theoretical system of the Rome Statute based on freedom and behavior, so that damages its human rights protection function. Dogmatik has the function of explaining law, criticizing and guiding legislation. Through the etymological interpretation of the doctrine, this paper puts forward the axiomatic dogmatik and clarifies the structure of dogma – overall norms – specific norms – criminal law knowledge – specific cases within the axiomatic dogmatik. And this structure provides a path for the criminalization of ecocide: The basic value of the Rome Statute lies in the protection of human well-beings and the right to life (axiomatic dogma), and the protection of environmental rights should take human well-beings and the right to life as the boundary (specific legal interests); Include typical ecological acts such as land encroachment and serious environmental pollution that violate human well-beings and right to life into genocide and crimes against humanity closely related to them (specific norms/criminal law knowledge); It can not only curb the ecocide, but also maintain the internal coordination and external stability of the Rome Statute.

Key words: symbolic legislation, criminal law function, dogmatik, legal interest.

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Догматика тұрғысынан экоцид әрекеттерін қылмысқа жатқызу

Тәуекелді қоғамның жаһандануы мен күрделі экологиялық дағдарыс жағдайында халықаралық қауымдастық қоғамның физикалық қауіпсіздігіне жауап ретінде Рим Статутында экоцидті тұжырымдауды ұсынды. Алайда, экологиялық құқықтық мүдде абстрактілі, ал заңды мүддені бұзушының жауапкершілігін ажырату қиын. Экоцидті ұқыпсыз тұжырымдау символдық заңнама болып табылатын заңды мүдделерді қорғау механизмінің жоқтығына әкеледі. Заң шығарушылардың әлеуметтік мәселелерге деген қамқорлығын көрсету үшін символдық заңнама Рим Статутының еркіндік пен мінез-құлыққа негізделген теориялық жүйесін бұзу өте оңай, бұл оның адам құқықтарын қорғау функциясына нұқсан келтіреді. Догматиктің заңды түсіндіру, заң шығаруды сынау және бағыттау функциясы бар. Доктринаның этимологиялық түсіндірмесі арқылы бұл жұмыс аксиоматикалық догматиканы алға тартады және аксиоматикалық догматика аясындағы догма – жалпы нормалар – нақты нормалар – қылмыстық-құқықтық білім – нақты жағдайлар құрылымын нақтылайды. Және бұл құрылым экоцидті криминализациялауға жол береді: Рим Статутының негізгі құндылығы адамның әл-ауқаты мен өмір сүру құқығын қорғауда жатыр (аксиоматикалық догма), ал қоршаған ортаны қорғау құқығын қорғау адам денсаулығына жақсы әсер етуі керек. -болмыстар және өмір сүру құқығы шекара ретінде (нақты заңды мүдделер); Адамның әл-ауқатын және өмір сүру құқығын бұзатын жерге қол сұғу және қоршаған ортаның елеулі ластануы сияқты типтік экологиялық актілерді геноцидке және олармен тығыз байланысты адамзатқа қарсы қылмыстарға қосу (нақты нормалар/қылмыстық құқықты білу); Ол тек экоцидті тежеп қана қоймай, сонымен бірге Рим статутының ішкі үйлестіруін және сыртқы тұрақтылығын сақтай алады.

Түйін сөздер: символдық заңнама, қылмыстық құқық функциясы, догматикалық, заңды мүдде.

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Криминализация актов экоцида с точки зрения догматики

Перед лицом глобализации общества риска и все более серьезного экологического кризиса международное сообщество предложило сформулировать термин экоцид в Римском статуте в ответ на физическую безопасность населения. Однако экологический правовой интерес абстрактен, и ответственность нарушителя правового интереса трудно различить. Неправильная формулировка экоцида приводит к отсутствию механизма защиты правового интереса, которым является законодательство. Символическое законодательство, призванное отразить озабоченность законодателей социальными проблемами, очень легко подорвать теоретическую систему Римского статута, основанную на свободе и поведении, что наносит ущерб его функции защиты прав человека. Догматика выполняет функцию объяснения законов, критики законодательства и руководства им. Посредством этимологической интерпретации доктрины в данной статье выдвигается аксиоматическая догматика и разъясняется структура догма – общие нормы – конкретные нормы – знания уголовного права – конкретные случаи в рамках аксиоматической догматики. И эта структура открывает путь для криминализации экоцида: основная ценность Римского статута заключается в защите благополучия человека и права на жизнь (аксиоматическая догма), а защита экологических прав должна исходить из благополучия человека и права на жизнь в качестве границы (специфическая юридические интересы); Включать типичные экологические деяния, такие как посягательство на землю и серьезное загрязнение окружающей среды, которые нарушают благополучие людей и право на жизнь, в геноцид и тесно связанные с ними преступления против человечности (конкретные нормы/знания уголовного права). Это может не только обуздать экоцид, но и поддержать внутреннюю координацию и внешнюю стабильность Римского статута.

Ключевые слова: символическое законодательство, функция уголовного права, догматизм, юридические интересы.

Introduction

Since human beings entered the industrial civilization, problems such as greenhouse gas emissions, oil leakage, deforestation, dumping of toxic substances and so on, which accompanied economic development, have increasingly threatened the ecosystem on which all lives depend. In order to curb the increasingly serious ecological extinction, more and more countries advocate that the ecocide shall be listed as the fifth crime (Kuanaliyeva, Shulanbekova, Rakhimova, Abisheva, 2022) of the Rome Statute. Although the formulation of ecocide can play the deterrent function of international criminal law and curb the intensification of ecological extinction to a certain extent, this paper believes that the establishment of ecocide is a kind of symbolic legislation that reflects the international community's sentiment or value preference for social issues (Kindermann, 1988) in a risk society with criminal legislation, and can't play a substantive regulatory effect. And the symbolic legislation pays attention to the tool value of criminal law and limits the freedom of the people to the minimum, which is a subversion of the freedom and rights protection function of traditional criminal law. How to regulate the ecological extinction on the basis of safeguarding the function of freedom and rights of criminal law has become a historical proposition that international criminal law must face directly at present.

Theoretical Discussion and Previous Studies

1. Criticism on Symbolic Legislation of Ecocide

In the 1980s, German scholar Ulrich Beck pointed out that at the moment when nature and tradition have lost their infinite effectiveness and depend on human decisions (Xiaoyuan & Zhan, 2005), human beings have entered a risk society. Frequent world conflicts, environmental pollution, terrorism, cyber attacks and other events seem to prove the proposition of a risk society. With the introduction of the concept of risk into the traditional criminal law based on contract and freedom, the traditional criminal law has been challenged unprecedentedly in its legislative orientation, nature and function, of which the biggest challenge is the symbolic legislation made by legislators to appease people's emotions.

(1) Establishing Ecocide is Symbolic Legislation

The law is based on society, and the wave of risk society constantly presents new criminal phenomena to legislators. In order to deal with risks and the

social panic caused by risks, legislators attempt to formulate a special law, rule or criminal law provision for each new social phenomenon (Ferri, 1990), so that legal norms can play their preset ability to positively affect the facts of specific social activities, and let society lead to positive development (Kindermann, 1988). However, this kind of legislative action is often just to simply meet the social expectations, by constantly revising the criminal law, it is announced that the country has begun to take corresponding actions to resist risks, and gradually bring the risks recognized by the public into the legal norm system of symbolic legislation (Albrecht, 2007). In other words, the actions of legislators only convey to the public the emotions and value preferences that threaten social problems or risks in a formal sense, and don't play a substantive regulatory role in itself. As Clause Roxin, a German criminal jurist, said: (Symbolic criminal legislation) is not intended to serve the protection of legal interests. It is not necessary to ensure a peaceful common life, but to seek purposes other than criminal law, such as legal provisions to appease voters or express the state's self-image (Roxin, 2006).

Symbolic legislation has been criticized by the legal circle since its inception, but symbolic legislation is not an analytical concept without destructive power, but a combat term with normative significance, and this concept must be used very carefully (Hassemer, 1989). Therefore, there must be a clear standard to determine whether a legislative action belongs to symbolic legislation. After nearly a century of theoretical penetration, the legal community has formed a relatively unified identification standard for symbolic legislation, that is, judging from the two dimensions of form and substance: On the formal side, based on the symbolic interaction theory – people's behavior depends on what they believe rather than what they actually are – The normative value construction attribute of symbolic legislation is more to express a certain posture and position of legislators than to have a practical function; On the substantive side, symbolic legislation has always been an emotional treatment of factual issues. It realizes other social effects by enacting laws and regulations, and has no function of protecting legal interests on the empirical level. According to this standard, this paper believes that the legislative action of adding ecocide to the Rome Statute under the current theoretical background belongs to symbolic legislation.

In essence, the legal interest protection mechanism of ecocide is absent. It is mainly reflected in the following aspects:

First, there is no clear definition of ecocide. Criminal legislation must follow the principle of clarity, which is the basic meaning of the principle of rule of law. Only when the criminal code clearly tells people what is prohibited, can people restrict their behavior by this standard. But up to now, the international community has not yet formed a unified definition of ecocide (International Expert Panel for the Legal Definition of Ecocide, 2021).

Secondly, there is no eligible legal interest in ecocide. The purpose of ecocide is to prevent the occurrence of ecological risks by preventing the danger of environmental pollution, which means that the concept of legal interests of ecological crimes has evolved from anthropocentrism to ecocentrism. However, the legal interest view of ecocentrism takes the protection of ecological security by human society as its purpose. It is essentially a collective rather than an individual legal interest, which is contrary to the individualistic criminal law idea based on contract and freedom, as Hassemer said: If the criminal law is used to protect the collective or diffuse legal interests, such as the criminal law used to protect the environment, this is very problematic (Krems, 2016).

Thirdly, the liability of legal interest infringement of ecological extermination may be attributed wrongly. Even if there are infringed legal interests, if the legislator fails to accurately define the cause of infringement of legal interests, it will also lead to symbolic legislation. In practical experience, most environmental hazards come from the cumulative effect of billions of small acts, rather than a single evil actor (Robinson, 2022). Therefore, it is undoubtedly difficult, even impossible, for legislators to achieve accurate attribution of criminal results in billions of acts.

In terms of form, the addition of ecocide has symbolic significance, but its practicality is limited. In the symbolic dimension, the recent ecological crisis reminds people of the importance and urgency of managing the environment. The international community, especially the International Criminal Court, needs to fight against ecological risks through criminal law to show the attitude and position of the international community in managing ecological risks. However, it is very simple to criminalize environmental pollution in the Rome Statute, but the deeper problem is that it is quite difficult to construct a fair and reasonable criminal law scheme to solve environmental pollution problems. First of all, the principle of proportionality is the inherent requirement of the critical concept of legal interest. When formulating legal norms, legislators must balance the rela-

tionship between measures and objectives. The standard of criminalization of ecocide – the seriousness of the crime – obviously does not allow legislators to determine an appropriate proportion between development and environmental protection; Secondly, the result of seriously harming the environment is often a historical responsibility – the ecocide is carried out by the developed countries in the north, and the result is borne by the developing countries in the south. Most of the environmental hazards are the cumulative effect of many harmful acts, and the punishment of consequentialism may lead to the misplacement of criminal responsibility; Moreover, the International Criminal Court has been overloaded in the fight against the crimes under its jurisdiction. It is unlikely that the International Criminal Court will deal with ecological extinction cases for at least a decade (Кенжалиев, 2022).

(2) Symbolic establishment of ecocide harms the function of international criminal law

The Rome Statute takes the maintenance of human well-beings and the elimination of the history of impunity as its own responsibility. It is an important force for the international community to protect and maintain peace and protect human rights. The symbolic inclusion of the ecocide lacking legal interest protection mechanism and practicality in the Rome Statute will not only lead to internal disorder of the Rome Statute, but also damage the legal interest protection, human rights protection and practical functions of international criminal law, as Hassemer said: (Symbolic legislation) makes the greatest function of criminal law lie in symbolic function, and this symbolic function has become the common (and independent and important) connotation of modern criminal law (relative to the inherent classical prediction of criminal law), also known as the main function of modern criminal law, and has become the feature and crisis of modern criminal law (Hassemer, 1989).

The symbolic establishment of the ecocide will cause internal disorder in the Rome Statute

If the law is to have dignity and authority, it is necessary to unify the legal norms themselves (Youyu, 1984) Because the law is the expression of civil rights and justice, the internal incongruity of the law will inevitably violate justice and damage human rights. When the newly established provisions are inconsistent with the original legal provisions, it means that one of them must be overturned or substantially repealed, but before being overturned, the judiciary will inevitably be in trouble.

Article 25 of the Rome Statute clearly stipulates that the subject of responsibility for international crimes is natural person who has reached the age of 18, and the subject of responsibility is unique. However, the interaction between state and enterprise behaviors promotes the expansion of production and profits by accelerating the pace of ecological destruction (Micheal & Averi, 2021), and state and enterprise are the main perpetrators and responsibility bearers of ecological extinction crimes. Therefore, the inclusion of ecocide in the Rome Statute will inevitably lead to tension between ecocide and individual criminal liability clauses. Secondly, Article 30 of the Rome Statute stipulates that the subjective state of international crimes is knowingly and intentionally. However, most of the ecological destruction acts are not intentionally committed by enterprises or countries, but are generated unconsciously with the development of production (Marco, 2021). In order to effectively curb ecological destruction acts, many scholars propose to introduce recklessness or strict liability into the Rome Statute. The adjustment of criminal elements will inevitably lead to the reshaping of the criminal theory of international criminal law or the overthrow of previous cases, which will undoubtedly damage the authority and dignity of the Rome Statute.

Symbolic establishment of ecocide impairs the protection function of legal interests of international criminal law

As pointed out above, the legal interest protected by the ecological extermination is an abstract and collective legal interest, which makes the traditional criminal law protecting specific legal interests lose the function of telling legislators the boundaries of reasonable punishment (Roxin, 2006). At the same time, the abstraction and diffusion of legal interests also make legal interests no longer presuppose the existence of a specific object. If ecocide is included in the Rome Statute, it means that the international criminal law will punish abstract dangerous criminals, because ecocide's legal interests are environmental rights. Protecting the environment means that as long as there is an abstract danger of damaging the ecological environment, the international criminal law can intervene, unlike the other four kinds of crimes, only when there is a danger or threat of infringement of legal interests. Therefore, the punitive boundary of international criminal law will shift from consequentialism to behaviorism. The punishment mechanism based on actual harm, and the result and causality between behavior and result, which are the basis of free criminal law, will be weakened or even lost because of the pre-position of legal interest protection. Such development will shake the behavioral criminal law, the rule of

law principle, the principle of proportionality, the principle of criminal responsibility based on the principle of individual rules, the principle of non-self-incrimination in the procedural law, the suspect criminal law or police intervention, and even the need to use the consultation mechanism in complex proceedings (Hassemer, 1989). Eventually, international criminal law will become a policy oriented political treaty, and the function of protecting the legal interests of international criminal law will no longer exist.

Symbolic establishment of ecocide impairs the human rights protection function of international criminal law

The preamble of the Rome Statute clearly points out that its value basis is safeguarding human well-beings, that is, the protection of human rights. International criminal law governs the most serious international crimes. Since international criminal law is a stigmatization and negative evaluation of the most serious crimes, it should strictly abide by the principle of modesty. Because the function of criminal law to protect human rights is not only embodied in the principle of rule of law, but also reflected in the appropriateness of criminal law to adjust social order. Because criminal rule of law governance is embodied in punishing crimes and protecting good people, but the degree and quantity of punishing crimes are based on the premise of safeguarding citizens' freedom and rights to the maximum extent, so the scope and intensity of punishment of criminal law can't be expanded arbitrarily, and criminal law must be used as the last means to regulate social conflicts, which is the internal logic of criminal law's modesty.

Ecocide, as an abstract dangerous crime, is characterized by its early criminalization and severe punishment. The early and spiritual concept of environmental legal interest protection is gathering a powerful force to impact the modesty of traditional criminal law (Yanhong, 2015), which greatly expands the degree and quantity of the application of international criminal law. In addition, development is bound to be accompanied by the depletion of environmental resources. The United Nations Declaration on the Right to Development clearly states that the right to development and other human rights are universal, indivisible, interdependent and interrelated and are an integral part of all basic human rights. The Rome Statute punishes the most serious international crimes, which is the most thorough and serious stigmatization and moral negation of criminal acts. Therefore, when the Rome Statute punishes ecocide, it must be at the cost of impairing the human right to development.

Symbolic establishment of ecocide harms the pragmatic function of international criminal law

The value of law is not limited to order, fairness, freedom, etc. Many legal norms are based on practicality and maximum benefits (Stein & Shander, 2004). Laws can adjust social relations only when they are enforced. If they are not enforced, it is like there is no law.

Ecocide is a symbolic legislation that the international community wants to carry out in the face of the increasingly serious ecological crisis. its most direct purpose is to eliminate the fear of ecological crisis through legislation, and to find a safe spiritual home for the people. However, as pointed out above, the result of environmental hazards is often the cumulative effect of multiple harmful acts. How to achieve scientific accountability is still a difficult problem to solve. Therefore, the symbolic formulation of the ecocide will damage the practicality of the Rome Statute. In addition, the legitimacy of criminal law largely depends on the legitimacy of its legal interest protection mechanism, as pointed out by Chinese scholar Chen Jialin: Punishing a certain behavior through penalty must be an effective means to achieve the purpose of regulating such behavior. If even using penalty to punish a certain behavior can't achieve the goal of consistent such behavior, then setting of penalty norms violates the principle of proportionality and shouldn't be allowed (Jialin, 2013). Both right to development and environmental right are components of human rights. What goes with economic development is the destruction of resource exploitation and the environment. How to balance the relationship between development and the environment. At present, the international community has not yet formulated scientific standards. Therefore, it is undoubtedly lack of the most basic legitimacy to recklessly include ecocide in the Rome Statute.

Discussion

Although the symbolic formulation of the ecocide can quickly create a sense of security for the international community through legislation, the face project lacking the core of the legal interest protection mechanism is bound to have no real power to protect the environment. However, as a serious threat to peace and human welfare, ecocide must be curbed. This paper introduces the methodology of dogmatik to expand the interpretation of relevant provisions of the Rome Statute, and brings typical ecocide into the jurisdiction of the Rome Statute. Although dogmatik is the research paradigm of

criminal jurisprudence, but international criminal law is a branch of criminal law (Ambos, 2017), therefore, dogmatik that guides and helps criminal legislation also has the function of criticizing and guiding international criminal law. Adopting the path of dogmatik can not only avoid a series of limitations brought about by symbolic legislation, such as lack of legal interests protection function, lack of proper legal interests, and disorder of internal system, but also realize the deterrent function of the Rome Statute in punishing illegal acts. First of all, dogma is the basic value embodied and observed by the overall laws and regulations, which can fully reflect the fundamental interests of the international community, and has the symbolic significance of the value construction of international criminal law; Secondly, the internal structure of dogma – overall norms – specific norms – knowledge system – cases, guided by the axiomatic dogmatic, enables dogmatik to critically interpret the Rome Statute, and to include behaviors that seriously endanger the ecological environment without changing the existing content of the Rome Statute, so as to achieve the effect of protecting the environment and punishing ecocide.

1. The dogma of axiom: protecting human well-beings is the logical starting point for the criminalization of ecocide

At present, there are positive law dogmatic and jurisprudential dogmatic in the academic circle, but both of them ignore the meaning of the dogma itself, and both believe that the dogma is a purely rational arbitrary process that has not criticized its own ability (Ruthers, 2013). Dogmatik takes the positive law as the premise, which is not proved by reason, but eliminated by authoritative declaration and acceptance derived from belief, and takes it as the starting point to carry out the standardization work of systematization and interpretation of the positive law. However, with the increasingly prominent drawbacks of dogmatism and the criticism of meta discourse theory by postmodern relativism, the dogmatik of positive law and the dogmatik of jurisprudence have been questioned (Lei, 2018). Through the etymological analysis of the concept of dogma, this paper holds that the dogma of law is the basic value or axiomatic value of law, and the dogmatik should be axiomatic dogmatik.

The concept of Dogma originated from theology. For the theological theoretical system, it is the essence of the Bible, not the Bible itself as the basis for its theoretical construction. Although the Bible is God's Word, repeating the words of the Bible with the same words distorts the meaning of the Bible. Therefore, as an internal emotion and consciousness, the dogma is an eternal truth extracted from narrative scriptures (Erickson, 2012). The dogma of law in the dogmatic of law, like the dogma in theology, is the basic value of stability, authority and universality contained in the legal text. These basic values and the highest basic principles, especially when they are determined in the Constitution, can claim absolute effectiveness, that is, they constitute an unchanging 'pillar of doctrinaire' and support the overall structure of the legal order (Lutes, 2015). This basic value of law is the axiomatic principle from the essence of things, which provides the basis and origin for other legal elements (Wenxian, 2011). It has universal applicability and authority beyond time, space and region. Moreover, the basic value or axiomatic dogma beyond the positive law is independent and open, which can not only provide direction for the dogmatik interpretation of the legal text, but also provide a legal interest basis for the criminalization of a certain act, and can also examine the legislation in a priori way, which is the basis for good law and good governance. The dogmatik of positive law can't overcome the shortcomings of positive law itself, such as lagging behind, arbitrary legislators, and loss of justice in specific case (Von Jhering, 2010); However, the dogmatik of jurisprudence can't solve the dilemma of general theory is difficult to form and lacks intelligence (Zhiwei, 2022). Therefore, the axiomatic dogma with openness and independence is the most effective and close to the original purpose of dogma.

As far as international criminal law is concerned, the Rome Statute is the most important legal text of international criminal law. Its basic values are contained in the preamble, namely, protecting human well-beings, maintaining world peace, and ending the history of impunity. In this paper, a series of basic values of the Rome Statute are all centered around a core value – protecting human well-beings. Whether it is to maintain peace, end conflicts, or fight against international crimes and protect good people, its purpose is to protect basic human rights and human well-beings. Therefore, the legal dogma of international criminal law should be protecting human well-beings. The environmental right is one of the basic human rights. All countries must maximize their available resources and fulfill their obligations in dealing with environmental challenges (David Boyd's speech to the Human Rights Council in 2020, 2020). The International Criminal Court isn't an exception – this provides

a legitimate and just basis for the criminalization of ecological extinction. The Rome Statute must shoulder the responsibility of punishing the serious damage to the environment and respond to the ecocide that threatens world peace and damages basic human rights. Under the constraints of the legal dogma of protecting human well-beings, although the international community can't recklessly carry out symbolic legislation, it can adopt a dogmatik approach to expand the interpretation of relevant provisions and bring the ecocide with serious harm into the jurisdiction of the Rome Statute.

2. Axiomatic dogmatik provides a way to criminalize ecocide

Traditional dogmatik believes that law is not the object of ridicule, and dogmatik scholars can only effectively interpret it on the basis of positive law, but axiomatic dogmatik is not only a formal classification system that only classifies (Lutes, 2015), but also evaluates and supplements the norms of positive law based on current justice and human rights, as Larenz said: We regard the norm of positive law as a whole, whether it is a norm in a special system or a norm in a self-contained field, and the whole is based on a certain purpose and value that needs to be achieved. According to these basic ideas, if a situation should be regulated, but the norm does not exist or is unreasonable, then there is a loophole in the meaning of the whole (Larenz, 2005).

However, judging whether a specific norm conflicts with the axiom of legal dogma requires a reference standard. The abstract axiom is obviously not competent for this task, and it is bound to require a more detailed specific value as a reference. That is, the internal value system of dogmatik must be from high to low, from abstract to concrete, which forms the internal structure of dogmatik dogma – overall norms – specific norms – knowledge system (criminal law theory) – specific cases. This structure provides a scientific paradigm for legal dogmatik to guide criminal legislation and interpret criminal law norms. First of all, legislators should not make symbolic legislation in order to cater to the public sentiment and blindly pursue the explicit function of criminal law, and each legal norm must conform to the legal dogma; Secondly, each norm must clearly express the harmfulness of the regulated behavior; Thirdly, the legal interests of specific norms should conform to their positioning and value pursuit in the whole legal system; Finally, through legal interpretation, we can make the norms conform to the social development and make the legal value reach the specific case.

To sum up, the introduction of axiomatic dogmatik into international criminal law can provide a scientific path for the criminalization of ecocide. First of all, the basic value concept of protecting human well-beings has laid a legitimate foundation for the criminalization of ecocide; Secondly, on the basis of reality, critically measure the relationship between development and environment, and set the scope for the criminalization of ecocide; Finally, although the dogmatik has a critical function, its interpretation of specific norms aims to build a harmonious system dominated by the dogma of law within the Rome Statute and objectively maintain the stability of the Rome Statute.

Results

Dogmatik links legal value with specific norms, so as to match the actual situation with the rules. We must carefully consider and weigh the living relationship to be standardized, the possibility of existing norms, the whole of which norms will be added to the norms to be formulated, and the influence of this part of norms to be formulated on other normative fields (Larenz, 2005), so as to better realize the function of international criminal law.

1. Introduction of the principle of proportionality: establishing the scope of environmental legal interest

Whether a certain social life interest should be protected by criminal law depends on the concept of legal interest, which is the value judgment standard for determining the scope of criminal punishment (Shantian, 1978). However, with the risk of society, many scholars believe that the liberal criminal law with legal interests as the core can't meet the needs of social development. It is necessary to explore the guiding principle of criminal legislation that replaces the principle of legal interests protection (Mingkai, 2017). Therefore, the principle of proportionality was introduced into criminal law. Although the principle of proportionality has the disadvantage of lacking the examination and clarity of the legitimacy of the purpose (Mingkai, 2017), which can't replace the basic position of the principle of legal interest protection in the liberal criminal law, the introduction of the principle of proportionality into the criminal law can overcome the limitation of the abstraction of legal interest to a certain extent, and achieve the balance between the punitive measures and the protection of legal interest.

It is pointed out above that ecological crisis is accompanied by economic development, and the both

are inseparable, as described by western scholars: The function of capital, its relentless driving force, accumulates a destructive and collapsing natural cycle, and transforms it into a 'broken linear process', which transcends the constraints and boundaries of nature, leading to the 'metabolic rift' between human beings and nature as described by Marx (South, Abaibira, etc., 2021). The environmental right and the right to development are both different aspects of basic human rights, and they have different emphasis only because of different times. In the past, neither international environmental law nor international criminal law took coercive measures to curb production development, because growth driven capitalism objectively promoted social development. However, in the face of increasingly serious ecological crisis, during the process of capital expansion in production and industrialization, there is an additional economic process of plunder or theft (Crook, Short, South, 2018) – in which violence, bloodshed and killing are often rife – colonialism.

Development, in the Declaration on the Right to Development, is clearly defined as (people) enjoying the benefits of economic, social, cultural and political development, which means that all development must be people-oriented. Therefore, the way of seeking development by colonial means has no justification in the field of international human rights law. Therefore, fighting colonialism and safeguarding human's right to life is the minimum scope of ecological extinction under the jurisdiction of the Rome Statute with the purpose of protecting human well-beings.

Due to the tension between the ecocide behavior summarized by the international community and the Rome Statute in terms of responsibility, subjective state, gravity threshold, etc., and the fact that the ecocide behavior can't be categorized, the time for formulating the ecological extinction crime is not yet coming. However, in the face of the increasingly serious ecological crisis, the international community must give play to the binding force of the Rome Statute, and include some representative ecocide acts that are closely related to the crimes governed by the Rome Statute into the Rome Statute, which can not only make an example to others, but also actually safeguard the justice and authority of the Rome Statute.

2. The specific path of criminalizing ecocide

(1) Cultural colonization of land grabbing can be included in genocide

In practice, the crime of genocide in the Rome Statute only governs the act of physically destroying a race in part or in whole. However, the definition of the Genocide Convention and the ad hoc court shows that: Genocide not only includes the physical destruction of the oppressed groups, but also includes the cultural destruction of the national model of imposing oppressors. First, at the object level, genocide includes cultural genocide. Article 6 of the Rome Statute clearly stipulates that the object of the crime of genocide is national, ethnic, racial and religious groups. These four objects focus on different aspects to define groups. Nationalities mainly emphasize the unity of political dimensions, while races focus on the unity of historical and cultural dimensions. The Oxford Dictionary defines race as a group of people with the same ancestors and origins. The ICTY held that race refers to a group whose members share the same language or culture (ICTY-96-4-T, 1998). From the above definition, physical destruction and cultural destruction can make a group disappear. In other words, the destruction of life and thinking mode and cultural symbols also constitutes genocide. The Rome Statute stipulates that forced transfer of children is one of the manifestations of genocide. As we all know, children grow up in a group, learn the language of the group, accept the influence of the group's culture, and believe in the religion of the group. When they grow up, they naturally become members of the group. Forcing children of a group to transfer will naturally reduce the number of members of a group, However, this reduction is not in the physical sense, but in the social and cultural sense. The Rome Statute defines this act as genocide, which undoubtedly indicates that genocide includes not only physical destruction, but also cultural destruction.

The conversion of land from natural land to industrial land is an inevitable result of economic development. However, as the scholar Wolfe said: Land is life, or at least it is necessary for life. Therefore, the struggle for land can be – in fact, often – a struggle for life (Wolfe, 2006). When violent ecological destruction expels or kills certain races to obtain their land, there is no doubt that the Rome Statute can govern these acts. However, when the land is occupied only by means of violence, the residents on the land are not killed, or they are incorporated into the expanding capital development relationship in the form of violence, the Rome Statute lacks the reason for jurisdiction. However, it is worth noting that the social livelihood and livelihood structure of some groups depend on the direct connection with specific land areas and the knowledge embedded in the land from generation to generation, and the unique ecology, landscape and related livelihood

practices attached to the land are unique components of the cultural identity, world outlook and social cohesion of these groups. Therefore, whether violent or non-violent land occupation is equivalent to directly destroying the cultural system of these groups, leading to their social death, that is, cultural extinction. When the cultural system of these groups is destroyed, all these communities resist these processes (land occupation, cultural extinction) in different ways and at different times, and formulate community response and survival strategies against the background of national violence and survival risks (Wise, 2021). This strategy is usually violent, even revolutionary, which leads to ethnic cleansing or large-scale human rights crisis.

The large-scale human rights crisis caused by land occupation is not a theoretical inference, but a practical experience. For example, in Sudan, due to the invasion of modern capitalist countries, the land and resources of the residents of Sudan were plundered. In this process, Sudanese society lost the conflict resolution mechanism attached to the land, the land tenure system and the resource distribution system between different tribes – the traditional historical culture attached to the land was replaced by modernity and capitalist economic relations, and the cultural customs left over from history, collective memory, customary power – after the elimination of traditional culture that once determined the relationship between community, land and nature, the social order based on traditional culture could not be maintained, which led to the class orientation of people's identity, and the regional relations that had previously existed together as a whole fell into tension. In addition, after the land was occupied, the food system of local residents was destroyed, and the rural population was more and more vulnerable to the impact of climate and fell into food crisis (Watts, 1983). The emergence of these situations has led to the instability of the common social structure. In this case, some groups are more vulnerable to the influence of the state's exploitative tribalism, the strategy of racial divide and rule, and the recruitment of state supported militias. The latter, in turn, are mobilized by the above-mentioned racist trends of thought, and become the main tool for the confluence and displacement of genocide (Wise, 2021).

To sum up, when there is a causal relationship between land occupation and cultural genocide, the ecocide of land occupation should be considered as a crime of genocide.

(2) Serious pollution should be regarded as a crime against humanity

The Rome Statute deals with the excessive, extensive, long-term and serious damage to the natural environment caused by military attacks in international armed conflicts in the context of war crimes. It will not be repeated here. However, acts of serious environmental pollution often occur in peacetime. How to exercise jurisdiction over acts of serious environmental pollution in peacetime deserves the attention of the international community.

The concept of murder in the past international criminal justice practice mainly includes three elements: 1. The victim died; 2. The death was caused by the illegal act or omission of the defendant or his subordinates; 3. When killing, the defendant or his subordinates intentionally killed or caused physical injury to the victim, knowing that such physical injury is likely to cause the victim's death, and the defendant's behavior must be the substantial cause of the victim's death (ICTR-96-4-T, 1998). However, with the development of the times, Article 7 (1) (a) of the Elements of Crime, when defining the concept of murder, believes that the word murder can be interchanged with the concept of causing death. The provisions of the Elements of Crime mean that as long as there is a causal relationship between the victim's death and the actor's act or omission, and that the victim's death is caused by actors knowingly and intentionally, then, no matter how they behave, they can constitute murder.

The broad interpretation of murder in the Elements of Crime provides the possibility for the criminalization of acts that seriously pollute the environment. If murder is committed through acts that seriously pollute the environment, and as long as the constitutive requirements are met, that is, there is a causal relationship between acts that seriously pollute the environment and the death of the victim, and the perpetrator intentionally does so when the victim dies, or at least the perpetrator is aware that his serious pollution behavior will lead to the death of others, then this behavior constitutes murder in crimes against humanity. Admittedly, such murders must be based on the premise of large-scale and systematic killing of civilians. However, acts that seriously pollute the environment are not actions taken against a specific person, but actions that will affect a region or even a country, with the characteristics of large-scale and systematic.

Article 7 (2) (d) of the Rome Statute stipulates that the expel or forcible transfer of population includes the expel of the person concerned from the area where he or she lawfully resides through expel or other coercive acts without the grounds permitted

by international law. The Elements of Crimes further define that expel can also be the transfer of one or more persons to another country or place through expel or other coercive acts. The subjective state of forced expel is knowingly, that is, in addition to knowing other elements of crimes against humanity, it must also intentionally cause such expel, or realize that expel is the inevitable result of its behavior. The Rome Statute does not clearly define the concept of forced expel, and the judicial practice of the International Criminal Court didn't clarify the nature and extent of forced transfer (Hall & Stahn, 2016). In response to this situation, the Elements of Crime has refined expel, believing that the term forcibly includes threat of force or coercion, but not limited to force (Elements of Crimes, 2013). The definition of forced expel in the Elements of Crime originates from the judicial practice of the ICTY – in the Stakic case, the Appeals Chamber held that forced expel includes threats of force or coercion, such as threats caused by fear of violence, coercion, detention, psychological oppression or abuse of power against these or another people, or the use of a coercive environment (IT-97-24-ES, 2011). In the judicial practice of the ICTY, forced expel mainly focuses on the causal relationship between the criminal's behavior and the victim's leave. In other words, as long as the victim is forced to leave without other real options, it constitutes forced expel.

It is worth noting that the Elements of Crime considers that the constituent elements of forced expel also include the lack of reasons allowed by international law, but it is clear that serious pollution of the environment isn't an act in accordance with international humanitarian law or human rights law. Under the condition of having the necessary intention and knowledge, the behavior of the actor seriously endangering the environment can be included in the category of forced migration, because the behavior of seriously polluting the environment itself may force population migration (Cooper, Behnke, Cronk, etc., 2021). For example, deforestation may force people who depend on forests to be displaced, and the Chernobyl nuclear accident has caused 135000 people to leave their homes.

Although Article 7 (1) (8) of the Rome Statute stipulates that any identifiable group or collective shall be persecuted on the basis of politics, race, nationality, ethnicity, culture, religion, gender as defined in paragraph 3, or on other grounds recognized as different from international law, and shall be committed in combination with any of the acts referred to in this paragraph or any of the crimes within the jurisdiction of the Court, paragraph 2 (7) further stipulates that persecution refers to the intentional and serious deprivation of basic rights against the characteristics of a group or collective in violation of international law. However, it is undeniable that in the practice of international criminal law, pure persecution hasn't been truly implemented in international judicial practice (Prosperi & Terrosi, 2017). As the jurist Holmes said, the life of law lies in implementation (Holmes, 2007), and the clauses that aren't implemented are virtually non-existent. Therefore, this paper believes that the extensive function of the persecution clause should be activated to better play the role of the Rome Statute.

An important reason that restricts the implementation of the crime of persecution is its criminal intent – Article 7 (1) (g) of the Elements of Crime requires that persecution must be based on the intentional deprivation of basic rights on discriminatory grounds. Deprivation of basic rights includes not only the deprivation of various personal rights, but also the deprivation of property rights. For example, the ICTY pointed out in the Blaskic case that: If property is destroyed because of discrimination, it may constitute a potential act of persecution. When the destroyed property is not only private property, but also closely related to the interests of specific communities, such as collectively owned property or land, it also constitutes a crime of persecution (IT-95-14-T). In addition, the ICTY is also aware that (IT-94-1-T) if on discriminatory grounds, property attacks that destroy the livelihood of some people (including the economic basis of their livelihood) may also be persecution. The reason why the ICTY defines this way is that it recognizes the fundamental link between indigenous peoples and their territories. Although there is no universally recognized definition of indigenous people in international law, some standards can be determined according to relevant legal documents, including: Maintain historical continuity with the past; show specific territorial ties, including ties with ancestors living in the region; unique and specific social, economic, cultural and political institutions, which are different from the political form of the country where the group is located; collective self-identity, etc. (ILO C169, 1989). It can be inferred from the relevant definitions in ILO that indigenous people mainly refer to the ancestral society that believes that they are rooted in the place where they live and raised by them, and that they are different from the more modern social parts established in these territories later (Zambrano, 2009). The ICTY recognized that the link between indigenous peoples

and their territories is fundamental to their existence, and therefore undermining this relationship between indigenous peoples and their territories is a serious violation of their fundamental rights.

The ICTY expanded the content of basic rights to property rights, which means that the content of discrimination has also been expanded accordingly, that is, discrimination in the economic dimension is also a kind of discrimination, because in international political theory, economy is the basis of political construction, and only by adopting advanced economic models can we build a free and democratic political model. From Montesquieu and Adam Smith in the 18th century, to social theorists such as Comte, Durkheim, Weber and Marx in the 19th century, and to American modernization theorists in the 20th century, in fact, they are all constantly seeking a universal history facing all mankind from the economic, social and political development of materialism, and finding a goal or significance model to guide the direction of human future development, Thus, it provides the historical experience of human development from the low primitive state to the advanced modern and even post-modern. It is on this theoretical basis that Francis Fukuyama, an American scholar, put forward the proposition that a free and democratic political system based on the capitalist market economy is the end of history (Fukuyama, 2014). Capitalism and colonialism also rely on this arbitrary idea to constantly expand the market economy and bring indigenous people into the capitalist market economy system (Crook, Short, South, 2018). Modern economic people driven by capital destroy or interfere with the natural habitat on the land by means of deforestation, exploitation of natural resources, environmental pollution, etc., and forcibly remove them from their ancestral land or forcibly expel them, it breaks the links between indigenous peoples and their territories and ecosystems, thereby threatening their integrity as a group. In other words, the act of bringing indigenous people into the market economy system and then seriously damaging their land, resources and ecology, which leads to the withdrawal of indigenous people from their native land, obviously destroys the inheritance relationship between indigenous people and their land, which is a serious violation of their basic rights and a kind of persecution.

In principle, illegal acts that cause serious environmental pollution may also constitute other inhuman acts as stipulated in Article 7 (1) (k) of the Rome Statute. In interpreting paragraph 7 (1) (k), the Elements of Crimes states that acts that may constitute other inhuman acts must at least cause great physical or mental suffering or serious injury (ICC-01/04-01/07-717). This means that as long as the perpetrator intentionally causes serious physical and mental suffering to the victim, or seriously violates the victim's human dignity, and in fact causes great suffering to the victim's body, mind and spirit due to his/her absence, the perpetrator may constitute a crime against humanity of other inhuman acts.

As a miscellaneous provision, other inhumane acts are open, emphasizing the results rather than the special nature of the perpetrator's acts, which provides a huge possibility for serious pollution acts to be included in crimes against humanity. Imagine that indigenous people or rural communities are often disconnected from modern society. When modern society uses these technologies or industrial methods that are completely disconnected from them to develop or destroy the living environment of these people, or directly deprive them of their land, it may cause them severe mental pain, because the spiritual connection between indigenous people and the land they live in cannot be separated, as the Inter American Court of Human Rights said:

It must be recognized and understood that the relationship between indigenous communities and their lands is the fundamental basis for their cultural, spiritual life, integrity and economic survival. For these peoples, their community relationship with ancestral territories is not just a relationship of ownership and production, but consists of material and spiritual elements, which must be fully integrated and enjoyed by communities, so that communities can preserve their cultural heritage and pass it on to future generations (IACHR, Arguments before the Inter-American Court of Human Rights in the case of Yakye Axa v. Paraguay, 2005).

When the land on which the indigenous people depend is seriously polluted, so that they have to give up their lands and leave, even if modern science and technology cannot show that they have suffered serious mental pain, as long as the serious pollution is deliberately committed by the perpetrator, such acts can also constitute other inhumane acts in the Rome Statute.

Conclusion

In the face of various risks caused by the excessive development of industrial society, the international community has turned its interest in criminal legislation to risk prevention, so that it can make a rapid criminal response to emerging risks.

However, in order to achieve this goal, symbolic legislative phenomena have emerged endlessly. Politics has come to the boundary allowed by law. The value of freedom and human rights protection of criminal law is at risk of being damaged by political values. Symbolic legislation is an ancient, primitive and intuitive response of human beings to evil. Although it is fast, it is emotional and may also be irrational. In the face of the increasingly serious ecological crisis, at the same time, we must adhere to the criminal law to modestly protect the freedom and rights of people, use the dogmatik method to expand the interpretation of the current Rome Statute, and include the typical representative ecocide such as land occupation and serious pollution into the jurisdiction of the Rome Statute, which is the proper meaning of protecting human well-beings. The dogmatik not only has the function of explaining law, but also has the function of criticizing and guiding legislation. By using the dogmatik to expand the interpretation of the Rome Statute, we can not only avoid the limitation of symbolic legislation lack of legal interest protection function, but also avoid the internal disorder of the Rome Statute caused by reckless legislation. The most important thing is to interpret typical ecocide as genocide and crimes against humanity in a dogmatik way, which can maintain the function of safeguarding freedom and rights of international criminal law while dealing with the risk of ecological crisis.

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