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Dogmatical Thoughts on Rohingya Case

The campaign of atrocities against Myanmar's Rohingya minority is among the most pressing human rights challenges of our times. The Prosecutor applied for jurisdiction with "Prosecution's request for a ruling on jurisdiction under Article 19(3) of the Statue", which caused considerable controversy among academical, diplomatic circles and even among judges. Judge Brichambaut's critique of "The Request" covers almost all critical legal thinking. Judge Brichambaut considered that the application of Article 19(3) of the RS in the "Request" was neither appropriate nor in accordance with the principle of fairness, inappropriately expanded the prosecutor's power, and did harm to the authority of the ICC. Based on the dogmatic theory, the Article 19(3) of the RS pointed out that the purpose of the clause is to limit the Court's jurisdiction to safeguard national sovereignty. The distinction between "jurisdiction" and "admissibility" essentially is to ensure that the Court earnestly abides by the scope of jurisdiction determined by the RS. The historical interpretation of Article 19(3) of the RS not only clarifies the legality of the ICC's jurisdiction over the situation in Myanmar, but also verifies that the RS is an "organized whole".

Keywords: dogmatic, historical interpretation, legality, jurisdiction, admissibility, Myanmar, admissibility.

Introduction

Since August 2017, approximately 670,000 residents of Rakhine State, Myanmar, have been expelled by the local government to neighboring Bangladesh. The Myanmar government's political actions against the residents of Rakhine State have also been called a "textbook example of ethnic cleansing" [1] by the Human Rights Council. In the face of Myanmar's atrocities that shocked human conscience, the ICC, drawing on the judicial experience of the former Yugoslavia Tribunal and the Rwanda Tribunal, decided to prosecute the Myanmar government for "crimes against humanity" in response to the atrocities committed by Myanmar government. However, one of the difficulties faced by the prosecutor in prosecuting the Rohingya situation is the issue of jurisdiction. Because the atrocities committed by the Burmese government took place in Myanmar, which is not a party to the RS, at the same time due to that the Burmese government has not referred the situation to the ICC, the UNSC has not taken any steps — as it did in 2005 and 2011 by referring the Darfur situation to the ICC and Libya to the ICC. Therefore, how to establish the jurisdiction of the ICC over the situation in Myanmar has become a prerequisite for the ICC to hold relevant persons criminally responsible and achieve the purpose of criminal justice.

ICC Prosecutor Bensouda believes that the court can exercise jurisdiction in accordance with Article 12 (2) of the RS. According to this provision, the harmful results of the situation in Myanmar occurred in Bangladesh, and based on the "cross-border" provision in crimes against humanity — the place where the crossing occurred was Bangladesh — according to the principle of territorial jurisdiction, the ICC can exercise jurisdiction over the situation in Myanmar. Therefore, on April 9, 2018, Prosecutor Ms. Bensouda requested the Court to make a decision that the Court can exercise jurisdiction over the "deportation crime" committed by the Myanmar government. After deliberation, the Pre-Trial Chamber confirmed on September 6, 2018 that the Court had jurisdiction over the Rohingya situation. Although the Pre-Trial Chamber's resolution established the ICC's jurisdiction over Myanmar, a non-State Party, the ruling caused great controversy in the entire judicial community. For example, commentator A. Seiff sharply accused the ICC of having too broad a jurisdiction, and even ICC Judge Brichambaut refused to recognize the legality of the Prosecutor's "Request". Judge Brichambaut said Prosecutor Bensouda's request lacked clarity and that if the court made a

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ruling on the situation in Myanmar without thinking, it would undermine its own authority as the ruling lacked a legal basis.

Methods and materials

This research was carried out within the frame of decisions of the ICC Judges and Chief Prosecutor (Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statue [2] and Partially Dissenting Opinion of Judge Marc Perrin de Brichambaut [3]) and Rome Statute. This study examined the reasons on which the judge's decision based, and believes that the prosecutor's reasons, on which she based to exercise jurisdiction on Myanmar situation, are significant. In addition, this research points out that the purpose of legal doctrine is to interpret the RS as a flesh-and-blood whole, and interpreting individual legal rules out of context and system is likely to distort the original meaning of the legal text.

Results

The Request filed by the Office of the Prosecutor can be divided into three parts. The first part is the main point. In this part, the Prosecutor argues that since up to 670,000 refugees from Rakhine State, Myanmar, have been deported to Palestine, the consequences of the crimes against humanity committed by the Government of Myanmar have occurred in Bangladesh, which is a party to the RS. Therefore, the ICC can establish jurisdiction over the Rohingya situation pursuant to Article 12(2) of the RS. Moreover, due to the special circumstances of the Rohingya situation, the prosecutor can submit a request to the Pre-Trial Chamber to make a ruling on specific issues in accordance with the right granted to the prosecutor by the RS — discretion — when he is unable to confirm it himself. The second part is the prosecutor's specific opinion on the Rohingya situation. In this part, the prosecutor argues whether the Rohingya situation exists and whether it is serious. Secondly, the prosecutor argues in this part that deportation is a kind of behavior that endangers humanity, and the prosecutor cites a large amount of factual evidence and legal evidence to prove that "deportation" is an independent crime, and finally establishes the constituent elements of the crime of deportation. The last part is the prosecutor's application for the court's ruling. Obviously, the entire logic of the Prosecutor's Request is based on Article 19, paragraph 3. Therefore, when the Prosecutor's application of Article 19, paragraph 3, of the RS lacks legitimacy, the entire Request lacks a legal basis, and even the Court's jurisdiction is illegal.

Article 19(3) of the RS gives the Prosecutor and other interested parties the right to question the jurisdiction of the ICC and the admissibility of the situation. Some scholars and judges believe that the Prosecutor's actions are an abuse of Article 19(3), but the Pre-Trial Chamber believes that different people have different understandings of the RS, so the Prosecutor's application of Article 19(3) is not an abuse of discretion. Judge Brichambaut believes that the OTP's interpretation of Article 19(3) of RS in the Request is incorrect, and the ICC has not provided an authoritative interpretation of the application of this provision. Moreover, when applying this provision, the Prosecutor did not follow the provisions on treaty interpretation in the *VCLT*, and therefore the Prosecutor's interpretation of Article 19, paragraph 3 of the RS is inconsistent with the inherent spirit of the RS.

Judge Brichambaut further pointed out that the application condition of Article 19(3) of the RS is "after the case has been established", and the standard for establishing a case is that the Pre-Trial Chamber issues an arrest warrant or a summons for the criminal to appear in court. However, when the Prosecutor applied Article 19(3) of the RS, this standard was not met. There are three main reasons why the applicability of Article 19(3) of the RS is considered to be time-limited. First, according to the title of Article 19 of the RS — "Challenging the Jurisdiction of the Court or the Admissibility of a Case", the right granted by this article can only be exercised when there is a "case". In other words, the application of Article 19 of the RS is under time limitation, that is, only after the case is established can it be applicated. In addition, not only the title, but also other provisions in Article 19 prove this assertion. For example, Article 19 (1) states at the beginning that this provision only applies to the case stage, and Article 19 (2) stipulates that "the objects of the questioning of relevant persons or institutions" is the case, not the situation or anything else. Secondly, according to the provisions on the interpretation of treaties in the *VCLT*, everyone who interprets the specific provisions should be in good faith in the context. Therefore, whether the prosecutor or the ICC interprets Article 19(3) of the RS, it should be interpreted in the context of the RS and the relevant provisions of the Rules of Procedure and Evidence. According to the provisions of Article 19(1), that is, the prosecutor's right to challenge should be exercised after the case is established, the prosecutor obviously did not interpret Article 19(3) of the RS in good faith. For this reason, Judge Brichambaut believes that Article 19(3) of the RS can only be

applied after a "case" has been established. Finally, Judge Brichambaut believes that if the Prosecutor applies Article 19(3) of the RS before a case has been established, this provides a way for the Prosecutor to expand his powers. Because the prosecutor can make hypothetical or abstract requests for jurisdiction to the Pre-Trial Chamber when there is no case or even situation, this not only undermines the authority of the RS, but also causes all cases to be concentrated in the Pre-Trial Chamber, which seriously conflicts with the four-stage preliminary trial procedure established by the ICC itself. In Judge Brichambaut's view, the purpose of establishing the four-stage preliminary hearing procedure is to protect and seal evidence, thereby providing a basis for the Pre-Trial Chamber to determine whether the Court has jurisdiction. However, at this stage, the Pre-Trial Chamber ruled that the prosecutor can apply Article 19(3) before the case is established, which not only makes the four-stage preliminary hearing procedure meaningless, but also does not provide any convincing reasons. In addition, the court's recognition of the prosecutor's abuse of discretion has given legitimacy to the prosecutor's abuse of discretion. Because the court provides advisory opinions to the prosecutor before the case is established, the court's role in restricting the prosecutor's discretion is placed virtually. According to the RS, in order to restrict the prosecutor's discretion, the States Parties set a limit on the review power of the Pre-Trial Chamber, thereby limiting the prosecutor's discretion. Before the case is established, the prosecutor seeks the opinion of the Pre-Trial Chamber, and the opinion of the Pre-Trial Chamber is likely to have final effect, because the Pre-Trial Chamber cannot deny the opinion previously provided in the subsequent review. Since the opinion of the Pre-Trial Chamber has such effect, it can be inferred that the prosecutor's request has two purposes.

The first is to actually request the court to grant him the right to investigate in order to conduct an investigation into the situation in Myanmar; The second is to give the court legal legitimacy to handle the situation. However, the prosecutor's abuse of discretion will greatly undermine the authority of the ICC. The court's authority lies mainly in its compliance with the law, which is specifically manifested in the continuity of precedents. Since knowledge is local, if the Court wants to achieve consistency in its jurisprudence, it needs to reconcile the different understandings of the RS among different States Parties based on their different cultures and coordinate the different opinions into a more consistent essentialist understanding. However, the irresponsible way of issuing opinions by the Pre-Trial Chamber has undoubtedly frustrated the efforts of the ICC. The advisory opinion provided by the Court at the pre-trial stage has, in a sense, recognized the crimes advocated by the prosecutor and put the acts investigated by the prosecutor on trial in advance, which not only violates the principle of "due process", but also violates the principle of "no crime shall be considered legal (no conviction without trial)" in substance.

It can be seen from Judge Brichambaut's dissenting opinion that Judge Brichambaut used systematic interpretation to conduct a comprehensive interpretation of Article 19(3) of the RS, and ultimately concluded that the Prosecutor's interpretation of Article 19(3) of the RS violated the original intention of the provision and lacked a legal and reasonable basis. Though many international law scholars have demonstrated the illegality of Myanmar's "expulsion" and the legitimacy and legality of the ICC's jurisdiction through procedural and substantive aspects such as "the principle of territorial jurisdiction includes not only the place where the act occurs, but also the place where the result occurs", "Myanmar's expulsion constitutes genocide", "the background of the Myanmar government's expulsion", "universal jurisdiction", "the prosecutor's discretion", and "Myanmar's Citizenship Law's discriminatory provisions against Rohingyas", unfortunately no scholar has responded to Judge Brichambaut's criticism of the legal basis of the Request (Article 19, paragraph 3). As mentioned above, the Prosecutor's application of Article 19, paragraph 3, concerns the legality of the entire Request. If the "legality doubts" raised by Judge Brichambaut cannot be resolved, even if there are no problems with the fairness and legality of the entire case, at least the jurisdiction of the Court is illegal, which is a blatant violation of Article 12 of the RS. So, to use the words of Judge Brichambaut, "this issue must be resolved and cannot be avoided or rejected in an arbitrary manner" [4; 138].

Discussion

"The principles of international criminal law depend on domestic criminal law (as long as it is considered that international criminal law is a branch of criminal law), ……Research also needs to start with relevant discussions in the context of domestic criminal law, and then move forward to test the relatively new field of ICL" [5; 61]. Therefore, the origin of the development of international criminal law is subject to the development of criminal law theory.

The "Strafrechtsdogmatik" is composed of two roots, one is "Strafrecht" and the other is "Gogma". The etymological interpretation of the creed is about the principles or rules of beliefs and faiths. It is an un-

changeable ideal in human thought. After the creed was transplanted into the criminal law in the Liszt era, the dogmatic refers to the unshakable part of the criminal law theory. Professor Roxin, a German criminal law scholar, pointed out: "Criminal law dogmatic is a discipline that studies the interpretation, systematization and further development of various legal provisions and academic viewpoints in the field of criminal law" [6; 74]. The main mission of the dogma of criminal law is to develop the system of criminal law theory, "ensure the unity of all kinds of knowledge under one concept"[7; 13], and become a "knowledge whole organized according to various principles"[8; 76]. What's more, "criminal law dogmatic is not satisfied with simply merging various theoretical principles together and discussing them one by one, but strives to put all the knowledge generated in the theory of criminal acts in the "organized whole" in an orderly manner. Through this method, not only the content of the concept can be clarified and the structure of the system can be formed, but also new concepts and new systems have to be explored" [9; 27]. However, the dogmatic of criminal law cannot exceed the scope of the text of criminal law. The development of dogmatic of criminal law must respect the current law. "Through the interpretation and systematization of legal provisions and legal theories" [10; 357] "to form a theoretical system of flesh and blood" [11; 276].

Judge Brichambaut challenged the prosecutor's interpretation of Article 19(3) in the "Request", especially the way she used the systematic interpretation to explain that "the provisions of Article 19(3) can only be applied after the case is established". It is undeniable that Judge Brichambaut's challenge has sufficient normative and legal basis, but it also makes Article 19(3) result in conflict with Article 15(4) and 53(3)(a) concerning the discretion of the prosecutor. Even going further, there are conflicts between paragraphs 1, 2 and 3 of Article 12 of the RS. According to the basic literal understanding of Article 12, paragraphs 1 and 2 stipulate that the Court exercises the jurisdiction over "situation". The third paragraph succeeds the second paragraph, stating that "if the acceptance of a State which is not a party to this Statue is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question". The third paragraph is inherited from the second paragraph, but the prerequisites for the Court to establish jurisdiction are very different. That is, the second paragraph stipulates that the time for the establishment of the Court's jurisdiction is when the "situation" occurs, while the third paragraph stipulates that the time for the establishment of the Court's jurisdiction is after the "crime" (the case is established or the prosecutor initiates a lawsuit). If the "crime" has been determined, it means that the prosecutor has filed a lawsuit. However, if the crime prosecuted by the prosecutor occurred in a non-party to the Statue, and the situation has not been submitted by the Security Council to the Court, so the Court can't exercise jurisdiction under Article 12(1). Then, how can the prosecutor initiate a lawsuit? Bassiouni pointed out: "The situation is an overall factual environment, that is, an environment where criminal acts which should be under the jurisdiction of the court are carried out. The point of the term "situation" varies in different cases, and the understanding of it should be defined by the prosecutor of the ICC depending on the circumstance. At the same time, a Trial Chamber composed of three judges shall have the right to review the term "situation", while the Appeals Chamber shall have the final power of interpretation. ……Because certain situations can only be handed over to the prosecutor of the ICC by the Security Council or a State Party, there is a substantive error in Article 12(3), that is, "suspicious crime" [12; 277]. In order to protect the integrity of the "RS", Bassiouni resorted to historical interpretation and pointed out: "The small delegation group and the chairman of the committee of the whole extended this content together. It's clear that, they are not trying to change the substantial content of the transfer matter, that is, the substantial content of the "situation" [13; 171]. Historical interpretation — exploring the original intent of the legislator — helps to make the law an organic integrity, avoiding the risk of normative conflicts caused by purely literal interpretation and systematic interpretation. This point was clearly expressed in Judge Rutrez's "rejection" [14; 124] of the judgment of the International Military Tribunal for the Far East (IMTFE).

The "RS" was formulated by thousands of representatives from many countries. Time, language, and political constraints will inevitably lead to logical contradictions or errors in the content of the "RS". Therefore, resorting to historical interpretation and exploring the original intent of the legislator has become a reasonable means to explore the purpose of the Statue and the original intent of the norms. In this way, conflicts in the norms themselves can be avoided and resolved, and the RS can become an organic and systematic integrity.

Conclusion

1. Review of the formulation proceeding of Article 19

The predecessor of Article 19 of the RS was Article 34 of the draft RS of the International Law Committee, which only regulated the challenge of the jurisdiction of the court [15; 125]. The defendant and any relevant country may submit challenge before or at the beginning of the trial in accordance with the "Rules of Procedure and Evidence"; But at any stage after the start of the trial, it can only be raised by the defendant. The Committee considers it to be a very important clause, whose purpose is to ensure that the Courts earnestly comply with the scope of jurisdiction established by the RS. It is generally believed that the time when a representative raises challenges in the preparatory committee should be before the trial or the trial has just begun, and it should not be later than this time. Some people believe that the Court should have the power to recommend litigation or review its decision on inadmissibility after a fundamental change in the situation.

Proposals for the draft RS submitted by the Preparatory Committee to the Rome Conference [16]: At each stage of the litigation, the court should determine its jurisdiction over a case, and can determine the admissibility of the case on its own in accordance with the relevant provisions. Those who can challenge the admissibility of the case or the jurisdiction of the Court include the defendant or suspect, the state that could exercise jurisdiction over the very crime, and the country that receives a request for cooperation. The prosecutor can ask the court to make a ruling on issues of jurisdiction or admissibility. All parties to the case, non-parties with jurisdiction over the crime, and victims can submit their opinions to the court. Except in special circumstances, any person or country that has the right to challenge can only challenge the admissibility of a case or the jurisdiction of the Court once. This challenge must be raised before or at the beginning of the trial, and should propose as soon as possible. Before the indictment is confirmed, challenges to the admissibility of a situation or the jurisdiction of the Court shall be submitted to the Pre-Trial Chamber. After the indictment is confirmed, it shall be submitted to the Trial Chamber. The decision about jurisdiction of the ICC or admissibility of the case can be appealed to the Appeals Chamber. The prosecutor may request reconsideration of the ruling at any time on the grounds that the circumstances that led to the inadmissibility of the case no longer exist, or on the grounds that new facts emerge.

By reviewing the formulation process of Article 19 of the RS, we can clearly grasp that the legislators have set up a very wide range of challenge measures to ensure that the Court earnestly abide by the scope of jurisdiction stipulated by the RS. These measures are embodied in the "challenge subject" and "challenge time" respectively. The challenge subject includes the prosecutor, the victim, the state party, and the non-state party (submission of the situation), and the "challenge time" starts before the trial and extends to the entire litigation proceed. It can be seen from this that the legislator's intention to enact Article 19 is to limit the Court's jurisdictional expansion, so it gives the parties a wide range of rights to challenge, not to limit the time horizon for the prosecutor to apply this clause. Therefore, Judge Brichambaut's understanding of Article 19(3) is wrong in the legislative purpose of this article. In other words, the prosecutor's interpretation of Article 19(3) in the "Request" completely complied with the original intent of the legislator and did not go beyond the literal scope of the article. On the contrary, Judge Brichambaut's interpretation of Article 19(3) deviated from the original intention of the legislator.

2. Systematic interpretation of Article 19(3) under the original intention of the legislator

The title of Article 19 of the RS is "challenge to the jurisdiction of the ICC or the admissibility of a case". "Jurisdiction" and "admissibility" are two different concepts. The Court must first establish jurisdiction in every case. Even if the RS does not expressly provide the Court with this power, the Court can automatically determine whether it has jurisdiction over a case. For example, the ICTY believes that this is the inherent jurisdiction of a court or arbitral tribunal, and is an essential part of the exercise of its functions, so it does not need to be clearly stipulated in its constitutional documents [17; 125]. Therefore, in Article 19(1), the English expression of "shall satisfy itself" is "shall satisfy itself" rather than "shall determine". This means that whether the Court has jurisdiction over the received case is an issue that the Court must resolve, but the RS gives the Court discretion as to how to determine it.

Regarding the issue of "admissibility", the Court may make determination in accordance with Article 17 of the RS on its own motion. However, in the RS writes that "the court may, on its own motion, determine...", the RS uses "may" instead of "shall", which means that the court can determine on its own, or in the case when the admissibility is challenged, the decision will be made. The "determine" of the court must be made within the specific provisions of Article 17, which means that if a case is inadmissible, the court cannot exercise jurisdiction. According to this logic, jurisdiction precedes admissibility, so the title of Article 19 only adds the time limit of "case (after prosecution)" before "admissibility". Judge Brichambaut took the "case" before "admissibility" in the title of Article 19 as a starting point, and treated the challenges of the

Court's "jurisdiction" and "admissibility of the case" equally, undoubtedly confusing the two completely different concepts of "jurisdiction" and "admissibility". At the same time, the RS clearly mentions "this Court is in accordance with Article 17" in paragraph 1. Although the Court is its own arbitrator who has right to determine whether the Court has jurisdiction and judge whether the case is admissible, it also emphasizes the "judicial sovereignty" and the "principle of optimistic complementary jurisdiction" which established a line of defense for national sovereignty, and reflects the legislator's original intention of restricting the Court's jurisdiction. But that Judge Brichambaut confuses "jurisdiction" with "admissibility" and essentially removes the limitation of the Court's "complementary jurisdiction", and forms a situation in which the case is "admissible" if the Court has "jurisdiction", which is contrary to the original intention of the legislator. In addition, Article 19 stipulates that "this Court shall have jurisdiction over any situation received." "Any situation" not only includes the situation which the prosecutor is prepared to investigate submitted to it by the State party according to Article 18, or the situation which prosecutor initiates an investigation on its own, also includes the situation submitted by the Security Council to the Court. Therefore, according to Article 13(2) of the RS, the Security Council can only submit to the Court "situations" rather than specific cases. According to Article 31 of the "VCLT", the understanding of norms must be related to the context, so the same concept cannot be given different understandings. It can be seen the term "any case" in Article 19(1), includes not only "cases" but also "situation". Therefore, Judge Brichambaut pointed out in his rejective opinion that "Article 19(1) applies only to the case stage" is unreasonable. Because if the "case" in Article 19(1) is understood as only a specific case prosecuted, it means that the provision of Article 13(2) is wrong.

It can be seen in Article 19(3) "the prosecutor can seek a ruling from the Court regarding a question of jurisdiction or admissibility". In view of the importance of "jurisdiction" and "admissibility" to the ICC, in order to ensure the rapid resolution of challenges, the "Regulations of the Court" authorizes the relevant chambers to formulate their own procedures. Because if the court's jurisdiction and the admissibility of the case are not resolved first, and left to be tried and decided later, once the Chamber's final decision denies the Court's jurisdiction over the case or admissibility of the case, all the Court's efforts will be in vain. Prosecutors learned from the experience of ICTR, KWECC, UNTAET and other international criminal tribunals that lack of funds and efficiency made justice impossible, so the efficiency issue she pointed out in the "Request" is not a jurisprudential basis, but a factual statement of historical experience. Judge Brichambaut's criticism on the prosecutor of "disregarding of justice and focusing on efficiency", although encouraging, ignores the meaning of "efficiency" embodied in Article 19(3).

3. Courts and prosecutors practiced the content of 19(3)

Articles 58 to 62 of the "Rules of Procedure and Evidence" establish procedures for challenging the jurisdiction of criminal courts and the admissibility of cases. Article 58, paragraph 1, stipulates that a request or application to challenge the jurisdiction of the ICC or the admissibility of a case shall be submitted in writing and attached with its basis. In the Request filed on April 9, 2018, the Prosecutor presented investigative reports from numerous international organizations, which stated: Ethnic minorities in Rohingya State have been persecuted for a long time, and the situation has worsened since 2017. Among the persecuted people are not only adult men, but also children and women. Rape, disappearance and other atrocities frequently occur here. The prosecutor made a judgment based on a lot of verifiable evidence that the Myanmar government's expulsion of ethnic minorities in Rohingya State is real.

The Prosecutor may, in accordance with Rule 58(2) of the Rules of Procedure and Evidence, rule on the admissibility of a case at his/her discretion upon receipt of an application or request by the Pre-Trial Chamber. If in doubt, the Prosecutor may refer the issue of jurisdiction and admissibility to the Pre-Trial Chamber and request the Pre-Trial Chamber to make a ruling. At the same time, the Prosecutor shall provide the relevant parties with a summary of the case and materials to ensure that the relevant parties have the right to be informed. According to relevant regulations, after the prosecutor submitted an application on April 9, 2018, the Chamber issued a decision the following month, inviting Bangladesh to provide relevant materials and evidence. In addition, since the situation also involves Myanmar, the Chamber issued another decision to Myanmar on June 21, requiring it to submit its opinions. It can be seen that the prosecutor and the Chamber did not violate the relevant provisions of the Rules of Procedure and Evidence and the RS, and even strictly followed the provisions. However, the Myanmar government refused to cooperate with the ICC. In 2018, it issued a statement through government news that it refused to cooperate with the ICC and also rejected the prosecutor's request. The Pre-Trial Chamber and the Prosecutor fully implemented the procedural rules of the "Evidence" on "challenging jurisdiction of the ICC and admissibility of cases", reflecting the value proposition of the ICC of "fairness, justice" and even "efficiency". Therefore, this article believes that the legal

basis of the Prosecutor's "Request" — Article 19, paragraph 3 — is the Prosecutor's legal and reasonable use of it on the basis of grasping the original intention of the legislators of the provision, and the Prosecutor and the Chamber fully and correctly implemented the procedural rules that should be implemented in Article 19, paragraph 3. In other words, Judge Brichambaut's criticism of the Prosecutor's "Request" was made without grasping the original intention and inherent spirit of the legislator of the provision, and misinterpreted Article 19(3).

Concluding remarks

When looking forward to the future of the ICC, Professor Cassese said passionately: "The rule of law has become a secular religion". The essence of the rule of law lies in human rights, and respect for human rights is the core meaning of the rule of law. International criminal law is the cornerstone of the rule of law in the international criminal field, which is responsible for protecting the peaceful coexistence of people within a certain country and beyond national boundaries in the event of serious violations of human rights and large-scale threats to the peace and security of mankind. It is undeniable that the international community is still an area dominated by sovereign states and full of struggles. As a result of the transfer of sovereignty, the "RS" is inevitably affected and restricted by politics. The "Rohingya Case" caused academic conflicts in the legal field, directly because the "RS" lacks exquisiteness, and there are contradictions in the interpretation of the text; but the fundamental reason is that the rule of law in international criminal law field is still restricted by international politics.

Judge Brichambaut's interpretation of Article 19(3) of the RS and his criticism on the Prosecutor's "Request" directly confronted the reality of contradictions between the rules of the RS, and also provided the orientation of development for the rule of law in international criminal law field — "To form concepts with certain determined content, to further fill in principles, and to specify the relationship between individual or multiple norms and these basic concepts and principles" [18; 17] — that is, under the guidance of "human rights" and "rule of law", use literal interpretation, systematic interpretation, purpose interpretation, historical interpretation and other means to make the "RS" an organized whole.

This article believes that, international criminal law is a branch of criminal law, and embedding the theory or ideas of "dogmatic" into international criminal law is an effective way to solve the contradictions between the "RS" norms. At the same time, dogmatic not only makes the content of the concept clarified and the structure of the system formed, but also contains the impulse to explore new concepts and create new systems, which promotes the leap of form of knowledge of international criminal law from theory of facts and theory of norms to axiology, and makes the discipline of international criminal law more prosperous. The rule of law in international criminal law field has become a culture worldwide. This is not only a reminder and stimulus for the sublimation of national consciousness, but also a realistic need for economic thinking.

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Рохинджа ісі бойынша догматикалық ойлар

Мьянмадағы рохинджа азшылығына қарсы зорлық-зомбылық науқаны біздің замандағы адам құқықтарының ең өзекті мәселелерінің бірі. Прокурор «Статуттың 19-бабының 3-тармағына сәйкес юрисдикция туралы ұйғарым шығару туралы прокурордың сұрауы» арқылы юрисдикцияға жүгінді, бұл академиялық, дипломатиялық ортада және тіпті судьялар арасында айтарлықтай дау тудырды. Судья Бришамбоның «Сұраныс» сыны барлық дерлік сыни құқықтық ойлауды қамтиды. Судья Бришамбо «Сұрау салуда» Статуттың 19-бабының 3-тармағын қолдану орынды да, әділдік принципіне де сәйкес келмейді, прокурордың өкілеттігін орынсыз кеңейтті және ХҚК беделіне нұқсан келтірді деп санады. Догматикалық теорияға сүйене отырып, Статуттың 19(3)-бабында бұл тармақтың мақсаты Соттың ұлттық егемендікті қорғауға арналған юрисдикциясын шектеу екенін атап көрсетті. «Юрисдикция» мен «қабылданушылық» арасындағы айырмашылық, негізінен, Соттың заңмен анықталған юрисдикция көлемін шындап сақтауын қамтамасыз ету. Статуттың 19(3)-бабының тарихи түсіндірмесі Мьянмадағы жағдайға қатысты ХКС юрисдикциясының заңдылығын түсіндіріп қана қоймайды, сонымен бірге Статуттың «ұйымдаскан тұтастық» екенін тексереді.

Кілт сөздер: догматикалық, тарихи түсіндіру, заңдылық, юрисдикция, рұқсат ету, Мьянма.

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Догматические размышления о деле Рохинджа

Кампания зверств против меньшинства рохинджа в Мьянме является одной из самых острых проблем прав человека нашего времени. Прокурор обратился за юрисдикцией с «Запросом обвинения о вынесении решения о юрисдикции в соответствии со статьей 19(3) Статута», что вызвало значительные споры в академических, дипломатических кругах и даже среди судей. Критика судьи Бришамбо «Запроса» охватывает почти все критические правовые мысли. Судья Бришамбо посчитал, что применение статьи 19(3) Статута в «Запросе» не было ни уместным, ни соответствующим принципу справедливости, ненадлежащим образом расширило полномочия прокурора и нанесло ущерб авторитету МУС. Основываясь на догматической теории, статья 19(3) Статута указала, что цель этого положения заключается в ограничении юрисдикции Суда для защиты национального суверенитета. Различие между «юрисдикцией» и «допустимостью», по сути, заключается в том, чтобы гарантировать, что Суд добросовестно придерживается сферы юрисдикции, определенной уставом. Историческое толкование статьи 19(3) Статута не только проясняет законность юрисдикции МУС в отношении ситуации в Мьянме, но и подтверждает, что Статут является «организованным целым».

Ключевые слова: догматический, историческое толкование, законность, юрисдикция, допустимость, Мьянма.

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