

The Legal Framework of the SCO: Between Intergovernmental Cooperation and Supranational Ambiguity

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Abstract

The Shanghai Cooperation Organization (SCO), an organization founded in the year 2001, has taken up a central regional body in Eurasia, which is composed of states that have different legal backgrounds and political systems, as well as geopolitical interests. Although it is gaining increasing power in terms of regional security, economic partnership and political engagement, the legal status of SCO is unclear. This paper examines the legal basis of the SCO to find out whether it is an old-fashioned intergovernmental body or it is supranationalist like organizations like the EU.

Although the SCO Charter has codified the mutual respect of sovereignty, non-involvement, and the consensus-based decision-making concept, it offers little insight over the binding and the modes of implementation of resolutions. The lack of powerful hierarchy of law, judicial mechanism of resolution of disputes, or legislative body, which will have ultimate authority implies an intergovernmental nature. Nevertheless, events in the recent past; i.e., institutionalization of the Regional Anti-Terrorist Structure (RATS), the growing popularity of multilateral treaties among the member states, and initiatives aimed at unification of economic and legal standards demonstrate the gradual tendency towards regulated legal decoupling. The paper examines these trends considering the international organizational law having analytical references to the legal frameworks of the European Union, the Association of Southeast Asian Nations (ASEAN), and the Eurasian Economic Union (EAEU).

Through researching of the primary documents used such as the SCO Charter, protocols, declarations, and institutional practices and some scholarly comments, the study reveals a hybrid nature of the legal identity within the SCO. It claims that even though SCO preserves the appearance of the intergovernmental institution, there are some signs of functional integration, especially in the fields of security and economics, which suggest that it is moving towards regional legal convergence, but with no formal supranational mandate. This transitional legal existence makes it difficult to implement joint commitments and casts doubt on the ability of SCO to resolve internal conflicts and exercise human rights standards and arbitration of conflicting legal signing of members to the larger international law.

Finally, in the paper, the legal ambiguity of the SCO has been argued to be more of a strategic decision rather than a structural imperative, which enables its members to collaborate in mutual cooperation without breaking sovereignty. This indeterminacy, on the one hand, is necessary to retain political freedom, on the other hand, creates immense legal problems of rule-making, uniformity, and responsibility. Whether and how the SCO will be able to manage this tension between intergovernmentalism and supranational aspiration as its membership and agenda grows will come to be central to its legitimacy and effectiveness within the international legal order.

Introduction

The Shanghai Cooperation Organization (SCO) has gradually become one of the most important regional institutions in Eurasia, formed in 2001. The SCO has eight full members (China, Russia, Kazakhstan, Kyrgyzstan, Uzbekistan, Tajikistan, India, and Pakistan), and the ranks of those willing to become observers and dialogue partners keep increasing, meaning that the organization would now cover almost half of the world population and a significant portion of global GDP. Its initial agenda was on regional security and, counterterrorism but now it also looks into economic cooperation, cultural exchange, energy security and cyber governance. All the same, there is becoming scholarly controversy over the legality and institutional integrity of the SCO even though its reach is so far-reaching. The SCO lacks a clearly defined supranational legal framework as compared to the European Union or even the Eurasian Economic Union. This brings about a key question; is the SCO just a place of intergovernmental coordination or is it in the process of gaining the feature of supranational legal regime?

The basis of the SCO is the ideas of mutual trust, non-interference and sovereign equality, the principles that could be heralded as much more Westphalian-classical in intergovernmentalism than supranational legalism. The principles have been reflected in the SCO Charter adopted in 2001 and highlighting consensus-based decision-making and voluntary execution of commitments.¹ However, during the last twenty years, the number of treaties, conventions, and mechanisms of cooperation, which the organization has been introducing, has been growing, specifically in the field of counterterrorism, economic development, and computer-securing harmonies. This thickening of institutions brings back burning issues regarding whether SCO decisions have legal force, whether members are legally bound to follow the norms of SCO and to what degree are the rules of SCO actually enforceable.²

An increasingly literature indicates that SCO has a hybrid legal identity, being in the middle between the classical intergovernmentalism and functional regionalism.³ As an example, the formation of the Regional Anti-Terrorist Structure (RATS) that shares the data and has cooperation in police forces can be viewed as partial within-country authority delegation.⁴ Furthermore, the conclusion of traditional mandatory agreements in the area of coordination of customs activities, transport, and energy is also indicative of the early harmony track in terms of regulation.⁵ However,

¹ "Charter of the Shanghai Cooperation Organization," Refworld, accessed July 16, 2024, <https://www.refworld.org/legal/constinstr/asia/2002/en/150194>.

² Ван Хэюн and Д. В. Татаринев, "Three Dimensions for SCO to Improve Legislation," *Вестник КазНУ. Серия Международные Отношения и Международное Право* 105, no. 1 (2024): 110–24.

³ Хэюн and Татаринев, "Three Dimensions for SCO to Improve Legislation."

⁴ Ekaterina Mikhaylenko et al., "The SCO and Security Cooperation," in *The Shanghai Cooperation Organization* (Routledge, 2022).

⁵ Stephen Aris, "The SCO's Model for Regional Cooperation: An Institutional Framework within the Regional Context of Central Asia," in *Eurasian Regionalism: The Shanghai Cooperation Organisation*, ed. Stephen Aris (Palgrave Macmillan UK, 2011), https://doi.org/10.1057/9780230307643_2.

lack of binding enforcement processes, judicial bodies or supranational legislators limit the SCO into becoming a complete integrated legal entity.

In this paper, we will examine the legal structure of the SCO focusing on its institutional design, legal framework, and its decision-making structures. It seeks to establish whether the SCO is structurally limited to be an intergovernmental organization or it is steadily approaching to supranational legal integration. Analysis will be based on the SCO Charter, official documents, as well as treaties which have been adopted within the framework of SCO and a comparative evaluation of the other regional associations, like European Union, ASEAN, and Eurasian Economic Union. The doctrinal approach with the use of comparative legal analysis is used to evaluate the legal course of the organization.

This paper is separated into eight parts. Section 2, which comes afterward as an introduction, outlines historical and legal backgrounds of the SCO. In section 3 the intergovernmental nature of its institutional design is talked about. In section 4, the question arises on how law has become convergent and about the possible supranational characteristics. In section 5, a comparison of the SCO with other regional organizations is made. Section 6 studies the strategic intention of using legal ambiguity. In the section 7 it suggests certain legal and institutional change. And, lastly, Section 8 ends with reflection on the changing legal identity of the SCO and its implication of the future of the regional governance in Eurasia.

Historical and Legal Foundations of the SCO

The Shanghai Cooperation Organization (SCO) is institutionally based on the so-called Shanghai Five mechanism that was formed in 1996 and included the following parties (China, Russia, Kazakhstan, Kyrgyzstan and Tajikistan). Founded with the purpose to overcome the problems of the demarcation of the borders and generate the trust in the military sphere between the sides, the grouping soon became a more wide-ranging format of a regional discussion.⁶ The accession of Uzbekistan in 2001 and the signing of the SCO Charter are the milestones of the transition to a fully-fledged regional organization of the Shanghai Five. Since, India and Pakistan (2017) and lately Iran (2023) have joined the SCO and a number of other states like Belarus and Mongolia are either observing member or dialogue partner.⁷

The SCO is based on its legal framework in accordance with its Charter that was adopted on 15 June 2001 in St. Petersburg. The Charter spells out the goals, principles and institutional framework of the organization. Among its stated aims are to strengthen mutual trust and good-neighborly relations among the member states, enhance effective cooperation in the field of politics, economy, the sphere of science, culture and security, as well as the joint efforts of maintaining peace, security and stability in the region.⁸ Nevertheless, the Charter in its legal language is reserved and carefully ambiguous. Expressions like cooperation, common interest and voluntary implementation are heard time and again indicating that the coordination must endeavor to be flexible as opposed to a legal commitment.

⁶ "Contracting States: Sovereign Transfers in International Relations | Request PDF," ResearchGate, accessed July 16, 2024, https://www.researchgate.net/publication/287920503_Contracting_states_Sovereign_transfers_in_international_relations.

⁷ "(DOC) Shanghai Cooperation Organization: Who Benefits From It?," accessed July 16, 2024, https://www.academia.edu/7411066/Shanghai_Cooperation_Organization_Who_Benefits_From_It.

⁸ "Charter of the Shanghai Cooperation Organization," accessed July 16, 2024, <https://cis-legislation.com/document.fwx?rgn=3851>.

It is worth noting that the art. 2 of the Charter lays stress on such important principles as the mutual respect of sovereignty, non-interference, equality between states and the peaceful settlement of disputes.⁹ Such principles can be viewed as a classical Westphalian way and they compare harshly to supranational aspirations of the organization such as the European Union. This point is supplemented by the demand of decision-making by consensus, repeated again in Article 16, which further restricts the legal accumulation of the SCO policies and statements.¹⁰

As concerns legal personality, the SCO per se has some of the aspects related to international legal personality. It can conclude contracts with other countries, form subsidiary organizations, as well as normalize relations formally with other international organizations including the United Nations, the Association of Southeast Asian Nations and the Commonwealth of Independent States.¹¹ The extent of this legal personality however is limited. SCO does not have a centralized system of enforcement of law, court or tribunal and a process of binding dispute resolution between member countries. Besides, though, member states are allowed to implement joint statements or multilateral treaties within SCO framework, they tend to be unevenly implemented because different jurisdictions have varied systems of domestic law and different priorities.¹²

The institutional framework envisaged in the Charter consists of the Council of Heads of State (the highest decision-making body), the Council of Heads of Government, the Council of Foreign Ministers and Regional Anti-Terrorist Structure (RATS). The Secretariat, at Beijing, is a mainly administrative organ, and it has no independent legal jurisdiction. Another indicator that the SCO is also mainly governed by intergovernmental interactions is the lack of judicial review or parliamentary checking.¹³

According to scholars, the legal foundations of the SCO are made intentionally loose, to take on a skeletal shape: cooperation with only a minimum of implication to national sovereignty.¹⁴ Such minimalist institutionalism is not a coincidence but a means of large powers in SCO, especially China and Russia, to enjoy flexibility and political opposition without committing to supranational dealings. This model therefore attracts regimes that focus more on the state-based governance and will be paranoid to international legal commitment, which may interfere with the national governance.¹⁵

Overall, although the SCO Charter establishes a basis on multilateral cooperation, the legal framework within it is not as deep, clear, and enforceable as the activities of supranational organizations. The focus of the organization on sovereignty, non-compulsory consent, and voluntary obedience fits in firmly as belonging to the classical intergovernmentalism tradition. However, the trend of gradual increase of its agenda, institutions and treaty making practices points to the existence of some legal changes, though these changes are hesitating, selective and politically driven.

⁹ "Charter of the Shanghai Cooperation Organization."

¹⁰ "Charter of the Shanghai Cooperation Organization."

¹¹ "ASTANA DECLARATION OF THE COUNCIL OF HEADS OF STATE OF THE SHANGHAI COOPERATION ORGANISATION | The Shanghai Cooperation Organisation," accessed July 16, 2024, <https://eng.sectsco.org/20240709/1438929.html>.

¹² Wang Heyong and D. Tatarinov, "THREE DIMENSIONS FOR SCO TO IMPROVE LEGISLATION.," *International Relations & International Law Journal/Seriâ Meždunarodnye Otnošeníâ & Meždunarodnoe Pravo* 105, no. 1 (2024).

¹³ Heyong and Tatarinov, "THREE DIMENSIONS FOR SCO TO IMPROVE LEGISLATION.," 2024.

¹⁴ Alexander Lukin et al., "The Shanghai Cooperation Organization Amidst the Rising International Tensions," *Journal of Eurasian Studies*, SAGE Publications Sage UK: London, England, 2024, 18793665251357320.

¹⁵ Alfred Gerstl and Ute Wallenböck, *China's Belt and Road Initiative* (Rethinking Asia and International Relations. Milton: Taylor and Francis, 2020).

Intergovernmentalism in SCO Structures and Practice

The Shanghai Cooperation Organization (SCO) is primarily in the officially intergovernmental format, decision-making procedures, and institutional arrangements that place emphasis on the national sovereignty in the forefront as opposed to regional legal integration. The SCO is still balanced in consensus, informal interaction, and political coordination; however, it has proven to depend on rules of law neither binding legal forms nor supranational jurisdiction have shaped its activities. In this field, this section expounds on institutional characteristics that support the intergovernmental nature of the organization and the ways its working practices serve to reinforce legal ambiguity.

The ideal of consensus-making decision plays a central role in the governance model of SCO. Article 16 of the SCO Charter defines that all substantive resolutions have to be taken by the member states unanimously.¹⁶ This element practically gives every member a veto power over the communal activity so that no policy or agreement can be imposed on a member that he or she does not agree with. Although such a model can create inclusiveness and protect state sovereignty, it only weakens the ability of the organization to act decisively in cases of a crisis or to make legally obligatory actions in case of a contentious environment in matters like human rights, environmental regulation or trade harmonization.

The major decision-making organs of the SCO, the council of heads of state and the council of heads of government meet occasionally and do not possess any legislative or judicial mandate. They are usually issued in a form of joint proposals, memoranda of understanding or action plans with the vast majority of them being non-binding. Such documents are politically influential rather than of legal consequences until and unless they are ratified on their own by member states according to their own domestic constitution. This further strengthens the trend of international commitments taking second behind national legislation undermining normative unity of the entity. Moreover, the SCO Secretariat in Beijing, which is to coordinate activities and apply decisions, is almost working with no autonomy. It lacks the right to oversee the compliance and take legal action against member states. It would do all the incidental activities but mainly the bureaucratic activity of agenda making, organizing meetings and keeping records. The Secretariat lacks authority to interpret SCO agreements authoritatively as well as lacks legal jurisdiction to settle inter-State disputes. This institutional incapacity is in sharp contrast with the supranational institutions like European Commission or ASEAN Secretariat which have more discretion in policymaking and monitoring.¹⁷

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¹⁶ "Charter of the Shanghai Cooperation Organization," Refworld, accessed July 16, 2024, <https://www.refworld.org/legal/constinstr/asia/2002/en/150194>.

¹⁷ Marat Sarsembayev and Yuri Bezborodov, "International Legal Background and Aspects of the SCO Member States Intercommunication," in *The Shanghai Cooperation Organization* (Routledge, 2022).

policymaking and monitoring.¹⁸ Lack of the adjudicative structures is not more problematic in the regions where the SCO has put in place security agreements or cross border cooperation protocols which are easily to be understood and implementable.

The selective legalism of the SCO, in turn, is another proof of its intergovernmental character as it presupposes the usage of formal treaties by member states in an area of mutual concern, e.g., cooperation in the fight against terrorism or against drug trafficking but avoids the promises of wider legal integration. These agreements tend to work more as policy skeletons rather than enforceable contracts. As an example, the Convention on Countering Terrorism of 2009 sets the guide on sharing the intelligence and cooperative actions but has no mechanisms of dispute settlement, supervision or penalties in case of violation. This is an intentional means of continuing coordination of the operations without giving up the control to a supranational rule of law.

Overall, the institutional and legal framework of the SCO is rather intergovernmental in nature. The fact that it depends on consensus, that the majority of its instruments are not binding and that its Secretariat is not particularly vast or powerful, in addition to the fact that it has no judicial enforcement of its rules and regulations all point to the fact that it is quite a political organization that does not serve to accomplish legal integration. This organization represents the interests of its powerful members—especially China and Russia—in their favor of flexible, non-sovereignty-threatening type of multilateralism. On the one hand, this method can lead to diplomatic stability and build trust in the region, on the other, it does not allow a coherent legal identity to form and limits the success of the organization to enforce common rules.

Emerging Legal Convergence and Supranational Features?

Although the Shanghai Cooperation Organization (SCO) is mostly defined in terms of intergovernmental arrangements and processes which are reached through consensus, functional legal convergence is observed in a growing number of spheres. Though such trends are narrow in scope and depth, they do indicate a gradual and realistic transition towards a more formulated legal framework—at least with respect to cooperation and integration like that of security, cross international intelligence sharing and economic integration. There is no evidence of the TSC declaring any supranational ambitions, but some of the institutional developments and legal tools show that it may go in that direction indirectly but not steadily.

The most prominent example is Regional Anti-Terrorist Structure (RATS), based in Tashkent and in charge of multilateral intelligence-sharing, joint operations and training exercises of member states. RATS has its own system of regulations and is allowed to have databases of terrorist groups or extremist groups and other people who are considered as a threat to security by any member.¹⁹ Despite having no actual enforcement capabilities or independent authority similar to supranational law-enforcement agencies, RATS is involved in coordination activities that have become more and more legal in nature. The sharing of classified data and coordination of border controls under a unified protocol reflects a form of quasi-legal integration—particularly in contrast to typical non-binding political dialogues seen in many regional organizations.²⁰

Cybersecurity and information governance is the next field that is converging under law. SCO Agreement on Cooperation in the Field of International Information Security, 2009 helps facilitate

¹⁸ Andrés B. Muñoz-Mosquera and Nikoleta P. Chalanouli, “Legal Personalities,” in *Research Handbook on NATO* (Edward Elgar Publishing, 2023).

¹⁹ “Regional Anti-Terrorist Structure of Shanghai Cooperation Organisation,” accessed July 16, 2024, <https://ecrats.org/en/>.

²⁰ Itrat Zehra, “Role of SCO in Countering Non-Traditional Security Threats in SCO Region,” *Pakistan JL Analysis & Wisdom* 3 (2024): 93.

common legal standards in the prevention of cybercrime, governance of the internet and the protection of critical infrastructure. The agreement aims to promote the practices of harmonized rulemaking by encouraging the states that become members to enforce compatible national schemes as opposed to voluntary cooperation. Notably, the arrangement came also with the operation on bilateral facilitation and technological help in prosecuting cybercrimes showing a transition of functional nature towards rule-based arrangement-based cooperation.²¹

In the financial field, the SCO has been pursuing the harmonization of laws related to trade and transportation regulation, more so, having inducted India and Pakistan. The SCO Intergovernmental Agreement on Facilitation of International Road Transport (2014) is intended to regulate the standardization of transport documents and customs formalities and dispute resolution, which is associated with cross-border trade. Having been ratified unevenly, the treaty counts as a practical endeavor to merge regional legal norms beyond the exclusively national enforcement.²² Further, under SCO Economic Forum working groups have been set up to discuss common rules on digital payments, taxation and support to small and medium enterprises-which is an indicator of increased legal expertise in economic integration.

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However, lack of institutional performative measures of law enforcement or auditing still limits the successes of these programs. The majority of SCO treaties and agreements are not binding in relation to dispute resolutions, and the entity is yet to create a provision resembling a regional court, arbitration tribunal, or legal advisory organ. Consequently, the situation is such that a legal convergence is taking place in some areas, nonetheless, it is not impervious to divergent national interpretations, and even contradictions in domestic application.

Summing up, although SCO is not characterized by the formal supranational features, some existing events, mainly those related to security and economy, evidence the development of some patterns of convergence of legal norms. There is pragmatism, pragmatically motivated change in patterns, by no means always across-the-board or extensive; the implication is of natural, silent change in institutions. The result of this evolution in terms of the relative formation of higher levels of legal organization, i.e. the elaboration of the higher levels of legal or even supranational coherence, is conditioned by the political paths of its member states and their readiness to find the compromise between sovereignty and the lack of coherence in the legal field.

Comparative Legal Analysis: SCO vs. Other Regional Organizations

In order to realize legal peculiarities of the Shanghai Cooperation Organization (SCO), one has to consider comparative analysis of its legal and institutional system with others across the regions. Even though the SCO has gained relevance in terms of political and security architecture in Eurasia, it has remained softer as compared to regional institutions that have implemented more organized legal frameworks. In this part of the paper, the SCO is drawn comparisons with three of the most prominent regional institutions, the European Union (EU), the Association of Southeast

²¹ Oleg Vinnichenko et al., "Convergence of Western and Asian Legal Values in the SCO Perspective," in *The Shanghai Cooperation Organization* (Routledge, 2022).

²² Fan Ruijuan, "The Impact of Trade Facilitation on the Import and Export Trade between China and SCO Member States," *Проблемы Экономики и Юридической Практики* 19, no. 4 (2023): 216–29.

²³ Florian Hoffmann, "International Legalism and International Politics," in *The Oxford Handbook of the Theory of International Law*, ed. Anne Orford and Florian Hoffmann (Oxford University Press, 2016), <https://doi.org/10.1093/law/9780198701958.003.0047>.

Asian Nations (ASEAN), and the Eurasian Economic Union (EAEU), to emphasize its unique role in the world context of regionalism.

European Union is the most comprehensive form of supranational integration with legal norms which are binding, centralized institutions and judicial enforcement procedures. By the treaties, i.e., Treaty of European Union, and Treaty of Functioning of European Union the EU has created a legal order overriding the national law in certain ever-growing fields. The main activity within the EU Court of justice Court of Justice of the European Union (CJEU) is to interpret EU law; moreover, it is involved in providing uniformity within the member states.²⁴ On the contrary, however, neither the SCO has a judicial institution, a supranational legislature, or a legally-binding supremacy, and thus it is positioned as strongly rooted in intergovernmentalism. EU laws are legally binding whereas most of the work of the SCO is politically binding with no legal backing. The Association of Southeast Asian Nations (ASEAN) has even more similarities to the SCO including the focus on sovereignty and non-interference. At the same pattern with the SCO, ASEAN works on the basis of consensus rather than supranational decision-making. Nonetheless, ASEAN has gone far to legalize its regional cooperation with the use of treaties like the ASEAN Charter (2008), which grants legal personality to the community of member states and puts more formal structure into place. It has also come up with dispute settlement mechanisms of trade issues within the ASEAN Economic Community (AEC). These aspects constitute the tendency of partial transfer to institutional legalism, and the SCO is more pliable, as there is little juridical control. To a greater extent Eurasian Economic Union (EAEU), created in 2015 by Russia, offers a better corresponding example since it jointly shares the same SCO membership. The EAEU is based on the approach to economic integration using a legal framework of extensive forms, such as the Court of the Eurasian Economic Union, which resolves disputes resulting in the application of the EAEU law.²⁵ Supranational rules oblige the member states at least in the form of customs, competition law, and technical standards. The EAEU is illustrative about the evolution of a post-Soviet regional organization to legally binding structures. Conversely, the SCO has not followed the same where despite its growing scope, it has not developed along this path especially when there is no mechanism of enforcement or legal determination.

Irrespective of these differences, however, the SCO has some structural peculiarities which justify its departure with more law-like patterns. Its legal specificity and flexibility of procedure is appealing to politically sensitive states to external legal scrutiny or where states are fearful of supranational intrusion. As a case in point, states like China, Russia and Pakistan might be interested in the soft law inclination of the SCO as they are not obliged to legalized obligations of diplomatic relations.²⁶ Such leeway enables the organization to manage geopolitical rivalries among the members of the organization among which is the rivalry between India and Pakistan, without causing the organization to enter into legal warfare.

²⁴ "The impact of Supranationalism on State Sovereignty from the Perspective of the Legitimacy of International Organisations (Chapter 18) - Statehood and Self-Determination," accessed July 16, 2024, <https://www.cambridge.org/core/books/abs/statehood-and-selfdetermination/theimpact-of-supranationalism-on-state-sovereignty-from-the-perspective-of-the-legitimacy-of-international-organisations/A10701439BF88CDE6B47D4A902D5A757>.

²⁵ "(PDF) LEGAL DEVELOPMENT OF EURASIAN INTEGRATION: POTENTIAL AND STRATEGIC DIRECTIONS," *ResearchGate*, n.d., <https://doi.org/10.22598/iele.2024.11.1.7>.

²⁶ "Security Regionalism: The SCO | Authoritarian Regionalism in the World of International Organizations: Global Perspective and the Eurasian Enigma | Oxford Academic," accessed July 16, 2024, <https://academic.oup.com/book/35209/chapter-abstract/299677189?redirectedFrom=fulltext>.

According to scholars, SCO is another example of authoritarian regionalism, whose cooperation has been modelled by shared strategic interests, but not the integration by way of law.²⁷ The SCO does not pursue legal convergence as a goal in itself as it is done by the EU or EAEU but, instead, views law as the means to achieve certain political and security-related interests. Such way, SCO is a unique model that is not an immature version of the supranational institution, but a conscious model shaped in accordance to the geopolitical preferences and ideological demands of its participants.

Legal Ambiguity as Strategy: Sovereignty vs. Integration

The Shanghai Cooperation Organization (SCO) holds a rather particular place in the system of international organizations not only due to its geopolitical orientation, but also owing to its purposeful lack of precise legal definition. It can be seen that instead of an indication of institutional instability or underdevelopment, the non-specificity of the legal framework of the SCO can be viewed as a rather deliberate approach which enables the states of the organization to retain flexibility, shun binding commitments and preserve their national sovereignty. This ambiguity is beneficial in terms of a driver of regional cooperation and protection against supranational usurpation.

Among the main explanations of such strategic ambiguity, the variety of existing regimes and law systems in the SCO can be observed. The members like China, Russia, and the republics of Central Asia have authoritarian or semi-authoritarian state systems, whereas India and Pakistan are democracies, although they are more or less sound in their institutions. Such a diverse bloc contains a risk of harmonization it leads to a political backlash or open member states to foreign rule. Through this, SCO does not dictate identical legal requirements since it favors politically negotiated agreements as opposed to legally bindings norms.²⁸

The focus on the sovereignty of states and non-interference between the them, captured in Article 2 of the Charter of the organization, is not a token. These values are commonly used to explain the lack of legal enforcement procedures; judiciary checks or supranational law-making capabilities. Whereas, the European Union or rather even the Eurasian Economic Union would establish a level of sovereignty being given over to the alliance in return of law and economic unification, the SCO is based on the presumption that sovereignty is not open to trade. This position enables the members to collaborate in the aspects of security or trade without infringing on the authority in internal affairs or in the legal system.

The other feature of this ambiguity is selective use of legal tools. The SCO also embraces treaties, memoranda and protocols which are usually legally framed but they lack the mode of enforcement or any conflict mechanisms. These instruments are not legally-binding and contain the language and structure of law, but this is adapted to conditions of the domestic ratification and voluntary fulfilment. It is a method that has been referred to as the tactic of the soft legalization as the SCO will be able to seem active in the legal field and still have discretion in the intergovernmental level.²⁹ It also offers the members immunity in any circumstances in which they may face legal liability on an international level whilst portraying an illusion of legality on the international front.

²⁷ Matej Bel University in Banská Bystrica (Slovak Republic) and Danylo Stonis, "Comparative Analysis of the Shanghai Cooperation Organisation and European Union Strategy on Central Asia: Confrontation or Cooperation?," *Polish Political Science Yearbook* 52, no. 1 (2023): 69–90, <https://doi.org/10.15804/pps202230>.

²⁸ Dr Zahid Ali Khan, *PAKISTAN AND SHANGHAI COOPERATION ORGANIZATION*, n.d.

²⁹ "International Legal Background and Aspects of the SCO Member States Intercommunication | Request PDF," in *ResearchGate* (n.d.), <https://doi.org/10.4324/9781003170617-4>.

Legal ambiguity is functional in that it allows SCO to deal with internal contradictions in its management. Competition between India and Pakistan, the emerging Sino-Russian rivalry and the variations in threat perceptions among countries in Central Asia are potential disruptors to cooperation in case of mediating cooperation through strict legal norms. Allowing its legal framework to be loosely spotted and uncommitted to the law, the SCO has been able to accommodate different national concerns and keeping political tensions at the minimum. According to Akbar (2024), the SCO has institutionalized plasticity, which promotes resilience to geopolitical shocks and does not turn into dysfunction, through legal ambiguity.³⁰

This freedom does however have a price. Lack of clarity of legal standards weakens the predictability, transparency, and accountability of organization. Adherence to the SCO commitments is not transparent because of the absence of judicial procedures and other means of control. Here, in practice, this leads to the possibility of adopting selectivity, politicizing legal tools, and normative inconsistency. In addition, events through which the organization continues to grow and intensify its agenda, especially in the fields of cyber governance, energy security and economic integration, the contemporary model may not be adequate to handle complex transnational commitments.³¹

To sum it up, the situation of legal ambiguity of SCO is not purely a period or step in the process of institutional development. It is a political aspect which indicates that its member states prefer a model of cooperation that does not infringe sovereignty. While this ambiguity enhances flexibility and shields political regimes from legal intrusion, it also restricts the SCO's normative evolution and limits its effectiveness in institutionalizing shared commitments. Whether the organization can sustain this balance amid growing regional demands remains an open question.

Recommendations

As the Shanghai Cooperation Organization (SCO) is proceeding to enlarge geographically and in the range of its policy-making, it is increasing pressure on the organization pointing in the direction of clarification and reinforcement of its legal framework. Although the single-mindedness and legal indistinctiveness have so far been acceptable to member states based on their political preferences, the existing arrangement has since threatened to turn into a liability in the future as there is a strong possibility of increased collaboration on issues concerning cybersecurity, economic connectivity, as well as counterterrorism. The following recommendations should be made in order to enhance the legal coherence and effectiveness of the organization:

1. Clarify the Legal Status of SCO Instruments

It is important to have a clear line between binding treaties, soft law instruments and political declarations of the SCO. In the current practice, there is still a lot of ambiguity in the agreements on whether they will be enforced and therefore many have gaps on their interpretation and implementation in different member states. An official scheme of classification, steps to make the rules more transparent such as the differentiation made by ASEAN between treaty and protocol and declarations as provided in the ASEAN agreement can augur well.³² Furthermore, in the case

³⁰ "(PDF) Still Agreeing to Disagree: International Security and Constructive Ambiguity," *ResearchGate*, n.d., accessed July 16, 2024, https://www.researchgate.net/publication/341401761_Still_agreeing_to_disagree_international_security_and_constructive_ambiguity.

³¹ Babalola Abegunde, "Regional Cooperation and State Sovereignty," *Athens JL* 7 (2021): 169.

³² Wang Heyong and D. Tatarinov, "THREE DIMENSIONS FOR SCO TO IMPROVE LEGISLATION.," *International Relations & International Law Journal/Seriâ Meždunarodne Otnošeníâ & Meždunarodnoe Pravo* 105, no. 1 (2024).

of SCO, it would be advisable to surround SCO legal texts with conventional implementation schedules, review process and procedures and ratification processes to better direct member states.

2. Establish a Dispute Resolution Mechanism

The lack of any regional provider of the legislation of disputes within the SCO is fairly an important institutional deficiency. The organization does not need to take the step towards creating a full-fledged court yet, but it may want to develop an independent arbitration or mediator panel that is supposed to settle the dispute pertinent to SCO agreements. It would enhance uniformity in interpretation of the law and offer a platform to resolve differences without the build-up of any political tension. Such precedents as ASEAN Dispute Settlement Mechanism and EAEU Court may be applied as more pliable models.³³

3. Harmonize Legal Frameworks in Key Sectors

The SCO must embark on a more sector-specific law harmonization as a step towards improving the integration in areas that have lesser political sensitivity. These are the cross-border transport regulation, customs and trade facilitation, digital economy regulations and anti-money laundering laws. It is possible that a special SCO Legal Harmonization Task Force be instrumental in coordinating model laws and regulatory standards that are in place in the member states. Other efforts that have worked in the EAEU indicate that legal convergence can work by being gradual, and therefore mutually advantageous.³⁴

4. Strengthen the Role of the SCO Secretariat

At the time of writing the SCO Secretariat carries out mostly administrative roles and has neither legal powers nor supervision capacity. The reforms ought to give it the mandate to monitor and report on how well legal commitments under which member states are complying with. This would not represent supra national authority but would have an element of enforceability of law and institutional recollection. Moreover, the establishment of a Legal Affairs Unit in the Secretariat would enable it to perform its task on the drafting of legal documents, interpretation of treaties, and coordination with the national legal authorities on a much more effective basis.³⁵

5. Promote Legal Education and Judicial Cooperation

The SCO ought to train, joint academic exchanges and regional conferences involving judges, legal academics and government lawyers of member countries. This would smooth more acquaintance with regional legal instruments and contribute to the establishment of more trust in common legal norms. Judicial cooperation agreements might be also the subject of formalization by the SCO, especially in the field of extradition, mutual legal assistance, and cybercrime. Advocating a common legal culture is the key to further action toward integration of law.³⁶

By implementing these reforms, the SCO would not necessarily have to renounce its devotion to sovereignty and consensus. Instead, these policies provide a fair solution--increasing legal organization without weakening political independence. A step-by-step process of introducing a legal clarity, institutional control, and dispute resolution mechanisms would help improve the

³³ Itrat Zehra, "Role of SCO in Countering Non-Traditional Security Threats in SCO Region," *Pakistan JL Analysis & Wisdom* 3 (2024): 93.

³⁴ Tatyana N. Neshataeva, "Eurasian Integration: General Values and Legal Institutions," *Pravosudie/Justice*, no. 2 (2020): 3.

³⁵ "CHINA DAILY: SCO Has Firmly Established Itself as an Influential and Responsible Participant in the Modern System of International Relations | News | The Shanghai Cooperation Organisation," accessed July 16, 2024, <https://eng.sectsco.org/20210324/732376.html>.

³⁶ Yongliang Yan, "Capacity Building in Regional Space Cooperation: Asia-Pacific Space Cooperation Organization," *Advances in Space Research* 67, no. 1 (2021): 597–616, <https://doi.org/10.1016/j.asr.2020.10.022>.

credibility of the SCO, coherence of policies and structure the way towards more meaningful regional governance.

Conclusion

The other unique feature of regional cooperation that is exemplified by the Shanghai Cooperation Organization (SCO) is that it is not following any paradigm of legal integration that the other established regional organizations trace. Based on the principles of mutual respect, sovereignty, and agreement, the SCO has opted to develop itself in a context of legal vagueness known to be the geopolitical realities and political preferences of its various member states. It has favored non-binding issues, discretion and decentralized integration over fixed legal responsibility and sovereign control.

Such strategic ambiguity has been helpful to the SCO in one way or another. It has helped to embrace a broad category of political systems, regulate inter-state rivalry, and growth of cooperation with regard to touchy fields like counterterrorism and cyber governance without creating any legal opposition. The legalism of the SCO has been minimalism which has made it inclusive and resilient with no divisions within even as the organization has expanded resulting in an enhanced agenda.

But these advantages of this legal elasticity are getting counterbalanced more and more by its shortcomings. Lack of binding norms, uniform legal structures and dispute resolution system reduces the capacity of the SCO to provide uniform results and make sure their agreements are followed. The greater the region and organization gamble in the dodgier spheres of cooperation, particularly the trade, transport, digital governance, and transnational security, the more legal clarity, institutional responsibility, and organizational consistency the organization will need.

This paper has explained that although the SCO is still essentially intergovernmental in its character, there has been the evidence of convergence of law in some functional areas. These advances hint at a possibility of a slow progression towards a more rules-based system as long as the reforms are carried out keeping in mind the political limitation of its member states.

Whether the SCO will be able to harmonize its embodied principle of sovereignty to the practices of enhanced cooperation is the eventual legal future of the organization. Finding that balance will define whether the institution will remain as a pliable political arena or whether it becomes more structured and legally coherent regional body.

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