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Dispute Resolution Mechanism of The Shanghai Cooperation Organization (SCO): A Comparative Study of Legal Mechanisms

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Keywords: Arbitration, International Court of Justice, International Organizations, Legal Mechanisms, SCO Dispute Resolution Mechanism

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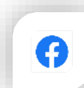

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Abstract

Shanghai Cooperation Organization's (SCO) expansion has increased opportunities; however it has also enhanced a myriad of challenges in the realm of dispute resolution and no comprehensive mechanism for addressing them exists. Many organizations according to the current research, rely on diplomatic involvement, compliance with international humanitarian law, legal courts, appellate tribunals, alternative dispute resolution (ADR), political discussion, mediation, agreements, negotiation, conciliation and diplomacy etc. This study attempts to explore how the Charter of SCO stipulates dispute resolution mechanisms (DRM) amongst memberstates? what conflict resolution methods do different international organizations employ? and what are the lacunae in SCO's DRM? Through discourse and content analysis and by utilizing doctrinal legal research methodology, this study concluded that charter lacks a comprehensive legal framework for addressing member states' internal conflicts and disagreements.The study recommended that SCO needs to stipulate and employ on consensus, arbitration, courts, appellate bodies and administrative tribunals to settle their disputes.

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Introduction

The SCO, founded in 2001, is a significant international organization in Eurasia that focuses on enhancing political, security, and economic cooperation and fostering cultural ties among its member countries. The primary focus of the Shanghai Five, formed in 1996 and evolving into the SCO, has been to resolve territorial conflicts and enhance security within the area (Yuan,2010). In 2017, SCO expanded its membership by including India and Pakistan, and in 2023, including Iran in addition to its original members: China, Russia, Kazakhstan, Kyrgyzstan, Tajikistan, and Uzbekistan. Due

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to expansion over time, there are chances that specific situations in the region may trigger various disputes among the member states (Song, 2014). For instance, there is a possibility that the conflicts of interest among the organization's major member states may lead to disputes. The possible disruption caused by the "Shadow of Crimea", India-Pakistan rivalry, Central Asian Republics' borders and water tensions, and the probable divisions between China and Russia constitute a significant risk to the SCO. These factors might potentially hinder any future alliance between China and Russia (Lanteigne, 2018). The power and interest disparities within the SCO, particularly between China and other member states, also pose challenges. Imbalances may lead to conflicts, thus it is important to handle them with cautions (Song, 2014) Likewise, the perception that the major member states in the organization are undemocratic and authoritarian may also take this organization towards direct conflict with the democratic member states in the organization perception of SCO (Ambrosio, 2008). There is also a probability that the organization may be used for military purposes, which may lead to armed conflict (Wang & Kong, 2019).

China and Russia have been the leaders of the organization since its establishment; however, the inclusion of India, another great power, complicates that Sino-Russian joint leadership within the organization. There is a possibility of political mistrust and conflict of interests among various member states in the SCO, which may lead to instability in the region (Li et al., 2020).

Despite this, the SCO's charter does not provide an effective mechanism to resolve disputes among the member states. This study intends to fill this gap by addressing four research questions: What conflict resolution mechanisms does SCO employ? What are the lacunae in SCO's conflict resolution mechanism? What conflict resolution methods do different international organizations employ? What legal framework may SCO use to resolve conflicts among its members?

Comparing SCO with other security, economic, and even purely trade organizations such as the World Trade Organization (WTO), despite their differing primary mandates, can be justified as all international organizations play pivotal roles in fostering international cooperation for security, stability, trade, and economic development. The SCO, though primarily a security alliance, also emphasizes economic collaboration and trade promotion among its member states. Both organisations engage in resolving conflicts between member nations, being within different spheres: the WTO handles trade differences, whereas the SCO deals with both economic issues and security-related concerns. By comparing dispute resolution mechanisms of various international organizations, including European Union (EU), Great 20 (G20), Gulf Cooperation Council (GCC), South Asian Association for Regional Cooperation (SAARC), North Atlantic Treaty Organization (NATO) and World Trade Organization (WTO), authors gain insight into how organizations with varying mandates and structures approach conflict management, cooperation and enforcement among diverse member states, enriching understanding of international governance across different fields.

Methodology

The research questions of this study were answered by utilizing doctrinal legal research, which relies on primary sources such as statutes, case law, statutory provisions, relevant legal instruments, and legal literature to analyze and interpret existing legal principles and frameworks. Moreover, Scholarly legal literature, commentaries, legal textbooks, and authoritative scholarly papers obtained from several academic databases and reputable legal publications, etc., have been considered as secondary materials. The data underwent methodical thematic, discourse, and content analysis to compare legal frameworks and interpretations across various jurisdictions, revealing differences, similarities, and patterns. Ultimately, authors synthesized the results obtained from both primary and secondary sources, with a focus on the evolution, patterns, and uncertainties within the legal structure of dispute resolution methods in different organizations as a whole and specifically within the SCO.

Conceptual Framework

Legal, political, and mixed approaches to conflict resolution are the three types of peaceful international dispute resolution, which are briefly discussed in the following lines.

Political Approach

The political technique, commonly referred to as the diplomatic strategy, involves the use of direct or third-party help to resolve international issues between conflicting parties. The political approach includes negotiation, consultation, inquiry, conciliation, good offices, and mediation (Mackenzie,2005).

Through negotiation, conflicting parties consult to settle their differences on their own or with outside aid. An investigation, on the other hand, involves warring parties disputing the facts and agreeing to have a third party investigate to resolve the issue. In mediation, a neutral third person helps to resolve a problem when one or both parties have failed to negotiate. In mediation, a third person helps disputants to find a compromise. This procedure prevents participants from thinking one side wins and the other loses (Macharzina, 2001). This approach has proven effective in resolving global

conflicts, including divorce cases (Sobourne, 2003), interstate disputes (Temelkovska-Anevska, 2017), international investment disputes (Lo, 2020), international economic disputes, trade disputes, and internal disputes (Kłos, 2020). It also resolves maritime disputes (Mongare, 2013), medical disputes (Handayani et al., 2020), petroleum agreements (Othman, 2018), cross-border mediated settlement enforcement (Guo, 2020), and environmental issues as well (Williams & West, 2000). Antonin (2008) says it can replace litigation and arbitration.

International law mediation is a useful and flexible conflict resolution tool. Arbitration, unlike litigation, is less combative and more collaborative, making it ideal for international disputes where connections are vital. Mediation's success depends on the mediator's ability to help parties communicate and cooperate. This political approach has several drawbacks, including the potential impact of comparing parties' strengths on the negotiation process, the lack of legal binding in the settlement agreement, the possibility of direct communication between parties leading to a dead end without a third party, and more.

Legal Approach

The International Court of Justice (ICJ) and international arbitration (IA) are two legal means to settle state disputes. IA, through amicable talks between the parties, decides the arbitration's laws, arbitrators, rules, and processes. This mechanism has resolved space, spousal, derivatives, human rights, commercial, and investor-state disputes (Kurlekar, 2016; Leonard & O'Donnell, 2022; Mitchell, 2009; Lebedev, 1992; and Kryvoi, 2018). It is commonly recognized that international arbitration may reduce the risks of cross-border investments and commercial interactions (Luki&Abubakar, 2016). IA relationships rely on party autonomy in dispute settlement process development and implementation (Born, 2009). Foreign investments and commercial operations may be riskier (Luki & Abubakar, 2016). IA is a realistic strategy to reduce risk, favors peaceful conflict settlement, mediation, and conciliation (Büyük, 2022). It may undermine the rule of law by forsaking certain values for others (Menon, 2021). To avoid due process violations, parties should bring procedural issues to the tribunal immediately (Teo, 2021). Convergent international arbitration processes employ common law and civil law for acceptable settlement. (Elsing& Townsend, 2002). In Dallah v. Pakistan, the English Supreme Court and the French Court applied the same rules to comparable situations, revealing disparities. Both courts ruled differently (2016, Kyveris). International courts, such as arbitration panels, are progressively bringing matters that are usually reserved for national authorities or diplomacy (Gal'perin, 2020).

The International Court of Justice (ICJ), founded in 1945, under the UN charter, resolves international legal disputes peacefully between governments using stringent procedural international standards. It is the UN's highest court, which may also provide legal advice to enforce global justice and international law enforcement (Thirlway, 2018). It has helped resolve international conflicts like the Macedonian-Greek name dispute via diplomacy and law (Ahmedi & Ahmeti, 2018). It shows how judicial and diplomatic techniques interact by constructing legal frameworks that impact political-diplomatic dispute settlement (Reed, 2013).

By creating legal frameworks that impact political-diplomatic activities in international law, the ICJ shows how judicial and diplomatic methods interact (Reed, 2013). Due to its neutrality ICJ may help resolve highly political disagreements (Coleman, 2003). It also resolves numerous private international law matters, improving the discipline (De Dycker, 2010). Despite its limits, it is essential to peaceful conflict settlement, only when parties willingly appear before the ICJ and it implements the ruling to resolve issues (Pfetsch, 2007).ICJ judgments dispute on the Court's authority to hear sovereignty and document interpretation questions (Clark, 1997). On the other hand, international courts, especially the ICJ, have weak standards that protect the political and strategic interests of a few powerful Western nations (Oduntan, 2005). It should develop an exclusionary discretion to guarantee solid evidence and a convincing approach to eliminate problematic content early (Chen, 2015). It is progressively taking on matters formerly reserved for national governments or diplomatic relations (Gal'perin, 2020).

Mixed Approach

An integrated global strategy comprises complementary legal and political views. However, a single method of settling disputes is not suitable for international dispute settlement due to the vast variety of issues in the real international community and the fact that states have different options and preferences. These factors provide a hybrid approach. International conflict resolution uses a mixed approach, with political approaches prioritised. This means that conversations, negotiations, and other peaceful tactics are used to frame dispute resolution. The legal technique helps parties reach a settlement by creating a mutually enforced dispute resolution. A hybrid method uses political and judicial channels to resolve disputes while avoiding their drawbacks.

Dispute Resolution Mechanisms in the European Union

The EU dispute resolution mechanism helps enforce justice, protect the rule of law, and resolve EU political,

legal, and economic problems. The EU mediates and litigates diplomatic disputes to promote peaceful responses to international crises. According to Hoffmeister (2012), this approach shows the EU's commitment to discussion and legal procedures. EU legislation relies on ADR processes to settle conflicts before or instead of the European Union Court. Magiera & Weiss (2014) discuss dispute resolution strategies that are flexible and less aggressive while preserving EU ideals. The EU's mediation of investor-State conflicts has several benefits, notwithstanding political concerns and an unequal investor-State dynamic. Investment conflicts in the EU are difficult to resolve (Goetz-Charlier, 2019). The EU might make euro area public debt restructuring more transparent, fair, and reliable. This framework shows the EU's economic dispute resolution policy. Enhanced Collective Action Clauses and conflict resolution processes do this (Grund&Stenstrom, 2018). The dispute resolution tools in preferential trade agreements complement EU litigation. These agreements create committees that communicate and solve contentious topics technically (Melillo, 2019).

The EU and its Court of Justice affect international dispute settlement and trade, investment, and human rights law. Their engagement is crucial to shaping international and EU legislation (Cremona et al, 2017). The European Court of Justice resolves EU-Switzerland sectoral agreement disputes. The function is vital to developing EU-Switzerland ties and resolving problems from these accords(Vajda, 2018). There is little doubt that legal and political issues impact the European Court of Justice's trade-environment decisions. The EU's "investment court system" differs from traditional investor-state dispute resolution approaches. This method offers a new approach to investment protection under EU law (Deli, 2016). The EU's dispute settlement system makes the existing conflict resolution model a useful case study for future integration processes, notwithstanding its shortcomings. This shows how the EU affects regional integration and conflict resolution (Vos, 2005).

Dispute Resolution Mechanisms in the G20

The G20, which includes governments and central bank governors from 19 nations and the EU, is crucial to addressing global economic issues. The G20 uses political and legal channels to resolve problems within its framework to promote stability and international cooperation.

The G20 conference created a unique global governance system that supports innovation, international collaboration, and crisis management. Rewizorski (2017) claims that this method affects international economic policy. The G20 has embraced the WTO dispute resolution process for international trade. In order to increase system effectiveness, the Appellate Body has implemented important process changes. However, opposing institutional interests of industrialized and developing states may worsen global trade imbalances (Smith, 2004). Some authors believe the WTO conflict resolution process has worsened problems. Legitimacy, accountability, sensitivity, and political safety valves may investigate these challenges (Alter, 2003). Hoffman et al. (2022) found that a holistic system, for dispute resolution and the International Court of Justice (ICJ) and binding arbitration, is are effective strategy for addressing global health challenges among G20 nations. Phillips (2009) thinks that a World Intellectual Property Litigation Court might help G20 nations greatly. Political support for this project depends on strong intellectual property rules, appropriate legal counsel, and a uniform currency. Formalizing decision-making and expanding interaction might improve global governance and G20 transparency. According to Benson & Zürn (2019), this strategy may reduce resistance and promote a more respected global governance structure.

However, the G20 needs political and judicial conflict resolution procedures to resolve international economic issues. It promotes global collaboration and resolves complex conflicts via formal legal processes, political debates, and international treaties.

Dispute Resolution Mechanisms in the Gulf Cooperation Council

Arab nations in the Gulf Cooperation Council (GCC), an international political and economic union, have strong communication and conflict resolution channels. The GCC prioritizes resolving internal disputes among the six nations, which affects its conflict resolution tactics (Cooper, 2003). Member nations resolve problems via mediation. Qatar has been significant in the Sudan, Yemen, and Lebanon war discussions. This role strengthens Qatar's diplomatic posture at home and abroad and its foreign policy independence (Nuruzzaman, 2015). Kuwait intends to de-escalate the Gulf issue via mediation to reach a peaceful conclusion. If the crisis escalates and threatens the GCC, these limits may be difficult to sustain (Alajmi, 2018).

Hussain and Zahraa (2021) say that the GCC's existing constraint makes it difficult to resolve issues among its members. Reforming the GCC's cooperation and dispute resolution mechanisms is necessary to ensure the peaceful settlement of conflicts between member nations and their populations. Implementing effective conflict resolution processes is vital (Altamimi, 2020). Due to member nations' different interests and self-centeredness, the GCC has struggled to adopt dispute resolution processes that are both impartial and efficient (Abdelkhalek, 2021). Baabood (2019) argues that the GCC has faced a challenge to its internal security due to

the different approaches used by its member nations and the absence of mutual trust among them. Certain people have achieved success in overcoming problems that arise from external strains and pressures (Guzansky, 2016).

Resolution Mechanisms in the South Asian Association for Regional Cooperation

Sanders (2021) underlines the need for dispute resolution mechanisms for South Asian Association for Regional Cooperation (SAARC) regional stability and harmony. Algorithmic methods may help SAARC members reach amicable civil agreements before or during a trial. This technique may improve regional conflict settlement (Amato et al., 2019). Regional trade agreements, especially those including SAARC nations, demonstrate a link between economic asymmetry and member states' desired liberalization and dispute resolution. Restructuring the global conflict resolution system by merging approaches from other fields is emphasizing its efficiency. SAARC may use this strategy to address global challenges affecting its members (Bradley, 2010). Regional cooperation needs strong institutional underpinning, a broader variety of aims, and non-governmental organization engagement, notwithstanding the 12th SAARC Summit's notable results. International agreements, such as those involving SAARC members, must have dispute resolution procedures to be legitimate and effective. Their involvement is crucial to regional international law development (Koremenos, 2016). Some researchers advise using alternative international conflict resolution channels to resolve SAARC disputes. The Singapore Convention supports worldwide corporate mediation may assist business dispute resolution. This agreement is important for SAARC countries. Peulve (2020). However, Singapore's dispute resolution procedure is inadequate for Islamic financing. It is crucial for SAARC nations with large Muslim populations and Islamic banking sectors (Hassan &Jani, 2015).

SAARC's political and judicial dispute resolution processes help manage member states' problems and maintain regional peace. These tools show their commitment to cooperation and conflict resolution in a dynamic area. The tactics include computational, legal, and peaceful resolution methods.

Dispute Resolution Mechanisms in the North Atlantic Treaty Organization

Thirty North American and European nations formed the North Atlantic Treaty Organization (NATO) in 1949 to protect their member nations by military and diplomatic means. Effective dispute resolution inside member states and across operations is essential for organizational functioning.

The 2013 founding of the NATO Administrative Tribunal was a major step toward legal compliance inside the organization. It improves organisational performance by promoting transformation and legal accountability (Hill & Minogue, 2020). NATO prioritizes diplomacy, political mediation, and international humanitarian law to prevent military confrontations. Mahfud (2016) says UN activities are crucial to world peace and security. NATO may have trouble conducting multinational peace operations. Member states' reluctance to join in military actions abroad may hinder NATO's collaboration (Lepgold, 1998). There are several arguments for using a range of dispute settlement strategies to better international conflict resolution in varied circumstances. Unfair allocation of economic resources affects nations' openness and legality in dispute settlement, even NATO members. Smith (2000) stresses the need to understand NATO conflict resolution. The WTO dispute settlement process illuminates political protections, sensitivity, accountability, and legitimacy in international legal systems, even if NATO and the WTO are not directly related (Alter, 2003).

Dispute Resolution Mechanisms in the World Trade Organization

WTO regulates and facilitates international commerce. It facilitates trade agreement negotiations and provides a dispute resolution system to ensure member nations comply with its accords. WTO dispute settlement process underpins global trade stability and predictability. An aggrieved state might impose political penalties on trade violators via the WTO dispute resolution procedure. Credibility from ambiguity about state reprisal costs promotes trade liberalization (Nzelibe, 2005). It is crucial to recognize the impartiality of WTO dispute resolution. However, the system favors developed countries, increasing inequality (Moon, 2006). Despite questions about its efficacy, the WTO includes an appeal body to resolve disputes among its members. WTO, Appellate Body changed its procedures. However, the differing interests of industrialized and developing nations may worsen global trade inequities (Smith, 2004). Due to its efficacy, the Multi-Party Interim Appeal Arbitration Arrangement may temporarily resolve the WTO Appellate Body problem. Organizational efficiency depends on its capacity to address challenges according to regulations (Starshinova, 2021). Experts also recommend using international institutions like specialized arbitration organizations and legal or political measures to resolve sovereign investment issues. This method is important for resolving WTO trade and investment disputes. Yang, Wang, and Thomas (2007) argue that the US's 2007 WTO complaints against China were a deliberate move to focus on WTO dispute settlement rather than bilateral relations. Mahncke (2004) emphasizes the importance of the US

Steel Tariffs case in highlighting the need to rethink WTO adjudication methods. Political techniques and abuses of the dispute resolution system may impair its efficacy, as seen in this instance. WTO mediation of global trade rules depends on its capacity to settle issues via political and judicial procedures. These tactics have many benefits, but they can increase conflict, prejudices, and procedural changes.

Dispute Resolution Mechanism in the Shanghai Cooperation Organization

Although the SCO charter specifies the basic method for the resolution of member states' disputes however it does not address legal or political dispute resolution mechanisms. Article 2 of the charter requires member nations to resolve disputes peacefully. Article 22 expressed that member states must negotiate to resolve conflicts regarding charter interpretation or implementation difficulties peacefully. Article 16 clearly states that the SCO makes decisions by consensus, save in circumstances of member state suspension or expulsion. This provision further underlines that one member state's opposition will not prevent another from participating in the initiative. Article 17 describes how the SCO implements its judgments. The agreement requires member governments to obey SCO judgments and their own laws and further stipulates that SCO institutions will monitor member states' Charter and other agreements and decision compliance. Article 24 prohibits member nations from opposing the organization's purpose, beliefs, or goals. The section specifies that a reservation violates the charter's values and objectives if two-thirds of member states believe it contradicts the organization's goals. Shanghai's non-litigation mediation mechanism helps allocate resources and resolve conflicts, notably in financial markets. This will considerably improve SCO's institutional operations, voting, and conflict settlement. However, these improvements are necessary for the organisation to succeed, and also proposed a China-Mongolia-Russia economic and commercial partnership structure. The plan promotes mutually beneficial results, egalitarian methods, inclusion, and harmony (Wei & Tao, 2016). Government officials and accession negotiators from Azerbaijan and Central Asian states met at the Central Asian Forum (2024) and suggested adapting the China-Kazakhstan International Frontier Cooperation Center's dispute resolution process to Central Asia's economy and commerce. They emphasise that China might use American conflict resolution methods to improve administrative mediation, procedural system design, and personnel issues. Additionally, the Agreement on Dispute Settlement Mechanism has greatly improved China-ASEAN commercial cooperation. Al-qahtani (2006) suggests that the SCO improve its dispute settlement and enforcement mechanisms to fulfill its aims.

Conclusion and Recommendations

Study reveals that the SCO does not have an effective legal mechanism to settle disputes relating to business, economics, culture, education, science, finance, terrorism, and border disputes among the member states. The SCO member states have to resolve their conflicts legally to attain their goals as explicitly expressed in the SCO charter. Therefore, the revision of the SCO's charter is recommended to establish a dedicated judicial system, tribunal system, enforcement mechanism, and arbitration mechanism inside the organization. The arbitration mechanism may have two-fold benefits; First, it may enable the member states to settle their disputes peacefully. Secondly, it may enable the parties to settle the terms and conditions of the dispute resolution mechanism, the applicable procedure, and the arbitrators as per their requirements, allowing disputing parties to choose arbitrators and resolve conflicts in a non-formal manner.

Similarly, the judicial system may consist of judicial and administrative courts to handle specific issues, including drug trafficking, extremism, terrorism, border disputes, illegal immigration, criminal activities, human rights, and environmental issues among member states. Legal matters necessitating adjudication may be addressed by the trial and appellate courts, presided over by qualified judges from member states. Additionally, it is recommended to establish protocols for implementing arbitration and court rulings to ensure compliance with the SCO member states' adherence to the outcomes.

The courts may be of two types: trial courts that may hear the cases at first instance and render decisions on the basis of the evidence tendered by the parties, and appellate courts that may review the decisions by examining both the question of law and fact. The judges of such courts may be appointed by all the member states, ensuring their equal voting rights in the selection of judges.

The administrative courts may settle the disputes relating to suspension, expulsion of member states, and the interpretation of the charter of the SCO. It is also recommended that the SCO may legislate administrative, civil, and criminal laws for the judicial and administrative courts. It is hoped that the proposed arbitration mechanism, judicial and administrative court system, will provide an unbiased forum to the member states to settle their dispute and also guarantee a regular and reliable method of dispute resolution.. Similarly, the legal framework may establish a system of precedent laws (decisions given by judicial and administrative courts)

which may offer a sound foundation to settle future disputes among member states of the SCO.

It may promote cooperation and dialogue among the member states in the situation of conflict and also strengthen the relations among the member states, which may ultimately result in the expansion of the SCO. The legal framework may also ensure that the decision-making process regarding disputes in the SCO is free from political pressure since the decisions on various disputes will be based on laws and legal principles. The proposed legal framework may also speed up and simplify the process of dispute resolution.

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