THE NECESSITY OF THE DISPUTE SETTLEMENT MECHANISM IN INTERGOVERNMENTAL ORGANIZATION: AN EXAMPLE OF SHANGHAI COOPERATION ORGANIZATION

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Abstract: *This article explores the UN-oriented international legal order as the fundamental reason for justifying the necessity of the dispute settlement mechanism in intergovernmental organizations. In that case, provisions of the Charter of the United Nations are seen as the primary reference for all intergovernmental organizations. Among them, however, the Shanghai Cooperation Organization (CSO) partially inherits this practice and a dispute settlement mechanism is not permitted within its structure. Under this circumstance, it will further discuss the unique nature of the settlement of disputes within the SCO.*

Keywords: *intergovernmental organization; general-purpose organization; dispute settlement mechanism; international legal order.*

Introduction

The international community has witnessed active movements toward the formation of international organizations in recent decades. The core aim for establishing international organizations was to solve common problems that nation-states face not only in the international arena but also at the domestic level. Today, owing to globalization and increasing trade opportunities, nation-states are seeking more structured and large-scale activities under the formation of international organizations. Therefore, after the establishment of the United Nations (UN), and then the European Union (EU), powerful nation-states initiated the process of forming IGOs[1] with their prospective interests toward a new global order, and collaborated to extend their influence in specific regions in the world.

In this context, as an international legal personality established under the law of international organizations, IGOs seem to look most powerful formation among international organizations. The reason is that IGO consists of sovereign states which are principal players in the international arena and is established by binding treaties which describe the far-reaching ambitions of the Member States. In addition, IGOs mainly comprise different organs and bodies within its structure. All of these organs have their specific mandates and purposes necessary for the fulfillment of the functions of the IGO.

Although the main aims of the IGO were generally to establish a mechanism to collaborate effectively in the field of peace and security, most of them are now considered to be 'general-purpose organizations'.[2] According to Alter and Hooghe, not just security, trade and economic development, but a variety of issues such as culture, environment, transport, human rights, disease

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[1] Among the variety of definitions on intergovernmental organisations, Volgy et al. suggested the definition that 'intergovernmental organisations are entities created with sufficient organizational structure and autonomy to provide formal ongoing, multilateral processes of decision making between states, along with the capacity to execute collective will of their members.' See T. J. Volgy et al., 'Identifying Formal Intergovernmental Organizations', *Journal of Peace Research,* vol. 45, no. 6, 2008, pp. 837-850.

[2] The term 'general-purpose organization' was used in several other writings. For instance, see generally L. Hooghe and G. Marks, 'Delegation and Pooling in International Governmental Organizations', *The Review of International Organizations*, vol. 10, no. 3, 2014, pp 305-328; G. Goertz and K. Powers, 'Regional Governance: The Evolution of a New Institutional Form', *Workshop on an International Organization Database*, *Wissenschaft szentrum für Sozialforschung*, Berlin, 2014.

or migration characterize general-purpose organizations.[3] Therefore, it is fair to say that we have witnessed major transitions of IGOs from peace and security to general-purpose issues over the decades. As it is becoming difficult to classify different types of organizations under the law of international organizations[4], in this article, the term 'intergovernmental organization' will further be used as an alternative name for 'general-purpose intergovernmental organization'.

While IGOs are becoming more general-purpose and their bilateral and multilateral relations are growing, the probability of disputes among nation-states is supposed to be increased. In other words, while peace and security issues are resolved by political ways, such as negotiation and consultation, general-purpose issues require more adjudicative forms of dispute settlement. Even though it depends on the IGO whether including a dispute settlement mechanism to resolve conflicts between its Member States, it has become one of the intriguing agendas among IGOs nowadays. Therefore, the task of this article is to give justifications for the necessity of the dispute settlement mechanism in IGOs from the perspective of the law of international organizations and will argue that dispute settlement mechanism in IGOs as a means of implementing the rules and principles of international legal order. In other words, it will be concluded that the UN-oriented practice establishes the international legal order of the dispute settlement mechanism and justifies its necessity within IGOs.

Furthermore, the article will evaluate the Shanghai Cooperation Organization as an IGO. In doing so, it will analyze the SCO Charter and subsequent documents. Finally, it will discuss whether general-purpose activities of the SCO could require more structured forms of dispute settlement while recognizing the organization's unique characteristic which is strongly related to Asian values.

One. The justification for the necessity of the dispute settlement mechanism

Although there is a variety of concepts about the driving force of dispute settlement mechanisms in IGO, this article highlights international organizations' perspectives more than any other concepts. Therefore, it argues that dispute settlement mechanisms in the international organization as a means of implementing the rules and principles of international legal order which are oriented by the UN. With this in mind, it will look at certain provisions of the Charter of the United Nations[5] (UN Charter) and continuity of its influence in IGOs such as the EU and other regional organizations.

Foremost, the necessity of the dispute settlement mechanism is originally derived from the consensus under international law that any disputes are settled by peaceful means. Under this circumstance, the provisions of the UN Charter are seen as a primary reference for all international organizations. It is needless to mention that, in any case, the UN Charter can be read as the fundamental document to describe the international legal order. In addition, its 'quasi-constitutional role'[6] in international law was also recognized. Briefly, since its establishment the

[3] K. J. Alter and L. Hooghe, 'Regional Dispute Settlement Systems' in T. A.Borzel and T. Risse (ed.), *Oxford Handbook of Comparative Regionalism,* Oxford, Oxford University Press, 2016, p. 542.
[4] J. Klabbers, 'Unity, Diversity, Accountability: The Ambivalent Concept of International Organisation', *Melbourne Journal of International Law*, vol. 14, 2013, p. 3.
[5] United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI.
[6] See A. McBeth, J. Nolan and S. Rice, *The International Law of Human Rights*, Australia and New Zealand, Oxford University Press, 2011, p.11.

UN has kept pace with international law and international law has been developed under the auspices of the UN.

In overall, Chapter I and VI of the UN Charter establish the international legal order of dispute settlement procedures clearly among its Member States. Explicitly, Article 2, paragraph 3 provides the following fundamental principle for dispute settlement: "All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered."[7] Furthermore, Article 33 (1) of the Charter devotes itself to the methodology of the dispute settlements. It reads "The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice".[8] Although this provision addresses the regional arrangements in the light of the maintenance of international peace and security, it gives a general impression that the UN encourages every possible peaceful settlement of disputes among its Member States. This principle should apply also to IGOs as they are generally peace and security organizations consisting of the sovereign states that have the full UN membership status. In addition, while Article 33 (1) suggests peaceful means of dispute settlement among nation-states, it also recognizes both legal and political ways of dispute settlement. For example, it is obvious that arbitration or judicial settlement requires a more legalistic nature of dispute settlements.

Moreover, Article 52 (2) stipulates the procedures of the dispute settlement clearly. It reads: "The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council".[9] Today, IGOs effortlessly represent the regional arrangements and regional agencies, and solve local disputes by pacific means of settlement. In a nutshell, Article 33 (1) and 52 (2) provide the parties with freedom to choose ways of dispute settlement and oblige state parties to resolve any disputes through regional arrangements. After a while, above principle of peaceful ways of dispute settlement was reaffirmed in several Resolutions of General Assembly[10] [11] later.

In addition, as a global intergovernmental organization, the UN sought to include multilateral dispute settlements in the relevant provisions of the UN Charter. To be brief, these provisions clearly justifies the necessity of dispute settlement mechanism and its procedure within regional arrangements. As a result, many international organizations followed this path and established dispute settlement mechanisms in their structure.

Moreover, the UN-oriented international legal order contributed the policies and activities of other IGOs further. Among them, a more concrete example is the EU. Although the EU is not an IGO comparable to the UN, it irrevocably follows the path which was established by the UN. This

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[7] United Nations, Article 2, para 3.
[8] United Nations, Article 33 (1).
[9] United Nations, Article 52 (2).
[10] See General Assembly, Resolution No. 2627, "Declaration on the occasion of the Twenty-fifth Anniversary of the United Nations" of 24 October 1970, [website], 2017, https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/348/92/PDF/NR034892.pdf?OpenElement, (accessed 18 April 2017).
[11] See General Assembly, Resolution No. 2734, "Declaration on the Strengthening of International Security" of 16 December 1970, [website], 2017, https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/349/99/IMG/NR034999.pdf?OpenElement, (accessed 18 April 2017).

type of practices is described as a 'European loyalty to the UN'[12] or 'EU loyalty towards the UN'[13], etc. In addition, it is fair to say that the EU is the one of the numbers of examples that the international legal order which is strengthened by the UN applies the same principles to other IGOs.

A pathway of the loyalty of the EU began from the Council of Europe[14] in the mid-1950s and the 1957 European Convention for the Peaceful Settlement of Disputes[15] was evidently established on the principle of the UN Charter.[16] Similar to the UN Charter, the Convention also provided Member states of the Council of Europe with the peaceful settlement of disputes such as judicial settlement, conciliation and arbitration, etc. Although the Council of Europe was not the supranational organization like today's EU, it was an intergovernmental organization which had its own dispute settlement mechanism. As well as, the initiative of adopting the European Convention on Human Rights was the significant step of the Council in the field of dispute settlement.[17]

In modern times, the Treaty of the European Union[18] demonstrates the EU's loyalty to the UN. Article 3 Paragraph 5 of the Treaty states: "In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter". It will further clarify that loyalty in Article 21 Paragraph 1:

> "The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.
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> The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organizations which share the principles referred to in the first subparagraph. It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations."[19]

In terms of dispute settlement, the Treaty provides an important provision in Article 21 Paragraph 2 (c): "The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to… preserve peace,

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[12] M. Evans and P. Koutrakos, *Beyond the established legal orders : policy interconnections between the EU and the rest of the world*, Oxford, Hart Publishing, 2011. p. 235.
[13] P. Fisher, 'International Organizations', Vienna; Bratislava, 2012, http://www.worldmediation.org/education/io-1.pdf, (accessed 01 April 2017). p. 25.
[14] See generally The Council of Europe, Statute of the Council of Europe, ETS No.001, 1949, [website], http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/001, 2017, (accessed 27 April 2017).
[15] The Council of Europe, European Convention for the Peaceful Settlement of Disputes, 1957, [website], 2017, https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680064586 (accessed 21 April 2017).
[16] United Nations, *Handbook on the Peaceful Settlement of Disputes between States.* New York, United Nations Publication, 1992, p.86.
[17] J. G. Merrills, *International Dispute Settlement.* 5th ed. Cambridge, Cambridge University Press, 2011, p.258.
[18] The European Union, Treaty of the European Union, *EUR-Lex,* [website] http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A12012M%2FTXT, (Accessed 10 April 2017).
[19] The European Union, Article 21 para 1.

prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter …".[20] In recent years, with the implementation of above-mentioned provisions, the EU has made an enormous effort in establishing complex dispute settlement mechanisms within a centralized EU level.

In the long run, the international legal order which has been strengthened by the UN Charter is substantial for reinforcing dispute settlement mechanism within the IGO and ensuring its activities more secure and predictable. Therefore, many IGOs in different regions (i.e. MERCOSUR[21], SADC[22], CARICOM[23], ECOWAS[24], SICA[25], EAC[26] and ASEAN[27], etc.) have established a variety of dispute settlement mechanisms, such as interstate and supranational[28], within their structure to resolve disputes related to economic development, welfare, peace, and political issues[29]. Particularly, in recent decades, international dispute settlement procedures have been developed as a judicialization process generally.[30] IGOs in Europe, America and Africa are mainly the frontrunners in that initiative. They formulated more adjudicative mechanisms in order to resolve general-purpose issues, including trade and economic disputes. For example, in 2010, adjudicative tripartite dispute settlement mechanism was established by three IGOs, COMESA[31], SADC[32] and EAC[33]. Additionally, while some IGOs are establishing new forms of dispute settlement mechanisms, other are transforming its current one into more adjudicative. For example, the diplomatic ways of dispute settlement in the General Agreement on Tariffs and Trade were renewed by a judicial dispute settlement mechanism of World Trade Organization in 1995.[34]

On the other hand, some IGOs still exist without any forms of dispute settlement mechanism. Namely, the Shanghai Cooperation Organization. The next section will discuss in some detail the current situation of dispute settlement within the SCO.

Two. The Shanghai Cooperation Organization as an IGO

[20] The European Union, Article 21 para 2 (c).
[21] See generally MERCOSUR, *Protocolo De Olivos: Para la Solucion De Controversias En El MERCOSUR*, 2002 [website], 2017, http://www.mercosur.int/innovaportal/file/722/1/2002_protocoloolivossolucontroversias_es.pdf (accessed 17 April 2017).
[22] See generally Southern African Development Community (SADC), *Protocol on Tribunal in the Southern African Development Community*, 2000, [website], http://www.sadc.int/files/1413/5292/8369/Protocol_on_the_Tribunal_and_Rules_thereof2000.pdf, (accessed 17 April 2017).
[23] See generally Caribbean Community (CARICOM), *Protocol IX: Dispute Settlement*, 2000, [website], http://archive.caricom.org/jsp/secretariat/legal_instruments/protocolix.jsp?menu=secretariat&prnf=1, (accessed 17 April 2017).
[24] See generally Economic Community of West African States (ECOWAS), *Protocol on the Communtiy Court of Justice*, [website], 1991, http://www.courtecowas.org/site2012/pdf_files/protocol.pdf (accessed 17 April 2017).
[25] See generally Central American Integration System (SICA), *Convention for the Establishment of a Central American Court of Justice*, 1908, [website], http://www.worldcourts.com/cacj/eng/documents/1907.12.20_convention.htm, (accessed 17 April 2017).
[26] See generally East African Community (EAC), *Annex on the Tripartite Dispute Settlement Mechanism*, 2010, [website], http://www.tralac.org/wp-content/blogs.dir/12/files/2011/uploads/Tripartite_FTA_Annex_13_dispute_settlement_Revised_Dec_2010.pdf, (accessed 17 April 2017).
[27] See generally Association of Southeast Asian Nations (ASEAN), *Protocol on Enhanced Dispute Settlement Mechanism*, 2010, [website], http://asean.org/?static_post=asean-protocol-on-enhanced-dispute-settlement-mechanism, (accessed 17 April 2017).
[28] J. Tallberg and J. McCall Smith, 'Dispute settlement in world politics: States, supranational prosecutors, and compliance', *European Journal of International Relations*, vol. 20, no. 1, 2014, p. 121.
[29] See generally K. J. Alter and L. Hooghe, 'Regional Dispute Settlement Systems' in T. A.Borzel and T. Risse (ed.), *Oxford Handbook of Comparative Regionalism,* Oxford, Oxford University Press, 2016.
[30] B. Zangl et al., 'Between law and politics: Explaining international dispute settlement behavior', *European Journal of International Relations,* vol. 18, no. 2, 2012, p.370.
[31] The Common Market for Eastern and Southern Africa (COMESA), 2017, [website], http://www.comesa.int/, (accessed 25 April 2017).
[32]Southern African Development Community (SADC), 2017, [website], http://www.sadc.int/, (accessed 25 April 2017).
[33] East African Community (EAC), 2017, [website], http://www.eac.int/ (accessed 25 April 2017).
[34] B. Zangl et al., 'Between law and politics: Explaining international dispute settlement behavior', p.370.

The Shanghai Cooperation Organization is one of the largest IGOs established in the 2000s. As mentioned before, although the CSO was capable of establishing a dispute settlement mechanism within its structure under the practices of the UN-oriented international legal order, founding members decided to perform without a permanent dispute settlement mechanism. Therefore, it is interesting to focus on the current legal and political status of the SCO in the international arena and further discuss the possible scenario of the dispute settlement mechanism.

2.1.The legal and political status of the SCO

The history of the SCO officially began on 14th of June 2001 and that day the organization was established by China, Russia, Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan in the city of Shanghai, China. Except for Uzbekistan, these nation-states were previously known as the coalition of 'Shanghai Five'[35] and concluded to expand the coalition as a new IGO in the Eurasian continent under the Declaration on Establishment of Shanghai Cooperation Organization.[36] After a year, founding members adopted the Charter of the SCO (SCO Charter)[37] and its function was officially initiated. The organization now has 10 members, including India, Pakistan, Iran and Belarus in addition to the 6 countries mentioned earlier.[38] Belarus became first European member of the organization with its accession in July 2024.[39]

In terms of its legal status, the SCO is the intergovernmental organization which fulfills the requirements can be given such status.[40] As well as the SCO has an international legal personality according to the Article 15 of the SCO Charter.[41] Article 15 stipulates that: "As a subject of international law, the SCO shall have international legal capacity. It shall have such legal capacity in the territory of each member State as required to achieve its goals and tasks".[42]

Otherwise, the SCO is also the general-purpose organization, as described by Alter and Hooghe[43], whose activities embrace the whole area of political, economic and social issues in the region. Founding documents, such as the Declaration on the Establishment of the Shanghai Cooperation Organization and the SCO Charter both state its wide variety of regional activities including peace and security issues. Since its establishment, not only fighting against global issues like terrorism, separatism, and extremism, which was enshrined in the SCO Charter, the organization wants to succeed in promoting economic cooperation and integration among the Member States. For example, the SCO Charter establishes broad categories of objectives, i.e. transnational crimes, trade and economy, environmental protection, culture, science and technology, education, energy, transport, credit and finance, and human rights, etc. Especially in the field of economy, the SCO Members agreed also to facilitate deep engagement in creating

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[35] M. Al-Qahtani, 'The Shanghai Cooperation Organization and the Law of International Organizations', *Chinese Journal of International Law*, vol. 5, no. 1, 2006, p. 130.

[36] The Shanghai Cooperation Organisation, *Declaration on Establishment of Shanghai Cooperation Organization*, [website] 2017, http://eng.sectsco.org/load/193054/, (accessed 11 April 2017).

[37] [37] The Shanghai Cooperation Organisation, *The Charter of the Shanghai Cooperation Organization*, [website] 2017, http://eng.sectsco.org/load/203013/, (accessed 10 April 2017).

[38] The Shanghai Cooperation Organisation, *Permanent Representatives to the SCO Secretariat*, [website] 2024, https://eng.sectsco.org/20220907/911976.html, (accessed 21 October 2024).

[39] TASS, *Belarus officialy joins SCO as 10th member*, https://tass.com/world/1812205, (accessed 21 October 2024).

[40] See Introduction for the common characteristics of the IGO.

[41] Z. Kembayev, 'Towards a Silk Road Union?', *Chinese Journal of International Law*, vol. 15, no. 3, 2016, pp. 691-699.

[42] The Shanghai Cooperation Organisation, *The Charter of the Shanghai Cooperation Organization*, [website] 2017, http://eng.sectsco.org/load/203013/, (accessed 10 April 2017) Article 15.

[43] See Introduction for the characteristics described by Alter and Hooghe.

comprehensive and balanced economic growth, and coordinate approaches to integration into the global economy as well.[44]

At the same time, in terms of political status in the international arena, the SCO is the competitive organization, which consists of two permanent and one non-permanent member of the UN Security Council.[45] [46] It means the SCO is able to participate in the international political affairs not only through the IGO but also the UN level. In addition, the SCO's aims are ambitious and objectives and areas of cooperation of the organization look capable of forming strong regional integration in the Eurasian continent. For instance, it is declared that: "strengthening mutual trust, friendship and good neighbourliness between the member states; … making joint efforts to maintain and ensure peace, security and stability in the region and establishing new, democratic, just and rational international political and economic order".[47] For that reason, the SCO seemed to apply for the observer status of the UN General Assembly. As a result, during its 65th plenary meeting in 2004, the UN General Assembly recognized observer status of the SCO in its sessions.[48] In terms of this status, Al-Qahtani argued that: "… the SCO felt that it would be appropriate to apply for observer status in the GA in order to substantiate its status and role in the international sphere and realize the objectives of its Charter"[49].

Today, the SCO has two observer states, Mongolia and Afghanistan. Mongolia is the first and the longest running observer state which was given the status in June 2004, while the rest of them were recognized in July 2005. Bangladesh and Algeria have applied for observer status as well. The Organization also encourages activities of dialogue partners, such as Armenia, Azerbaijan, Cambodia, Egypt, Nepal, Qatar, Turkey and Sri Lanka.[50] In other words, the SCO will benefit with the help of further extension of its members and it will be an important step to strengthen the organization's political status.

2.2. Dispute settlement issues in the SCO

In terms of dispute settlement, the SCO Charter is in the spotlight. While a core document for the institutional set-up of the SCO is the SCO Charter, it also regulates the dispute settlement issues of the organization. However, the provisions related to dispute settlement in the SCO is too diminutive in comparison with the UN Charter.

Article 2 of the SCO Charter explicitly states that 'peaceful settlement of disputes between the member States'[51] is one of the core principles that the SCO Member States shall adhere. Primarily,

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[44] See generally The Shanghai Cooperation Organisation, *The Charter of the Shanghai Cooperation Organization*, [website] 2017, http://eng.sectsco.org/load/203013/, (accessed 10 April 2017) Article 1.

[45] Russia and China are the permanent members of the UN Security Council. See United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, Article 23.

[46] Kazakhstan was appointed as a non-permanent member of the UN Security Council in 2016. See United Nations News Centre, *Sweden, Bolivia, Ethiopia and Kazakhstan elected to Security Council*, [website], 28 June 2016, https://www.un.org/apps/news/story.asp?NewsID=54350#.WQFs-YiGPDc (accessed 14 April 2017).

[47] The Shanghai Cooperation Organisation, *Declaration on Establishment of Shanghai Cooperation Organization*, [website] 2017, http://eng.sectsco.org/load/193054/, (accessed 11 April 2017). Para. 2.

[48] General Assembly Resolution, A/RES/59/48, 2004. [website], http://repository.un.org/bitstream/handle/11176/251299/A_RES_59_48-EN.pdf?sequence=3&isAllowed=y, (accessed 18 April 2017)

[49] M. Al-Qahtani, 'The Shanghai Cooperation Organization and the Law of International Organizations', *Chinese Journal of International Law*, vol. 5, no. 1, 2006, p. 144.

[50] The Shanghai Cooperation Organisation, *The Tashkent Declaration of the Fifteenth Anniversary of the Shanghai Cooperation Organization*, [website], 2017, http://eng.sectsco.org/load/207886/, (accessed 14 April 2017).

[51] The Shanghai Cooperation Organisation, *The Charter of the Shanghai Cooperation Organization*, Article 2.

it seems to be understood that the SCO also inherits the practice established by the UN Charter. Because, as mentioned earlier, the UN encourages multilateral methods of peaceful settlements in regional arrangements. In addition, the SCO Charter clearly endows its 'loyalty' to the UN as well in its preamble. The preamble of the SCO Charter stipulates: "Reaffirming our adherence to the goals and principles of the Charter of the United Nations, other universally recognized principles and norms of the international law related to the maintenance of international peace, security and development of good-neighbourly and friendly relations, as well as cooperation between States;".[52] After a while, in 2016, during the celebration of the 15th Anniversary of the SCO in Tashkent, Uzbekistan, the Member states also expressed their adherence to the UN Charter and international law.[53] However, if we further read the SCO Charter, Article 22 'Settlement of Disputes' provides very limited access to dispute settlement to its Member States. It merely stipulates:

> "In cases of disputes or controversies arising out of interpretation or application of this Charter Member States shall settle them through consultations and negotiations."

Again, it looks too strict regulation that limits any disputes shall be gone through the consultations and negotiations only, if we think that the Member States would better have more broad dispute settlement options consists of both political (negotiation, mediation or conciliation) and legal (arbitration and judicial settlement) ways. It is clear that consultations and negotiations do not always settle every dispute between the Member States. In this situation, third party intervention or more constructive dispute settlement would be needed. In contrast, the SCO has further implied their support for the continuation of consultations and negotiations only dispute settlement during the above-mentioned Tashkent event. In the text of the Tashkent Declaration, Member States jointly confirmed that: "All relevant disputes should be resolved peacefully through friendly negotiations and agreements between the parties concerned without their internationalization and external interference."[54]

It is needless to say that the SCO's primary goal was ensuring regional peace and security issues[55]. In this case, political ways of dispute settlement were absolutely convenient. However, over the years, the SCO has used only those as the main dispute settlement methods and the processes have been carried through higher level bodies of the organization. As well as, many binding agreements which were signed between the governments of the Member States of the SCO explicitly chosen consultations and negotiations as a means of the only dispute settlement method. The latest example is that, in 2014, when the SCO Members signed the Agreement on Creating Favourable Conditions for International Road and Transportation, they concluded to settle any disputes through negotiations and consultations.[56]

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[52] See The Shanghai Cooperation Organisation, *The Charter of the Shanghai Cooperation Organization*, [website] 2017, http://eng.sectsco.org/load/203013/, (accessed 10 April 2017).

[53] In the text of the Tashkent Declaration, it reads: "Member States intend to continue to adhere to universally recognized objectives and principles of the UN Charter and international law, primarily relating to the maintenance of international peace and security, development of cooperation between states, independence, equality, independent choice of social systems and paths of development, mutual respect for sovereignty, territorial integrity, inviolability of borders, non-aggression, non-interference in internal affairs, peaceful settlement of disputes, non-use of force or threat of force." See the Shanghai Cooperation Organisation, *The Tashkent Declaration of the Fifteenth Anniversary of the Shanghai Cooperation Organization*, [website], 2017, http://eng.sectsco.org/load/207886/, (accessed 14 April 2017).

[54] *The Tashkent Declaration of the Fifteenth Anniversary of the Shanghai Cooperation Organization*, [website], 2017, http://eng.sectsco.org/load/207886/, (accessed 14 April 2017).

[55] E. Azarkan, 'The Interests of the Central Asian States and the Shanghai Cooperation Organization', *Ege Academic Review*, vol. 10, no. 1, 2010, p.396.

[56] The Shanghai Cooperation Organization, *Agreement between the Governments of the Member States of the Shanghai Cooperation Organization on Creating Favorable Conditions for International Road Transportation*, [website], 2014, http://eng.sectsco.org/load/207681/, (accessed 14 April 2017). Article 26.

Regardless of the SCO made significant effort to settle border disputes through political ways, it will be problematic to settle trade and economic disputes among the Member States. As discussed earlier, promoting economic integration among its members is one of the main aims of the SCO, its institutional structure should be refined. Given these points, the SCO needs to consider the Protocol on Establishing Dispute Settlement Mechanism in order to fully comply with the adherence to the UN-oriented international legal order. Next section will discuss the possible scenario of the dispute settlement mechanism within the SCO.

2.3. More or less adjudicative mechanism?

In the first place, a variety of discussions is held while the absence of the dispute settlement mechanism in the SCO. Based on the current practice of keeping up the UN-oriented international legal order, many justify that permanent dispute settlement mechanism must be established within the SCO. But it has not been decided among scholars that which kind of dispute settlement mechanisms are more effective for the organization. It is needless to say that establishing whether more or less adjudicative dispute settlement mechanism can depend on the institutional necessity of certain IGOs.

In our case, some proponents of more adjudicative dispute settlement mechanism argue that it concretizes the goals and tasks of the SCO.[57] For instance, Al-Qahtani simply supports that 'it would be appropriate for the SCO to contemplate establishing an SCO (or Shanghai) Court of Justice to realize the goals of the SCO and to overcome this limited dispute settlement mechanism'.[58] Under this notion, he sees the goals and tasks of the SCO as a crucial factor for establishing judicial dispute settlement mechanism. In fact, it seems that an initial purpose of establishing the SCO was not to support independent judicial body within the organization but to enhance the authority of the organization in the Eurasian continent. It was not important for the SCO that ensure the freedom of the Member States from the SCO, while they prioritize the unity of the organization very first. As discussed earlier, the SCO Charter, Tashkent Declaration of 2016[59] and all other treaties and agreements indicate that the only means of dispute settlement methods will be consultations and negotiations. Under this circumstance, consultations and negotiations do not demand judicial bodies strictly.

But it is appropriate to say that the indolence of the SCO must be related to the unique legal and political nature of the Asian region rather than criticize that lack of political will or weak institutional structure affects the initiative to establish a more adjudicative dispute settlement mechanism within the SCO. Since every region has different social and cultural background, the dispute settlement mechanism can be of its own uniqueness. Some had expressed their views that the Asian region has its disparate nature from Western culture and specified it as 'a new model of Asian Regionalism'.[60] [61] According to Yasuda, one of the most important values of Asian culture

[57] M. Al-Qahtani, The Shanghai Cooperation Organization and the Law of International Organizations, *Chinese Journal of International Law,* vol. 5, no. 1, 2006, p. 139.
[58] Ibid.
[59] See footnote 49.
[60] Aris, S., 'A new model of Asian regionalism: does the Shanghai Cooperation Organisation have more potential than ASEAN?', *Cambridge Review of International Affairs*, vol. 22, no. 3, 2009. p. 453.
[61] See generally N. Yasuda, 'Law, Legal Culture and regional Integration: Asian Perspectives', *APEC Discussion Paper Series*, no. 7, 1996.

is that settling any conflicts in the friendly means.[62] Therefore, consultations or negotiations look more suitable for this value. In contrast, Western legal tradition prefers judicial settlement of disputes based on its essence of individualism.[63] Moreover, it can be concluded that although the UN Charter encourages universal values of peaceful settlement of disputes, the SCO inherited merely limited methods from the UN Charter because of its Asian characteristics.

It is also worth noting that many of the member States of the SCO had been under the control and influence of the former Soviet Union for many decades, although countries in that region are seeking to broaden their cooperation at large after the fall of the socialist regime. In a similar vein, all founding members of the SCO were part of the socialist regime prior to the 1990's revolutions. And they are still trying to establish a liberal and democratic society within their territories.

Based on the above-mentioned assumptions, it might be unlikely to see the establishment of a judicial dispute settlement mechanism within the SCO near future. Under these circumstances, an initial and more appropriate step to establish the dispute settlement mechanism within the SCO might be choosing a similar way that the ASEAN followed. Because the SCO has similarities to the ASEAN by its Asian values, while Aris sees the SCO as a replica of ASEAN.[64] More importantly, the ASEAN is another major intergovernmental organization in the Asian region and it has already experienced its less adjudicative or quasi-judicial dispute settlement mechanism. Today ASEAN has transformed it to more adjudicative form. Particularly, in 1996, Member states of the ASEAN adopted the Protocol on the ASEAN Dispute Settlement Mechanism[65] and, later in 2010, it was replaced by the Protocol to the ASEAN Charter on Dispute Settlement Mechanisms[66]. The former one used to provide Member states with political ways of settlement such as consultation, good offices, conciliation or mediation. The new Protocol enables Member States to appeal to arbitration.[67]

Finally, it is believed that if the SCO wants to develop as a modern liberal and democratic international organization, the dispute settlement mechanism is necessary for the organization. If the SCO makes a step toward the establishment of a dispute settlement mechanism, it would be an appropriate response for those who criticize the SCO as 'not a democratic and legitimate institution'.[68] Interestingly, there are some potential candidates for the SCO, such as Mongolia which have already established significant democracies within their territories under the influence of Western legal and political values. Somewhat, their accession to the SCO might intensify this process in the future.

In addition, it is worth noting that, according to Burchill, an effective application of international legal order at the regional level determines 'a belief in the effectiveness, or at least

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[62] N. Yasuda, 'Dispute Settlement Mechanisms in Asia-Pacific Region – APEC DMS and ASEAN DMS', *APEC Discussion Paper Series*, no. 13, 1997, p.25.
[63] N. Yasuda, 'Law, Legal Culture and regional Integration: Asian Perspectives', *APEC Discussion Paper Series*, No. 7, 1996, p.5.
[64] Aris, S., 'A new model of Asian regionalism: does the Shanghai Cooperation Organisation have more potential than ASEAN?', p. 464.
[65] ASEAN, *Protocol on the ASEAN Dispute Settlement Mechanism*, 1996, [website], http://agreement.asean.org/media/download/20140119110714.pdf, (accessed 21 April 2017).
[66] ASEAN, *Protocol to the ASEAN Charter on Dispute Settlement Mechanisms*, 2010 [website], http://agreement.asean.org/media/download/20160829075723.pdf, (accessed 21 April 2017).
[67] Ibid. Article 8-12.
[68] See generally A. J. K. Bailes, P. Dunay, P. Guang and M. Troitsky, *The Shanghai Cooperation Organization.* Stockholm International Peace Research Institute (SIPRI), 2007.

the usefulness of international law in the pursuit of common concerns and objectives'.[69] Under this notion, not only the SCO but also any other international organizations must recognize its adherence to international law and the quasi-constitutional UN Charter as well.

Conclusion

To conclude, although there is no binding rule that every international organization should establish a dispute settlement mechanism within its structure, commonly accepted international legal order justifies this necessity. In particular, most concepts around dispute settlement tend to be drawn from the experience of the UN-oriented international legal order. Therefore, the UN Charter is generally understood as the fundamental reference that all other IGOs should seek to follow. Otherwise, establishing the dispute settlement mechanism without delay will be an invaluable effort to ensure the increased functionality of the IGO, including the CSO as an intergovernmental organization that is recognized under the law of international organizations.

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[69] R. Burchill, 'Regional organizations and the UN legal order', in *International Organizations and the Idea of Autonomy,* Taylor and Francis, 2011, p. 332.

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