

# Shanghai Cooperation Organization: Legal Framework, Issues and Challenges

Muhammad Sohail Khan<sup>1</sup> and Muhammad Zubair Khan<sup>2</sup>

<https://doi.org/10.62345/jads.2023.12.3.113>

## Abstract

*In 1996, an organization was formed by the name Shanghai Five, which was later transformed into the Shanghai Cooperation Organization (hereinafter SCO) with a current total of nine members. It is an international alliance with an agenda to work and cooperate for a better and peaceful world from a social, economic, security and environmental perspective. The policy of the SCO is entirely based upon the principles of mutual benefit, mutual trust, equal rights, recognition and respect for diverse cultures and aspirants towards joint development. SCO has been facing various issues in terms of legal framework. From time to time, international observers and researchers have highlighted several things that SCO had to work on in furtherance of what the international community expects from such an organization. However, SCO can be seen by how rapidly it has improved from five-member organizations, having no say in the world, to a significant organization which now has an essential and positive role in governing various matters in the region and at the international level. It has positively reflected in the term of the legal framework and has shown a satisfying future ahead by the international rules and policies. In the instant research, all the issues mentioned above, specifically in the context of the legal framework of SCO, were addressed further. Other international organizations' legal frameworks were discussed, and a guiding path could be adopted. It is pertinent to mention that the internal rivalry in SCO is also an issue. Most of the time, it is the subject of discussion whenever the SCO matters are under discussion. Other member countries must play their part in solving every case by contributing their factors.*

**Keywords:** BRICS, Legal Framework, Shanghai Cooperation Organization, Security Cooperation, Treaty of Nestedness, Three Evils, War on Terror.

## Introduction

In 1996, a regional organization was founded under 'Shanghai Five'. The founding members of this organization were China, Russia, Kazakhstan, Kyrgyzstan and Tajikistan. Initially, this organization resulted from two main treaties signed in Shanghai and Moscow. The two treaties, "Treaty on Deepening Military Trust in Border Regions" and the "Treaty on Reduction of Military Forces in Border Regions". In the later meetings of the organizations, it was discussed that the organization's mandate should also extend to economic and political aspects that would benefit each country's state. The current Shanghai Cooperation Organization (from now on, SCO) is the successor of Shanghai Five. This reshaping of the organization resulted after giving the membership to Uzbekistan, and it was made sure that regional security would be the foremost issue

<sup>1</sup>LLM Scholar, Abdul Wali Khan University, Mardan. Email: [Sohailkohistani313@gmail.com](mailto:Sohailkohistani313@gmail.com)

<sup>2</sup>Associate Professor, Department of Law, Abdul Wali Khan University, Mardan. Email: [mzubair@awkum.edu.pk](mailto:mzubair@awkum.edu.pk)



to be catered to along with stability in the region by countering terrorism, drug manufacturing and trafficking with collective economic projects (Nasir, 2009).

Nonetheless, this research paper will focus on the current legal framework of SCO and how it has been followed so far. Moreover, the SCO is now the region's most prominent organization in many terms, so there are specific issues and challenges that the SCO has been facing for a long time. It has been almost 25 years since the establishment of this organization, yet it has yet to be able to hold the desired place in the region and the world. However, the potential SCO cannot be neglected, so a bird's-eye view will be presented regarding the response of SCO to challenges and the success achieved in this regard. At the end of the paper, the prospects of the SCO will be discussed, and light will be shed on its importance and its role in the region.

### **Agenda of Shanghai Cooperation Organization**

SCO is a permanent regional organization with a wide variety of goals and objectives intended to be achieved within the span of time. Some of the primary goals are strengthening mutual relations among the member states, and this would be achieved through a series of other steps like trade and economic projects, promotion of practical cooperation in political ties, culture as well as education, science and technology, transportation, tourism, reasonable steps regarding the environmental protection, creating such opportunity where joint efforts shall be put in to ensure peace, security and stability in the region. Working towards establishing a new, democratic, and rational world order is the main objective of the SCO. The policy of the SCO is entirely based upon the principles of mutual benefit, mutual trust, equal rights, recognition and respect for diverse cultures and aspirants towards joint development. All these above elements are part of the internal policy, which would be governed in the region. However, the external policy of the organization that would extend to other areas, continents and countries includes non-targeting, openness, and non-alignment principles (SCO, 2017).

### **Legal Frame Work of Shanghai Cooperation Organization**

Bailes et al. (2007) argued that the question of legitimacy raised against every international organization would be addressed in the case of SCO because when this question is answered, it specifies whether this organization is a force for good or ill purposes. There have been two perspectives in this regard: a legitimate and effective organization and a legitimate and ineffective one. On the face, it can be seen that SCO is an effective organization. Still, when it comes to its legitimacy, certain international institutions and powers do not regard it in this term. A series of practices have been conducted in and around the legitimation of SCO. After its foundation in 1996 and a change in its name, SCO has gained the attention of a more significant part of the world, specifically the region (Rebecca, 2022) It has extended its membership to eight states and is considering the application of nine states, i.e., Iran. There are several other countries as dialogue partners, and some are there as observers. This extension of the organization and involvement of other nations in different forms reflects the acceptance and legitimacy of SCO. However, as Bailes et al. (2007) pointed out, a widespread assumption is found in the Western world that the member states of SCO are often found reluctant towards the external norms of the world, reflecting the ineffectiveness and illegitimacy of this organization as a whole. This Western claim of SCO illegitimacy is also countered by the practice of self-legitimacy of policies among the member states by using the organization's legal framework.

### **Security Cooperation of Shanghai Cooperation Organization and its Legitimacy**

The SCO extended its mandate from regional and economic cooperation to security cooperation, which was the need of the time at the start of the 21st century, and it also brought a legal status to this organization in everyone's view. The SCO aimed to counter terrorism, separatism and religious extremism by referring to it as 'Three Evils'. An alternate model of the counter-terrorism approach was presented at this convention. In addition to this convention, a permanent body for counter-terrorism, the Regional Anti-Terrorism Structure (RATS), has also been formed. Moreover, (Buland, 2010) over the years, SCO has conducted several multilateral anti-terrorism exercises to increase confidence building and cooperation among the member states and other countries. The first-ever training was held in 2003 in which Uighur separatists were prevented from crossing the border of Kazakhstan in furtherance to attack China. After that, in 2006, another training was conducted from the platform of SCO, which involved Kyrgyzstan, Tajikistan and Uzbekistan, to prevent a group of terrorists from attacking the infrastructure of certain countries in the region. SCO has very efficiently taken part in the United States of America's led 'War on Terror' after 2001, along with the UN project of global terrorism strategies around the world (Aris, 2009). The role of SCO in counter-terrorism differently and more effectively as compared to Global Counter-Terrorism strategies of the United Nations or other countries has given a legitimizing framework to SCO which nullifies any negative impact or perspective regarding the Standing and legitimacy of SCO and also a rebuttal to the threats to the integrity of nation-states.

### **Status Quo of Legal Frame Work of Shanghai Cooperation Organization**

An international perspective of SCO will also be an authoritarian organization that could have ill intentions for the world. This picture of the foreign policy center needs to investigate how their practices could be shared by the former Soviet Union and currently dominant China (who have been in rivalry with each other before 1990). For this reason, in this research paper, an analysis of the Treaty of Nestedness will be applied to the SCO to investigate this. This approach focuses on the link between the international agreement and other essential documents considered the essence of the legal framework.

### **Treaty of Nestedness**

The foundation of both international law and international relations are international agreements. They are the primary channels for building and promoting international norms and interstate cooperation. Bilateral agreements or multilateral collaboration might happen, with the latter taking place inside the framework of a global organization. However, these agreements occur inside a more extensive legal framework that links nations together, not in a vacuum. To appreciate how a legal framework has institutionalized collaboration among the EU member states, one has to look at the fundamental treaties of the European Union and how these, in turn, led to a myriad of other accords. Similar to this, further alliances have enhanced the democratic and human rights ideals mentioned in such earlier EU agreements. Using a methodology that focuses on how treaties and other essential documents link to one another via references to earlier treaties and records, these legal frameworks may be comprehended; this is called a treaty of nestedness (Slobodchikoff, 2013).

The SCO serves various purposes, including promoting interstate cooperation, averting regional conflict, and even furthering some geopolitical goals. However, Cooley was right to characterize the SCO as a "league of authoritarian gentlemen," more concerned with maintaining the status quo than promoting democracy or human rights. The fundamental SCO accords and the SCO heads of

state declarations support this viewpoint. Therefore, it is essential to understand that the network that has been connected and self-reinforcing since 2001 attempts to construct an "architecture of authoritarianism" — a regional legal framework that supports and enhances non-democratic norms and behaviours (Cooley, 2013). Policymakers who want to advance democracy in Central Asia must recognize that in addition to state-level internal barriers to liberalization, they must also deal with a complex, interrelated, and self-reinforcing international system that is inimical to their objectives. Policymakers must pressure these states to be more open about their intraregional extradition procedures, the blocklisting of opposition groups through SCO institutions, and their broad definitions of the "Three Evils" to reverse this dynamic. Nevertheless, political reform will be highly challenging to implement in the short- to medium term because authoritarianism is supported at the state and regional levels (Ambrosio, 2016).

### **Challenges Ahead to Shanghai Cooperation Organization**

In the last 21 years, the SCO has emerged remarkably as an influential regional organization in various sectors. This organization has the potential for further growth. However, it is a young organization compared to other regional organizations like the European Union (EU) and United Nations Organization (UNO), which still need some help to cater to and include its membership.

### **Conservative Approach of West towards SCO**

The Western conservative groups will hardly alter their views towards the SCO. Immediately after its founding, the SCO proclaimed that it is an unrestricted regional cooperation organization that does not explicitly target any nation or group and is not a military organization. Unquestionably, however, the multipolar, just, and rational international order that the SCO seeks to establish opposes the U.S. goal of preserving the pre-existing world order that it will perpetually rule. The new security paradigm that the SCO upholds in international relations, which is based on "mutual trust, mutual benefit, equality and cooperation," and the notion of "an indivisible security space with due regard to the interests of all states without exception," are inconsistent with the cold-war mentality of the conservative forces of the West. From its expansion, it has been seen as an undermining force for democratization, especially in Central Asia. (Ambrosio, 2008). The U.S. and NATO's policy of avoiding the UN directly opposes the SCO's support of the UN's leadership and coordinating roles in tackling global hotspot issues. The SCO fosters a spirit of peace, friendliness, and mutually beneficial collaboration, which runs counter to the "Groupthink" and power politics of the United States and other Western nations. Additionally, the SCO challenges Western ideals by urging countries to accept one another's independence, sovereignty, and variety in political and social systems.

The West was persuaded by the SCO's 2005 resolution that called on the United States to provide a timeline for removing its troops from Central Asia, and this organization is different from what they would like to presume or think of. Following the SCO Summit in 2012, the Western media once more exaggerated the rivalry between the SCO and the West and portrayed the SCO as a platform that was no longer just for settling border conflicts. Some Western politicians believe that the SCO is eager to establish a multilateral mechanism against the United States and that, as a result, the West, particularly the United States, must prepare for challenges on all fronts, including those the SCO may launch in the areas of politics, economy, and security (Qadir, 2016). Taking into account that the SCO Heads of State Declaration supports Tehran and is categorically opposed to meddling in the internal affairs of any state, imposing regime changes therein, and using force to resolve the Iran nuclear problem.

### **Shanghai Cooperation Organization's Internal Issues**

It goes without saying that in addition to these external difficulties, the SCO also faces several challenging internal issues. Because Russia has yet to gain as much from the SCO as China has, some top SCO members are worried that Central Asia will become even more dependent on China. That explains why some Russian government officials' enthusiasm for SCO-based international economic and commercial cooperation has been somewhat dampened. Additionally, the long-standing conflicts and friction between India and China and the conflict between Pakistan and India on various matters may significantly affect the SCO's traditionally peaceful environment. In the future, the SCO must fully implement the Shanghai Spirit, which includes mutual trust, benefit, equality, consultation, respect for all civilizations and a struggle for joint development. It must also actively resolve or reduce disruptions brought on by internal and external negative factors to have greater solidarity, cooperation, and a more significant role in international affairs.

### **Prospect Image of Shanghai Cooperation Organization**

From the performance of SCO so far, it is evident that it has performed remarkably remarkable by following the guided principle of mutual trust, benefit, consultation, equality, and respect for every civilization in the region and outside the area for joint development. Furthermore, the inclusion of Pakistan and India into SCO has brought so many new opportunities in different dimensions, which could be the economic models, cultural elements, and political systems, which also would further increase International Standing and with this, SCO will have a more significant and influential role in regional and international affairs for sure (Ramzan, 2021). The SCO has expanded to include South Asia, which is linked with the Eurasian continent and Indian Ocean, as well as China, Russia, and Central and Eastern Asia. As a result of the growth, the region's population increased from 25% to 44%, and its combined GDP reached over \$14.5 trillion, or about 1/3 of the global total. This led to the formation of the globe's most populated regional organization with the most significant territory. More significantly, the SCO's network of allies has grown, and the Shanghai Spirit it maintains is now more widely known. With four "nuclear-armed powers," three BRICS countries, and two permanent members of the UNSC on essential topics like enhancing the global governance system and fostering the reform of the international economic order, the SCO will have much more voice and influence.

### **Analysis**

This research employs a mixed methods approach to comprehensively investigate the Shanghai Cooperation Organization's legal framework, issues, and challenges. This research adopts a descriptive and analytical approach, and a critical analysis is carried out. The foundation is laid through an extensive literature review, delving into existing scholars' work to identify gaps and establish a context for the study. The research design is explicitly defined, focusing on specific countries or aspects of SCO's legal framework. Qualitative data is collected through the literature review and depending upon the secondary sources, in light of which findings and discussion have been highlighted.

### **Discussion and Findings**

States and observers alike routinely affirm and argue the legitimacy of international and regional organizations and the acts taken by those bodies. Their engagement in what governments consider internal affairs, their authorization or deployment of military actions, and their decision-making processes have all called into doubt their legitimacy. Since nations have the potential to compel

conformity with their choices, international organizations do not. Their legitimacy is thus seen as essential to this ability. Despite the significance of the legitimacy debate surrounding international organizations, little focus has been placed on the procedures and methods by which these organizations and the governments that make up their membership defend the power they wield. This research fills this vacuum by contrasting and assessing the legitimation strategies of several international and regional organizations. It looks at the methods through which these organizations articulate and support their claims of legitimacy and how these methods vary amongst organizations. This paper examines the particular legitimation procedures used by international organizations. It examines how these procedures are influenced by the structure of the various organizations, the various normative contexts in which they function, and the nature of the audiences for their legitimation claims. It also considers how this study may affect regional and global governance.

## Conclusion

SCO is becoming one of the most influential and essential organizations for the region and the world. Though the organization did not make much bigger and stronger decisions like the EU and UNO, it is just because it could be seen that it is an organization that the Western world needed to be more welcoming at any cost. With every passing year since its formation, the SCO has faced a large amount of backlash in the format of illegitimacy and its authoritarian approach, which has been repeatedly declared and countered by the SCO. Looking into the legitimacy of SCO, it is evident that it has taken many positive steps so far in furthering the policies of international organizations' laws and specifically in furthering UNO policies. It has extended quite a few policies which would be beneficial for the region and the entire world. Though there are specific issues regarding the membership drive and internal issues like where the early competitors Russia and China are, a question of supremacy arises. On the other hand, there are Pakistan and India with ongoing issues unsolved and how they would impact the prospect of SCO in the foreseeable future. Nevertheless, SCO has done remarkably in each arena and is also expected to do brilliantly in the rest of the things to make itself an organization one would always wish to be a member of.

## References

- Ambrosio, P. T. (2016). *The legal framework of the Shanghai Cooperation Organization: An architecture of authoritarianism*. The Foreign Policy Centre.
- Ambrosio, T. (2008). Catching the 'Shanghai spirit': how the Shanghai Cooperation Organization promotes authoritarian norms in Central Asia. *Europe-Asia Studies*, 60(8), 1321-1344.
- Aris, S. (2009). The Shanghai Cooperation Organisation: 'Tackling the three evils'. A regional response to non-traditional security challenges or an anti-Western bloc?, *Europe-Asia Studies*, 61(3), 457-482.
- Bailes, A. J., Dunay, P., Guang, P., & Troitskiy, M. (2007). *The Shanghai cooperation organization*, 17. Stockholm: Stockholm International Peace Research Institute.
- Buland, J. (2010). *Learning from the Shanghai Cooperation Organization's 'Peace Mission-2010' Exercise*. Washington, DC: Brookings Institution.
- Cooley, A. (30 January 2013). *The League of Authoritarian Gentlemen*. Foreign Policy, available at: <http://foreignpolicy.com/2013/01/30/the-league-of-authoritarian-gentlemen/>.
- Nasir, S. (2009). *Shanghai Cooperation Organization Challenges and Response*. National Defense University. What is SCO? Available at:

<http://eng.sectsco.org/docs/about/faq.html#:~:text=The%20main%20goals%20of%20the,environmental%20protection%20and%20other%20fields%3B>

- *Preamble to the Shanghai Convention on Combating Terrorism, Separatism, and Extremism*, (2000). refworld.org. signed on 15 June 2000, available at: [www.sectsco.org](http://www.sectsco.org).
- Qadir, M. I. (2016). Expansion of Shanghai Cooperation Organization (SCO) harbinger of regional peace and prosperity. *Journal of Political Studies*, 23(1), 117.
- Ramzan, M. M. (2021). Expansion of Shanghai Cooperation Organization (SCO): Implications for Pakistan. *ASIAN Journal of International Peace & Security (AJIPS)*, 5(2), 344-352.
- Rebecca, N. I. N. (2022). Shanghai Cooperation Organisation Summit 2022: key takeaways. *Shanghai Cooperation Organisation in Samarkand, Uzbekistan 2022*. Samarkand: ODI.Org.
- Slobodchikoff, M. (2013). *Strategic Cooperation: Overcoming the Barriers of Global Anarchy*. Lexington Books.