

SCO: TIME FOR A REVISED CHARTER

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The expansion in membership of the Shanghai Cooperation Organisation (SCO) is an opportunity to review, possibly revise and widen the scope of its Charter to make it more suited to address the concerns of all its members, including new ones like India. This paper recommends what the changes in the SCO Charter ought to be by comparing it with the successful ASEAN charter.

The Shanghai Cooperation Organisation (SCO), which initially began in 1996 as the Shanghai Five with China, Russia, Kazakhstan, Tajikistan and Kyrgyzstan, was officially formed in 2002 with the adoption of the Declaration on the Establishment of the Shanghai Cooperation Organisation and the SCO Charter.

The primary motivations behind the formation of the SCO were to control terrorism, separatism and extremism in the region, and to enhance regional security and cooperation in areas such as politics, trade and economy, culture and more. Since its formation, the membership of the SCO has expanded to include nations such as India and Pakistan. Currently, the SCO accounts for a total GDP of \$18.4 trillion and almost 44% of the world population¹, thus, making it a body with the requisite power and capacity to have relevance, voice, and impact.

Over the years, along with the expansion in the SCO membership, there have been several regional developments such as China's Belt and Road Initiative, multilateral and unilateral trade sanctions, and most recently the COVID-19 pandemic and its repercussions, all of which have led to regional instability and geopolitical uncertainty.

1. Comparison with ASEAN

This leads to the fundamental question – does the almost two-decade old SCO Charter require a revamp to remain relevant and to play a more intrinsic role in global affairs?

A charter is the holy book and the backbone of an institution – it defines the goal, governs the relationship between members, determines the modus operandi of the institution and provides substance and continuity to the institution. The charter of multilateral and plurilateral bodies like the SCO, Association of Southeast Asian Nations (ASEAN) and South Asian Association for Regional Cooperation (SAARC) serve similar purposes. Institutions that have robust charters, are more effective than others. Even the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC) which currently functions without a charter, is in the process of framing a charter in order to work in a well-coordinated manner with established rules, which in turn would make this multilateral more efficient and effective.²

¹ Norov, Vladimir, 'Statement by H.E. Mr. Vladimir Norov Secretary-General SCO', Shanghai Cooperation Organisation, 25-28 February 2020 https://www.unece.org/fileadmin/DAM/trans/events/2020/ITC/ppt/4c_Transport_corridors_SCO_final_82_session.pdf

² Statement by H.E. Mr. Don Pramudwinai, Minister of Foreign Affairs of the Kingdom of Thailand, Report of the 16th BIMSTEC Ministerial Meeting, Kathmandu, August 29, 2018. Available at https://bimstec.org/?page_id=945

The ASEAN, which has proved itself a success as a regional body, has an effective charter. Trade and investment ties between the member states, thrive under its aegis. Inward flows of intra-ASEAN FDI increased from \$4.5 billion in 2005 to \$24.5 billion in 2018. Intra-ASEAN trade has continuously accounted for the largest share of ASEAN total trade.

While the ASEAN and SCO operate in different geographies, both institutions have the common goal of a safe and secure Asia-Pacific, and also seek mutual cooperation in the domains of trade, economics, connectivity. This is evident from the signing of the Memorandum of Understanding between the two multilaterals in 2005. A study and analysis of the ASEAN and SCO charters, therefore, is instructive.

To further strengthen the cooperation and exchange of knowledge between ASEAN and SCO, the SCO can establish a Consultative Group with ASEAN. This will serve two purposes; one, facilitate the strengthening of the SCO Charter by adopting the best practices under the ASEAN framework, and two, intensify and accelerate a long overdue cooperation between the two bodies on security, economics, finance and other sectors.

2. Recommended changes in the SCO Charter

The SCO Action Plan 2018-2022 envisages the SCO as a catalyst to create a polycentric world. But, with the SCO charter in its current form, the strategy seems unrealistic and far-fetched. A comparison of the two charters reveals shortcomings in the SCO Charter, and makes a case for its immediate amendment. The following are some key recommendations on the SCO Charter, based on a comparison with the ASEAN Charter:

2.1 Preamble

The Preamble to the SCO Charter must include the names of all the current members – permanent and those on observer status. Currently, it only has the names of the founding member states - China, Russia, Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan.

In contrast, the preamble to the ASEAN Charter contains the names of all member states. However, unlike the SCO, there has been no change in the membership of ASEAN since the signing of its Charter in 2007.

2.2 Goals

The focus of the SCO Charter is limited to security and cooperation between member states. For India, which joined the SCO along with Pakistan, its connectivity and infrastructure projects are now equally significant and an important part of why India joined the SCO. India is heavily invested in the Chabahar port and the International North-South Transport Corridor. Therefore, connectivity and infrastructure cooperation between the SCO members must be specifically included in the SCO charter as it is an important part of bilateral and plurilateral relationships between members.

In comparison, the goals of the ASEAN Charter are well defined and hold ASEAN as the primary regional body and perceive the ASEAN to be representative of the interests of all its member states. Leaning on the ASEAN Charter, the SCO Charter should consider including the following goals in its Charter as well:

1. *To maintain the centrality and proactive role of ASEAN as the primary driving force in its relations and cooperation with its external partners in a regional architecture that is open, transparent and inclusive;*
2. *To strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN;*
3. *To create a single market and production base which is stable, prosperous, highly competitive and economically integrated with effective facilitation for trade and investment.*

2.3 Principles

A gaping hole in the SCO Charter's current set of principles³ is the absence of rule of law. Inclusion of rule of law as one of the principles under the Charter will ensure transparency, accountability and non-arbitrariness in the actions taken within the SCO framework and in actions taken by the member states.

The ASEAN Charter, on the other hand, mandates that its member states adhere to the principles of rule of law, good governance, democracy and of a constitutional government.⁴ These principles have been central to the ASEAN's progress in regional integration and economic development. The ASEAN Free Trade Agreement, ASEAN Trade in Goods Agreement, the ASEAN Framework Agreement on Services and the ASEAN Comprehensive Investment Agreement are examples of the successful promotion of the rule of law in ASEAN.

2.4 Areas of cooperation:

Both ASEAN and SCO charters have lacunae in this dimension.

Within the SCO framework, the areas of cooperation exist, but are dated and not forward-looking. They do not enable the inclusion of the SCO's core issues such as cybersecurity, digital economy and cooperation during emergencies such as the COVID-19 pandemic – all under the umbrella of 'security'.

The ASEAN Charter does not specifically list out the areas of cooperation. However, it has compensated by establishing various frameworks and mechanisms such as the ASEAN Digital Integration Framework, ASEAN Information and Communications Technology Masterplan 2020, Master Plan on ASEAN Connectivity 2025, ASEAN Strategic Action Plan for SME Development 2025, ASEAN COVID-19 Response Fund.

³ Under Article 2 of the SCO Charter. Available at <http://eng.sectesco.org/load/203013/>.

⁴ Article 2(2)(h), ASEAN Charter. Available at <https://asean.org/wp-content/uploads/images/archive/publications/ASEAN-Charter.pdf>

2.5 Decision-making:

The SCO Charter provides only for consensus-based decision making, limiting its flexibility.⁵ This makes the decision-making process rather complicated as the SCO comprises member states with contrasting political systems. Therefore, it is difficult to reach mutually beneficial solutions.⁶ This may in turn delay the entire decision-making process, and also its subsequent implementation.

The ASEAN is a step ahead of the SCO in this respect. It permits the ASEAN Summit⁷, the supreme policy-making body of the ASEAN comprising of heads of all member states, to take decisions in case consensus cannot be reached or when there is a serious breach of the Charter. However, the ASEAN Summit is a political body and a deadlock may arise at its level too given the political interest of the Summit members.⁸ For example, in the Preah Vihear Temple territorial dispute between Thailand and Cambodia⁹, the ASEAN played an important but limited role in mediating between the two countries. This dispute was finally settled by the International Court of Justice.

Learning from the difficulties faced by the ASEAN, the SCO should establish a legal body (and not a political body) that can conduct dispute resolution on the basis of law, within the SCO framework itself.

2.6 Operational language:

The SCO Charter prescribes Chinese and Russian as its official languages.¹⁰ While this may superficially seem like a minor point, it is a matter of concern to the two new member states, India and Pakistan which do not have fluency in either of these languages.

The ASEAN Charter is more practical in recognising English as its working language¹¹ as it is common between its member states, and allows for a more inclusive regional integration, including allowing for experts from other institutions to contribute when needed.

2.7 Dispute resolution

The key to all functioning societies, economies and multilateral bodies is dispute resolution. ASEAN recognised it early, and its charter details a procedure for dispute resolution which includes arbitration or other international legal instruments.

⁵ Article 16, SCO Charter. Available at <http://eng.sectesco.org/load/203013/>

⁶ Alimov, Rashid. *The Shanghai Cooperation Organisation: Its role and place in the development of Eurasia*, *Journal of Eurasian Studies*, volume 9, Issue 2, July 2018. Available at <https://reader.elsevier.com/reader/sd/pii/>

⁷ Article 20, ASEAN Charter. Available at <https://asean.org/wp-content/uploads/images/archive/publications/ASEAN-Charter.pdf>

⁸ https://www.researchgate.net/publication/328214049_The_Deadlock_of_ASEAN_Dispute_Settlement_Mechanisms_and_Why_ASEAN_Cannot_Unlock_It

⁹ <https://cil.nus.edu.sg/wp-content/uploads/2010/01/WalterWoon-Dispute-Settlement-the-ASEAN-Way-2012.pdf>

¹⁰ Article 20, SCO Charter. Available at <http://eng.sectesco.org/load/203013/>.

¹¹ Article 34, ASEAN Charter. Available at <https://asean.org/wp-content/uploads/images/archive/publications/ASEAN-Charter.pdf>

The dispute resolution clause of the SCO Charter has the following loopholes:

- It does not contain a proper procedure for dispute resolution. It merely provides for two ways for resolution; consultation and negotiation, that too only in case of any dispute with respect to the interpretation or application of the SCO Charter;
- It does not provide a procedure for how the consultation will take place;
- It does not account for any form of dispute other than on interpretation or application of the SCO Charter;
- There is no method assigned for dispute resolution if a particular dispute is not resolved either through consultation or negotiation.

These are glaring lacunae as member states such as India-Pakistan and India-China have continuing bilateral territorial and trade differences.

Amending the SCO Charter to include various kinds of disputes and provide the option to members to resort to arbitration or other modes of peaceful settlement under the UN Charter,¹² or any other international legal instrument, is necessary. It may also consider the establishment of a quasi-judicial body/mechanism within the SCO for settlement of disputes.

2.8 Sectoral and National level bodies

The ASEAN Charter provides for:

- Establishment of sectoral Ministerial Bodies which shall ensure the implementation of decisions and initiatives and enhance cooperation in their concerned sector like trade, agriculture, science and technology and so on.¹³
- ASEAN National Secretariats have been established under the Charter in each member state to coordinate and ensure implementation of the ASEAN decisions at the domestic level.¹⁴

Similar to the ASEAN sectoral bodies, in pursuance of the goals of the SCO, the SCO established the SCO Energy Club, SCO Youth Council, SCO Business Council and SCO Interbank Consortium. However, these are not recognised under its charter. These entities/bodies should be formally recognised under the Charter in order to ensure effective monitoring and implementation of the initiatives under the SCO framework.

While the SCO Charter provides for the establishment of the Council for National Coordinators¹⁵ for coordinating meetings, its mandate does not include facilitating and monitoring the implementation of obligations at the national level in each member state, and, coordinating

¹² Article 33(1), UN Charter: *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.* Available at <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>

¹³ Article 10, ASEAN Charter. Available at <https://asean.org/wp-content/uploads/images/archive/publications/ASEAN-Charter.pdf>

¹⁴ Article 13, ASEAN Charter. Available at <https://asean.org/wp-content/uploads/images/archive/publications/ASEAN-Charter.pdf>

¹⁵ Article 9, SCO Charter. Available at <http://eng.sectSCO.org/load/203013/>.

activities of the SCO at the national level. The SCO Charter should either add these functions to the mandate of the Council, or in the alternative, provide for the establishment of national-level bodies in each member state of the SCO. This will enable smooth coordination between the SCO Secretariat and the member states, along with effective implementation and monitoring of the SCO decisions at the national level in each member state.

3. Conclusion

India has much at stake in the SCO and should take the initiative to insert itself deeper and more assertively in the institution. In addition to the crucial Charter amendments as detailed hereinabove, India should make every effort to be a part of the SCO Interbank Consortium, a joint financing platform in the grouping which is responsible for making investment decisions and providing funding for projects.

With India's renewed focus on the Connect Central Asia Policy, a broad-based approach including political, security, economic and cultural connections,¹⁶ India has furthered the impetus to focus on connectivity agreements with the Central Asian countries which will also serve as a corollary to China's BRI projects in the region. India's aim of improving connectivity ties with the Central Asian countries will receive further stimulus once countries such as Afghanistan and Iran, currently on observer status, join the SCO. This will also help the SCO become more multipolar in nature instead of being dominated by Russia and China, while also creating a level-playing field amongst its members.

India has been a bystander in the Eurasian and Central Asian theatres. It is only now beginning to understand the urgency of being a relevant and reliable actor in the region. Once its economy is stimulated and self-reliant, India should begin to sign equitable trade agreements with its near regionals as it will need more export markets. Central Asia is one such market. The relationship India builds with Central Asia, through the SCO, can lead to an equitable trade agreement with Central Asian countries in the future. The interest exists - in 2015, a Joint Study Group was formed to consider the feasibility of a free trade agreement between the Republic of India and the Member States of the Eurasian Economic Union;¹⁷ this has not yet been realised. Now is the time to update and expand the scope of this study, along with an action plan.

The skirmishes amongst the India-Pakistan-China troika should not be a dampener for India's expanded role in the SCO. In fact, it is even more critical for India to deepen its engagement with the SCO to ensure that the region stays free from hegemony.

Research assistance: Lakshesh Sihag, Former Intern, Gateway House.

¹⁶ Ministry of External Affairs, 'Keynote address by MOS Shri E. Ahamed at First India-Central Asia Dialogue', Government of India, 12 June, 2012 <https://www.mea.gov.in/Speeches-Statements.htm?dtl/19791/>

¹⁷ Ministry of External Affairs, 'Joint Statement between the Russian Federation and the Republic of India: Shared Trust, New Horizons (December 24, 2015)', Government of India, 24 Decemeber 2015, <https://mea.gov.in/outoging-visit-detail.htm?26243/Joint+St+atement+between+the+Russian+Federation+and+the+Republic+of+India+Shared+Trust+New+Horizons+December+24+2015>

