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THE CONTRIBUTION OF ASIAN COUNTRIES TO INTERNATIONAL LAW: THEORIES, PRACTICE AND FUTURE PROSPECTS

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ДОПРИНОС АЗИЈСКИХ ЗЕМАЉА МЕЂУНАРОДНОМ ПРАВУ: ТЕОРИЈЕ, ПРАКСА И БУДУЋЕ ПЕРСПЕКТИВЕ

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Abstract:

International law is undergoing a fundamental transformation, moving from a Western-centric paradigm of "universality" towards "multiple modernities." Asian states are leading this shift through "re-contextualization"—integrating their historical and civilizational wisdom into regional practices to forge a distinctive path between passive adoption and cultural resistance. Existing scholarship, however, remains dominated by Western narratives, overlooking Asia's innovations at normative, institutional, and philosophical levels.

This study addresses this gap by proposing a "re-contextualization" model and examining key Asian cases—such as ASEAN dispute settlement, RCEP, and the AIIB. The analysis shows that Asia is creatively translating traditional concepts like the consensus-based "ASEAN Way" and Buddhist ecological thought into modern legal norms. In institutional design, regional mechanisms exhibit hybrid models that adeptly balance legal formality with political flexibility. Furthermore, practices such as operationalizing the philosophy of "the unity of Heaven and humanity" challenge the universalist foundations of international law, advancing a shift from formal equality toward substantive justice.

In conclusion, Asia's practice marks a transition from being a rule-taker to a co-constructor of the global legal order. This offers a pragmatic, culturally-grounded model for cross-civilizational dialogue and points toward a more inclusive and pluralistic future for global governance.

Keywords: Asian international law; re-contextualization; civilizational compatibility; normative innovation; institutional breakthroughs; regional governance

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Сажетак:

Међународно право пролази кроз фундаменталну трансформацију, одступајући од западњачке парадигме "универзалности" ка "множеству модерности". Азијске државе предводе овај помак кроз "реконтекстуализацију" — интегришући своју историјску и цивилизацијску мудрост у регионалне праксе како би створиле посебан пут између пасивног усвајања и културног отпора. Међутим, постојећа научна литература и даље је доминирана западним наративима, занемарујући азијске иновације на нормативином, институционалном и филозофском нивоу.

Ова студија се бави том празнином предлажући модел "реконтекстуализације" и испитујући кључне азијске случајеве — као што су АСЕАН механизам за решавање спорова, РЦЕП и АИИБ. Анализа показује да Азија креативно преводи традиционалне концепте, попут консензуалног "АСЕАН начина" и будистичке еколошке мисли, у савремене правне норме. У институционалном дизајну, регионални механизми показују хибридне моделе који вешто балансирају правну формалност и политичку флексибилност. Штавише, праксе попут операционализације филозофије "јединства неба и човека" изазивају универзалистичке основе међународног права, унапређујући помак од формалне касднакости ка супстантивној правди.

Закључно, азијска пракса означава прелазак са улоге примаоца правила на улогу суградитеља глобалног правног поретка. Ово нуди прагматичан, културно утемељен модел за међуцивилизацијски дијалог и указује на инклузивнију и плуралистичнију будућност глобалног управљања.

Кључне речи: Азијско међународно право; реконтекстуализација; цивилизацијска компатибилност; нормативна иновација; институционални пробиви; регионално управљање

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Chapter I Introduction

1 Research Background and Theoretical Significance

The international order of the 21st century is undergoing a profound "paradigm shift," driven primarily by the global restructuring of power relations and the renewed awakening of civilizational diversity. In this historic transformation, international law—long regarded as the core normative system sustaining world order—is experiencing a fundamental redefinition of the geopolitical foundations upon which it was built and operates. The narrative and institutional framework of international law, shaped over centuries by Western centrism, is increasingly challenged by its inherent exclusivity and tensions surrounding its claim to universality. [1]The rise of Asia—not only in economic and strategic terms,[2] but also in normative and institutional dimensions[3]—constitutes the most dynamic source of this transformation.

As the foundational chapter of this study, this introduction aims to construct a three-dimensional analytical framework integrating power transition, subjectivity formation, and normative innovation, in order to systematically demonstrate how Asia has transformed from a passive "rule taker" into an active "co-builder" of international law, and to analyze the theoretical reconstruction and practical implications of this shift for the international legal system.

1.1 Global Power Shifts and the Rise of Asia's International Law Discourse Power

The manifestation of global power shifts in the field of international law is essentially a process of redistributing institutional power [4]and normative power. The rise of Asia's discourse power in international law has been enabled precisely through the dual expansion of these two forms of power:

On the one hand, institutional power has advanced through concrete breakthroughs—namely, Asian states gaining more voting shares, representation, and decision-making influence in international economic organizations and global governance institutions.

On the other hand, normative power has risen through the infusion of Asian perspectives, cultural values, and governance approaches into the interpretation, development, and application of international legal rules, thereby enhancing the cultural compatibility and pluralistic paradigms of international law.

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[1] For a systematic critique of Western-centrism in international law, see Anghie, A 2005, *Imperialism, Sovereignty and the Making of International Law*, Cambridge University Press, Cambridge., pp. 32–100; see also Koskenniemi, M 2001, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960*, Cambridge University Press, Cambridge, pp. 98–135.

[2] For data and analysis on Asia's economic and strategic rise, see World Bank 2023, *East Asia and Pacific Economic Update*, 17 October, p. 5. For scholarly discussions of Asia's emerging normative and institutional influence, see C hesterman, S 2016, 'Asia's Ambivalence about International Law and Institutions: Past, Present and Futures', *European Journal of International Law*, vol. 27, no. 4, pp. 945-978.

[3] For example, China's increased share and voting power in the World Bank and the International Monetary Fund, together with the creation of new Asia-led financial institutions such as the Asian Infrastructure Investment Bank (AIIB), illustrate significant advances in institutional power. For data, see International Monetary Fund 2023, *IMF Members' Quotas and Voting Power, and IMF Board of Governors*; In climate negotiations, the principle of "common but differentiated responsibilities" promoted by China and other Asian states, and the emphasis on the "right to development" in human-rights debates, exemplify efforts to inject Asian perspectives into global norms. See Atapattu, SA 2006, *Emerging Principles of International Environmental Law*, Transnational Publishers, Ardsley, NY, which discusses the influence of non-Western perspectives on international environmental law.

[4] The distinction between "institutional power" and "normative power" draws on debates in international-relations theory concerning different modalities of power. See Nye, JS 2004, *Soft Power: The Means to Success in World Politics*, Public Affairs, New York, p. 5 (while Nye introduces "soft power," the concept is closely related to "normative power"); for institutional power in international law, see B arnett, M & Duvall, R 2005, 'Power in International Politics', *International Organization*, vol. 59, no. 1, pp. 39-75, which provides a classic typology of compulsory, institutional, structural, and productive power.

The following sections proceed along this dual analytical path and empirically examine the multidimensional components of Asia's enhanced discourse power—economic strength, participation in global governance, and institutional design.

1.1.1 Institutional Power: Restructuring Shares in Global Economic Governance

The most prominent changes appear in the redistribution of voting power within the World Bank.

The 2010 World Bank voting reform marked a watershed moment: developed countries transferred 3.13% of voting shares to developing countries, raising the overall share of developing and transition economies in the IBRD from 44.06% to 47.19%.[5]China's share increased significantly from 2.77% to 4.42%, surpassing Germany, the United Kingdom, and France to become the Bank's third-largest shareholder, behind only the United States and Japan.[6]

This reform was the first in World Bank history aimed primarily at enhancing the representation and voice of developing countries. It not only reflected the broader trend of a multipolar global economy but also symbolized the beginning of a new era of joint governance between developed and developing countries, creating an institutional pathway for Asian states to move from the margins of rule-making toward the core of decision-making.[7]

The World Bank Group subsequently adopted another transformative reform package in 2018.[8] This package included a US$13 billion capital increase—US$7.5 billion for the IBRD and US$5.5 billion for the International Finance Corporation (IFC)—as well as an additional US$52.6 billion in callable capital for the IBRD. The purpose of this capital expansion was to strengthen the Bank's financial capacity to support poverty reduction and development in developing countries, enabling its combined financing capacity to reach nearly US$100 billion annually between fiscal years 2019 and 2030.[9]

More importantly, the reform package continued efforts to address imbalances in shareholding and underrepresentation. Through selective capital increases and other mechanisms, it further expanded the voice and representation of emerging markets and developing economies, aligning the institution more closely with the realities of the contemporary global economy.

These reforms signify that global economic governance institutions are gradually adjusting their governance and decision-making mechanisms to adapt to the changing power structures. However, the reform process still needs to be deepened. For example, the United States still retains more than 15% of the voting power in the World Bank, effectively retaining veto power over major decisions[10]

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[5] The World Bank is increasing voting power for developing countries. See: World Bank Group, 'World Bank Reforms Voting Power, Gets $86 Billion Boost' (Press Release, Washington DC, 25 April 2010) https://www.worldbank.org/en/news/press-release/2010/04/25/world-bank-reforms-voting-power-gets-86-billion-boost accessed 20 November 2025.

[6] On the World Bank's reforms to increase voting power for developing countries, see World Bank Group, "World Bank Reforms Voting Power, Gets $86 Billion Boost," Press Release, Washington DC, 25 April 2010; see also World Bank, *World Bank Group Voice Reform: Developing Countries' Voice Share Increases to 47.19 Percent, Press Release No. 2010/430/EXT, 25 April 2010.*; and the report World Bank Group*, Voice Reform: Enhancing Voice and Participation of Developing and Transition Countries in 2010 and Beyond.*

[7] see Xie, S & Qu, Q 2010, 'A Review of the World Bank Voting Power Reform', *Macroeconomic Research*, no. 8, pp. 8-11.

[8] See: World Bank Group 2018, *World Bank Group Shareholders Endorse Transformative Capital Package*, 21 April.

[9] See the official statement from the World Bank: The World Bank2010, *World Bank Reforms Voting Power, Gets $86 Billion Boost*, Press Release, Washington DC, 25 April, viewed 20 November 2025, https://www.worldbank.org/en/news/press-release/2010/04/25/world-bank-reforms-voting-power-gets-86-billion-boost. This press release details the specific amount and objectives of the reform package.

[10] For information on the World Bank's major decision-making mechanisms and the latest voting rights of its member countries, please refer to the World Bank's official website's real-time data page: The World Bank, *"Voting Powers,"* https://www.worldbank.org/en/about/leadership/voting-powers, accessed on 20 November 2025. This page clearly shows

(major decisions require more than 85% approval). Asian countries, through economic growth and deep participation in global governance and institutional design, have significantly enhanced their agency and voice in the traditionally Western-dominated international order.

A similar transformation occurred at the IMF. The 2010 IMF quota and governance reform, which entered into force in 2016, [11]raised China's quota from 3.996% to 6.394%, making it the IMF's third-largest member. Japan maintained the second position, with a slight increase to 6.464%. India's voting share also rose to 2.751%. The overall quota of emerging and developing economies increased by 2.8 percentage points to 42.4%,[12] reflecting a more inclusive structure of global economic governance.[13]

It is worth noting that the IMF completed its sixteenth General Review of Quotas in 2023 and approved a new round of reforms. Unlike the 2010 reforms that redistributed quotas, this reform was primarily achieved through proportional capital increases. All member countries' quotas increased by 50%, raising the total quota from approximately 238.4 billion Special Drawing Rights (SDRs) to approximately 476.8 billion SDRs (approximately US$720 billion), significantly enhancing the IMF's permanent financial resources and crisis response capabilities. Although this reform did not adjust the quota ratios of individual countries, maintaining the quota distribution pattern established after the 2010 reforms, the increased quota amounts paid by Asian countries such as China, Japan, and India signify a further consolidation of their responsibilities and associated institutional influence. [14]

1.1.2 Expansion of Institutional Power: Breakthroughs in Global Political and Security Governance

The enhancement of Asia's discourse power in international law is reflected not only in the quantitative increase of its share in economic governance, but also in its deeper penetration into the core arenas of global political and security governance, achieving a shift from marginal participation to central agenda-shaping. This structural breakthrough is systematically manifested through three dimensions: the acquisition of non-permanent seats on the UN Security Council, the assumption of leadership roles in regional international organizations, and the proactive shaping of the UN reform agenda.

First, within the UN's core decision-making mechanism, Asian states have secured a sustained institutional presence by contesting and winning non-permanent seats on the Security Council. On 6 June 2024, the UN General Assembly elected Pakistan as a non-permanent member of the Security Council for the term beginning on 1 January 2025.[15] This continued the cyclical presence of Asian states in the Security Council—an institutionalized channel and platform for representing and voicing the region's interests and perspectives at the highest level of global collective security decision-making—demonstrating the growing visibility and influence of Asian states within the UN's central decision-making structure.

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the United States' voting power (over 15%) and points out the requirement in the Articles of Agreement of the International Bank for Reconstruction and Development that major matters require an 85% majority vote.

[11] For IMF quotas, please refer to the official IMF document: IMF 2022*, IMF Quotas: Factsheet*.https://www.imf.org/zh/About/Factsheets/Sheets/2022/IMF-Quotas

[12] See the official documents of the International Monetary Fund: International Monetary Fund, IMF 2010, *IMF Executive Board Approves Major Overhaul of Quotas and Governance*, Press Release No. 10/418, 5 November.; and the subsequent effective announcement: IMF 2016, *IMF Board of Governors Approves Major Quota and Governance Reforms*, Press Release No. 16/25, 27 January. These documents detail the specific changes in the quotas of each member country.

[13] see Gao, H 2024, 'Further Advancing IMF Quota Reform', *People's Daily*, 23 January.

[14] For the Sixteenth General Review of Quotas, see IMF 2023, *Board of Governors Resolution No. 23-1: The Sixteenth General Review of Quotas and Proposed Quota Increase*, 18 December.

[15] See the official minutes of the United Nations General Assembly or press release: United Nations General Assembly, "*General Assembly Elects Denmark, Greece, Pakistan, Panama, Somalia to Security Council,*" GA/12605, June 6, 2024.

Second, the leadership roles assumed by Asian states in regional international organizations illustrate the extension of their institutional power across regions. For example, Kazakhstan held the rotating chairmanship of the Shanghai Cooperation Organization[16] and the International Fund for Saving the Aral Sea in 2024[17]. This underscores the leadership role Asian states are playing in regional governance and international affairs, signifying their transition from "implementers" of international rules to "agenda-setters" and "coordinators," thereby injecting Asian experience and wisdom into regional governance practices and consolidating their power base for participation in global governance.

Finally, Asian states have become key forces driving structural reform of global governance mechanisms. The "G4 group"—Japan, India, Germany, and Brazil—renewed their push in 2024 for reform of the Security Council, calling for an expansion of both permanent and non-permanent seats[18] in order to address the current deficits in representation and democratic legitimacy. This effort itself constitutes a direct challenge to, and an attempt to revise, the international power structure established after World War II, which has lagged behind contemporary realities. It profoundly reflects the shared aspiration of major Asian states to obtain a level of institutional status in global security governance commensurate with their comprehensive capabilities.

The active engagement of Asian states in global political and security architecture is thus a key indicator that their institutional power has extended beyond the economic domain to the more politically consequential sphere of global governance design. It provides an indispensable structural pillar for Asia's transformation from a "complier" of international law to a "definer" of it.

1.1.3 Normative Power: Awakening of Subjectivity in Judicial Representation and Rule Formation

The highest level of discursive power in international law is embodied in the "normative power"[19] that shapes rules, interprets norms, and guides intellectual currents. Asia's rise is becoming increasingly evident at this dimension: it is no longer content with merely exercising voting rights within existing institutional frameworks, but is instead committed to promoting greater diversity and inclusiveness within the international legal system through enhanced representation in judicial bodies and the internationalization of its own governance philosophies.

On the one hand, the steady increase of Asia's representation in international judicial institutions has directly translated into greater influence within the global community of legal interpretation. The changing composition of the International Tribunal for the Law of the Sea (ITLOS) is a highly symbolic indicator: the proportion of judges from Asian states rose from 18% in 2000 to 31% in 2023. [20]This growth is far more than a simple numerical shift; it signifies that in one of the most authoritative venues for international dispute settlement, the legal traditions, value orientations, and interpretive approaches originating from Asia have gained stronger expressive power and influence, enhancing the Asian legal community's representation within the global legal architecture. At the same time, this judicial presence provides a foundational basis for the generation of Asia's

[16] For official information regarding Kazakhstan's chairmanship of the Shanghai Cooperation Organisation (SCO), please see the SCO official website: SCO2024, *Kazakhstan Assumes SCO Chairmanship*, viewed 25 November 2025, https://eng.sectsco.org/20240522/1356437.html.

[17] For official information regarding Kazakhstan's role as chair of the International Fund for Saving the Aral Sea, see: CAREC, *Kazakhstan heads International Fund for Saving the Aral Sea* https://centralasiaclimateportal.org/kazakhstan-heads-ifas viewed 25 November 2025

[18] For the G4's specific calls for UN Security Council reform in 2024, see: Nichols, M 2024, 'UN adopts pact that aims to save global cooperation', *Reuters*, 22 September.

[19] For a classic theoretical exposition on "normative power," see: Manners, I 2002, 'Normative Power Europe: A Contradiction in Terms?', *Journal of Common Market Studies*, vol. 40, no. 2, pp. 235-258.

[20] The data was calculated based on the list of judges published on the official website of the International Tribunal for the Law of the Sea. See: ITLOS 2023, *Election of Seven Judges of the International Tribunal for the Law of the Sea*, 12-16 June, New York, viewed 25 November 2025, https://documents.un.org/doc/undoc/gen/n23/108/69/pdf/n2310869.pdf., New York https://documents.un.org/doc/undoc/gen/n23/108/69/pdf/n2310869.pdf

normative power by injecting a vibrant Asian perspective into the development of international law rules—especially in fields like the law of the sea, where judicial lawmaking plays a central role.

On the other hand, Asia's distinctive regional governance experiences and cultural traditions are being distilled into normative ideas of global relevance, challenging the Eurocentric narrative that has long dominated international law. The awakening of "Global South"[21] agency has provided strong momentum for this process. Drawing on their successful development practices—such as ASEAN's principles of consensus-building and non-interference[22]—and on their deep cultural pluralism, Asian states have demonstrated to the world that effective governance models and pathways to legal modernization are not singular. Asian-origin insights—such as a cooperative understanding of "sovereignty," the prioritization of the "right to development,"[23] and the pursuit of values of "harmony"—are offering alternative approaches to addressing global challenges, approaches that transcend the Western liberal-internationalist paradigm and push the theory and practice of international law toward greater civilizational inclusiveness.

Therefore, the emergence of Asia's normative power marks a fundamental transformation in its role in international law: from a passive user of rules to a co-builder of international order endowed with cultural self-awareness and theoretical creativity. This process not only enhances the representativeness and legitimacy of the international legal system, but also injects new vitality rooted in multiple civilizations into its future development.

1.1.4 Preliminary Confirmation of the Dual-Track Dynamics

In sum, Asia's enhanced discourse power under global power shifts follows a dual-track dynamic of institutional embedding and normative innovation.

Reforms in the World Bank and IMF, as well as increased representation in political-security institutions such as the UN Security Council, demonstrate Asia's strengthened institutional foundations. Meanwhile, greater judicial representation and the internationalization of Asian governance norms indicate Asia's growing ability to shape the agenda and values of international law.

This "dual-wheel drive" model lays the empirical foundation for the deeper analysis in the subsequent chapters on Asia's contributions to normative innovation, institutional breakthroughs, and theoretical reconstruction in international law.

1.2 Critique of Eurocentrism and the Rise of Asian Scholarly Self-Consciousness

The "universality" narrative of international law is increasingly confronted by profound theoretical challenges from Asian academia. Drawing on postcolonial legal theory,[24] scholars have systematically deconstructed the colonial power structures and civilizational hierarchies embedded deep within the knowledge system of international law, revealing that it is fundamentally a historical product of Western geopolitical expansion intertwined with knowledge production. This

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[21] For a discussion on the awakening of subjectivity of the "Global South" in international law, see: Eslava, L, Murphy, C & Pahuja, S 2023, 'Development, International Law, and the State', in R Buchanan, L Eslava & S Pahuja (eds), *The Oxford Handbook of International Law and Development*, Oxford University Press, Oxford, pp. 121-140.

[22] For classic studies on the "ASEAN Way" and its principles of "consensus" and "non-interference in internal affairs," see: Amitav A, 'Ideas, Identity, and Institution-Building: From the "ASEAN Way" to the "Asia-Pacific Way"?', *The Pacific Review*, vol. 10, no. 3, pp. 319-346.

[23] For the sources of international law concerning the right to development and its central role in the agendas of developing countries in Asia and elsewhere, see the United Nations General Assembly 1986, *United Nations Declaration on the Right to Development*, A/RES/41/128 and related commentaries.

[24] For a systematic critique of international law by postcolonial theory, see: Wilkens, J 2017, 'Post Colonialism in International Relations', in R Marlin-Bennett (ed.), *Oxford Research Encyclopedia of International Studies*, Oxford University Press, Oxford, pp. 1-22.

section aims to trace this critical trajectory and demonstrate how it has generated an "Asian scholarly self-consciousness" rooted in indigenous practice and theoretical innovation, thereby opening new possibilities for cross-civilizational dialogue in international law.

The sharpest edge of Asian scholarly critique targets the long-naturalized Eurocentrism embedded in the historiography of international law. This research approach exposes how, since the very origins of modern international law, the discipline has been tightly bound to the colonial project.[25] The purported "universal" principles were in fact advanced through discursive devices such as the "standard of civilization,[26]" which stigmatized the legal traditions of the non-Western world as "premodern" or "uncivilized" Others, thereby providing a veneer of legality for colonial conquest and resource extraction. This colonial knowledge system—cloaked in legal form—not only shaped the global hierarchical order of the past but continues to exert profound influence on the interpretation and practice of international law today.

This critique goes beyond theoretical deconstruction and seeks to "recover" Asia's subjectivity through historical empirical research. The treaty practices between nineteenth-century Siam[27] and European powers offer a representative example. Emerging scholarship reveals a complex landscape of resistance, adaptation, and reinvention in the circulation of international law.[28] Research shows that Siamese elites did not passively accept European legal concepts. Instead, they strategically deployed indigenous land-law notions such as *sadina* within diplomatic rhetoric and treaty frameworks to offset the substantive encroachments embedded in colonial treaties, thereby achieving a form of "counter-utilization" of international law. Such studies are groundbreaking both empirically and methodologically: they challenge the traditional narrative of the "one-way transplantation" of international law and demonstrate how history can be reread from Asia's own intellectual and legal traditions.

Building on these critiques and empirical insights, a distinct paradigm of "Asian scholarly self-consciousness" is taking shape. This paradigm reflects Asian scholars' active initiation of two interconnected intellectual movements: first, the systematic reflection on the inherent blind spots and historical limitations of Western theories of international law; and second, the deep exploration and theorization of Asia's indigenous legal wisdom, state practices, and regional governance experiences. In doing so, Asian academia is gradually shifting from being consumers of international legal knowledge to becoming critical interlocutors and co-creators.

This fundamental repositioning seeks to break the Western monopoly over defining "universality" and to transform international law from a particular normative system rooted in European history into a genuinely global normative framework grounded in inter-civilizational dialogue. By critiquing the epistemic hegemony of Eurocentric international law and reexamining its colonial legacies, Asian scholarly self-consciousness not only establishes a more solid foundation for Asia's own discursive agency but also aspires to stimulate more inclusive visions of the global legal order, injecting new intellectual momentum into the pluralistic future of the international legal system.

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[25] For the most systematic and comprehensive discussion of this issue, see: Koskenniemi, M 2001, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960*, Cambridge University Press, Cambridge. This book provides a detailed analysis of how modern international law intertwined and coexisted with the discourse of "civilization" during the colonial era.

[26] For a classic critique of the "standard of civilization" in international law, see: Gong, GW 1984, *The Standard of 'Civilization' in International Society*, Clarendon Press, Oxford. This book systematically examines how this concept has been used to exclude the non-European world from the subjects of international law. Wang, R 2021, 'Basic Characteristics and Discourse Practices of Modern Western "Civilization Hierarchy Theory"—and Its Influence on China', *Political Science Research*, no. 5, pp. 134-143.

[27] Thailand was known as Siam before June 1939 and from September 1945 to May 1949. Except where otherwise quoted, it will be referred to as "Thailand" in this article.

[28] For in-depth research on Siam's use of local legal concepts to navigate colonial treaties, see: Evers, H 1987, 'Trade and State Formation: Siam in the Early Bangkok Period', *Modern Asian Studies*, vol. 21, no. 4, pp. 751-771. *JSTOR*, http://www.jstor.org/stable/312761. Accessed 16 Nov. 2025.

1.3 The Rise of Asia as the Global Political and Economic Center and Its Interaction with the International Legal System

The rise of Asia as the global political and economic center has not only altered the distribution of power but has also profoundly influenced the generative logic and value orientation of international legal norms. Asian states, drawing on their distinctive civilizational resources and practical wisdom, are transitioning from "receivers" of international law to "co-creators," driving the diversified development of the international legal system.

In the field of macro-level development cooperation, China's Belt and Road Initiative[29] provides a representative example of paradigmatic innovation. Rooted in the Confucian philosophy of "harmony" (*he-he*), the initiative has transformed this idea into the principles of "consultation, joint contribution, and shared benefits" in international cooperation, shaping a new legal paradigm for global development. [30]These principles stand in sharp contrast to the traditional North–South aid model[31] represented by the OECD Development Assistance Committee, which often implies conditionality and unilateral power relations, whereas the former offers a value alternative based on equality, mutual benefit, and multilateral consultation. This paradigm breaks through the unilateral power dynamics of traditional development assistance by emphasizing the maximization of common interests and the construction of partnerships, demonstrating the creative contributions of Asian states to the formation of international legal rules.

Meanwhile, at the micro-level of commercial rules, Asian practice likewise demonstrates an innovative capacity to deeply integrate indigenous traditions with the global system. For example, within the Dubai International Financial Centre (DIFC), Islamic finance law achieves an organic fusion of religious law and commercial arbitration procedures through "Sharia compatibility.[32]" This fusion is not a simple institutional patchwork but, through institutional design and procedural innovation, enables ancient religious legal traditions to acquire operability within the modern global financial system, thereby becoming commercially competitive legal norms. This practice not only highlights the significant role of Islamic law in global economic governance but also offers a successful example of how international law can achieve coordination and integration across multiple civilizational contexts.

These practices—ranging from the macro to the micro level—demonstrate that Asia is reshaping the vitality of international law through "normative re-contextualization," that is, a process of combining global institutional structures with indigenous civilizational genes. International law is no longer merely a universalist disciplinary tool dominated by the West but is evolving into a global framework capable of responding to civilizational diversity and exhibiting greater adaptive capacity. The rise of Asia is therefore not only an enhancement of political and economic power but also the emergence of a normative force, offering globally significant, Eastern-origin solutions and momentum for building a more diverse and inclusive system of global governance.

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[29] For the official explanation of the Belt and Road Initiative, see the white paper : People's Republic of China, State Council Information Office 2017, *Building the Belt and Road: Concepts, Practices and China's Contributions*.

[30] For research on the origins of the "joint consultation, joint construction, and shared benefits" principle in the Belt and Road Initiative and the traditional Chinese philosophy of "harmony and unity," see: People's Daily 2019, *Remarks during a meeting with a delegation from the Council of Elders*, 2 April.

[31] For a critique of the conditional and power relations in the traditional North-South aid model, see: Engel, S 2014, 'The Not-So-Great Aid Debate', *Third World Quarterly*, vol. 35, no. 8, pp. 1374-1389.And for Sui, G & Yu, Q 2023, 'Global Aid Governance Reform and Community Building', *World Economics and Politics*, no. 4, pp. 96-119

[32] For specific provisions regarding the arbitration system and "Sharia compatibility" of the Dubai International Financial Centre (DIFC), please refer to the legal database on the DIFC official website: Dubai International Financial Centre 2008, *Arbitration Law*, DIFC Law No. 1 of 2008. DIFC Legal Database， and the DIFC Arbitration Institute's practice guidelines: DIFC-LCIA Arbitration Centre 2016, *DIFC-LCIA Arbitration Rules*, viewed 25 November 2025, https://us-arbitration.aoshearman.com/siteFiles/7ec20eff-dde7-4752-b1ec-e8829f9b2a59/custom/files/DIFC-LCIA%20Arbitration%20Rules%202016.pdf Or see authoritative academic analysis: Andespa, R, Yeni, YH, Fernando, Y & Sari, DK 2024, 'A Systematic Review of Customer Sharia Compliance Behaviour in Islamic Banks: Determinants and Behavioural Intention', *Journal of Islamic Marketing*, vol. 15, no. 4, pp. 1013-1034. https://doi.org/10.1108/JIMA-06-2023-0181

1.4 The Particularities of Asian States in the Practice of International Law

Asian states exhibit pathways in the practice of international law that differ markedly from Western traditions, rooted in the "historical stratification" of civilizational development and the "cultural heterogeneity"[33] of social structures. This particularity is far more than superficial difference; it has generated a distinctive jurisprudential logic and practical wisdom for addressing cultural conflict, historical legacies, and sovereignty dilemmas, continuously providing critical reflection and alternative solutions for the international legal system.

First, at the level of cultural pluralism and normative integration, Asian practice breaks through the singular narrative of human-rights universalism. The construction of the ASEAN human rights mechanism is a typical example. By adopting a model of "gradual consensus," ASEAN skillfully integrates the collective "right to development" with individually based rights shaped through cultural discretion.[34] For instance, the *ASEAN Human Rights Declaration* (2012) explicitly incorporates collective rights such as the right to development while allowing member states to retain cultural discretion over individual rights. This mechanism enables Malaysia to express reservations on LGBT rights while maintaining overall regional consensus.[35] The result is a governance paradigm of "weak institutionalization–strong adaptability," which does not pursue absolute uniformity of rules but seeks a dynamic balance through respect for cultural heterogeneity.

Furthermore, in the dimension of colonial legacies and the reconstruction of sovereignty, Asian states have achieved a creative transformation by turning historical trauma into jurisprudential claims. In the WTO negotiations on "public stockholding for food security purposes," India justified its position not only based on contemporary poverty and food-security needs but also through deeply rooted domestic historical memory—particularly the mass famines during the colonial period and their influence on post-independence public food policies. Scholarly research shows that food security has long been a core issue for developing countries in their struggle for policy space within WTO multilateral negotiations. India repeatedly linked its national security and development rights to historical trauma in order to push for greater flexibility or a "permanent solution" regarding Article 6.2 of the Agreement on Agriculture or its subsequent exceptions/waivers.[36] This practice of transforming historical trauma into legal reasoning reflects Asian states' creative use of the "therapeutic function" of international law and enhances the legitimacy of international law from the perspective of developing countries.

Finally, in the dimension of sovereignty absolutism and functional cooperation, Asian states have balanced sovereignty protection with the need for transnational cooperation through institutional innovation. The Shanghai Cooperation Organisation (SCO)[37] exemplifies this in its

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[33] The concept of "historical stratification" is frequently discussed in the philosophy of history, and here it is borrowed to describe the complex structure formed by the continuous absorption and integration of different legal traditions in Asian civilization throughout its continuous historical process. "Cultural heterogeneity" is used to summarize the pluralistic coexistence of religions, ethnicities, and normative systems in Asian societies. For related theoretical inspirations, see: Sahlins, M 1981, *Historical Metaphors and Mythical Realities: Structure in the Early History of the Sandwich Islands Kingdom*, University of Michigan Press, Ann Arbor.
Or see: Chakrabarty, D 2000, *Provincializing Europe: Postcolonial Thought and Historical Difference*, Princeton University Press, Princeton.

[34] Gamez, KR 2017, *Examining the ASEAN Intergovernmental Commission on Human Rights (AICHR): The Case Study of the Rohingya Crisis*, PhD dissertation, Tilburg University.. ASEAN 2012, *ASEAN Human Rights Declaration*, 18 November.; Human Rights Watch commentary 19 Nov 2012.

[35] See the official ASEAN document: ASEAN 2012, *ASEAN Human Rights Declaration*, 18 November. For Malaysia's reservations, refer to the official statements made by its representatives before and after the adoption of the declaration, or see the academic analysis: Human Rights Watch 2012, *ASEAN: Landmark Human Rights Declaration Adopted*, 19 November, which records the relevant controversies.

[36] For India's negotiations at the WTO regarding "public stockholding for food security purposes" and historical research on famine during the colonial period, see Margulis, ME 2016, 'The Forgotten History of Food Security in Multilateral Trade Negotiations', *World Trade Review*, vol. 15, no. 1, pp. 1-24. Or see Hopewell, K 2018, 'Recalcitrant spoiler? Contesting dominant accounts of India's role in the WTO', *World Trade Review*, vol. 17, no. 2, pp. 1-21.

[37] The Shanghai Cooperation Organisation (SCO) is a permanent intergovernmental organization. The SCO's objectives

counterterrorism framework. The SCO upholds the fundamental principle of "non-interference in internal affairs," ensuring that the sovereign core of its member states remains unharmed, while simultaneously developing supra-sovereign mechanisms such as joint intelligence sharing.[38] Such mechanisms realize functional delegation of sovereignty, allowing member states to engage in limited cooperation in specific functional areas without weakening their independence in others. Through this innovation, the SCO has established a counterterrorism model based on "common security," providing an operational template for balancing sovereignty and cooperation.

These practices fully demonstrate that the particularity of Asian states lies in their development of a "contextualized" methodological approach to legal practice. Their distinctiveness in international law is reflected not merely in changes to legal texts but more profoundly in innovations in the logic of practice. Through flexible normative integration, jurisprudential transformation of historical experience, and pragmatic configuration of sovereign functions, they achieve a creative balance between the universal aspirations of international law and Asia's particular contexts. This not only injects diversity into global governance but also profoundly challenges the Western-centric assumptions embedded in the formation and evolution of international law, heralding a future of international law grounded in genuinely plural modernities.

2 Research Questions and Innovations

This section aims to establish a comprehensive framework for understanding the concept of the "Asian Path" through a systematic analysis of its core issues, theoretical dimensions, practical dimensions, and future prospects. Specifically, the structural logic of Section Two is as follows: first, it presents the central questions the research seeks to answer, namely the fundamental propositions of the "Asian Path" at the levels of conceptual construction, theoretical characteristics, and empirical assessment; it then explores the normative innovations and theoretical positioning of the "Asian Path" in areas such as conceptions of sovereignty, the right to development, human rights, and dispute settlement, revealing from a theoretical perspective its differences from Western paradigms and the space for dialogue between them; through concrete cases such as ASEAN, human rights mechanisms, the Belt and Road Initiative, and the RCEP, it examines the practical operation and institutional effects of the "Asian Path"; finally, based on the foregoing findings, it further raises research questions that remain to be clarified and outlines future prospects.

Through this logical progression, the aim is not only to present the theoretical uniqueness and practical manifestations of the "Asian Path," but also to lay the conceptual foundation and research direction for the deeper discussions in the subsequent chapters.

2.1 Core Issues

This study is dedicated to exploring the "Asian Path" in the evolution of international law, aiming to systematically reveal its uniqueness and assess its theoretical and practical value. Centered around this core theme, the argumentation in this paper will be guided by the following three progressively advancing core questions:

First, the question of conceptual construction: Can the "Asian Path" be established as a theoretically coherent concept? Is it merely an empirical description of international cooperation practices in the

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are: to strengthen mutual trust and good neighborliness among its member states; to encourage effective cooperation among member states in the fields of politics, trade, science and technology, culture, education, energy, transportation, tourism, environmental protection, and others; to jointly safeguard regional peace, security, and stability; and to promote the establishment of a democratic, just, and equitable new international political and economic order.

[38] See SCO, *Shanghai Cooperation Organisation Charter*, art 1, which explicitly establishes the principle of "non-interference in internal affairs." Regarding the joint counter-terrorism and intelligence-sharing mechanism, see the official SCO document: SCO, 2001, *Shanghai Convention on Combating Terrorism, Separatism and Extremism*, 15 June, and subsequent joint statements from summits of heads of state on deepening security cooperation.

Asian region, or has it evolved into an analytical framework with autonomous normative content and theoretical guidance? The answer to this ontological question forms the basis for determining the academic value of the "Asian Path."

Second, the question of theoretical characteristics: If the concept of the "Asian Path" holds, does it demonstrate a distinct logic in core areas of international law such as sovereignty, the right to development, human rights, and dispute resolution, differing from the Western liberal institutionalist paradigm? For instance, can gradualism and consultative consensus be regarded as its institutional features? How do these characteristics engage with or create tension with existing international law theories (such as liberal institutionalism, critical theory, or Global South studies)? This question directly relates to the academic originality and theoretical contribution of the "Asian Path."

Third, the question of practical effectiveness: In specific regional mechanisms and cooperation initiatives, what observable institutional outcomes and normative influences has the "Asian Path" produced? In concrete cases such as the ASEAN mechanisms, the Belt and Road Initiative, and the Regional Comprehensive Economic Partnership (RCEP), has the "Asian Path" yielded measurable institutional results? How effective are its rules in operation? Is there a risk that "consensus priority" may lead to insufficient enforcement of rules? Case studies will serve as a critical means to test the sustainability and scalability of the "Asian Path."

In summary, this section establishes the logical thread running through the entire paper via the threefold interrogation of "concept-characteristics-effectiveness." The step-by-step resolution of this series of questions aims to move beyond a mere descriptive account of Asian experiences and instead profoundly reveal the unique contributions and potential challenges of the "Asian Path" to international law theory and the global governance system.

2.2 Theoretical Innovation

On the basis of clarifying the core issues, this study is dedicated to constructing a systematic theoretical framework for understanding the "Asian Path" in international law. The innovative aspect of this section lies not only in proposing several original concepts but also in organically integrating them to form a theoretical system that is both explanatory and groundbreaking.

Specifically, it will explore the normative innovations of the "Asian Path" in key areas such as the view of sovereignty, the right to development, human rights, and dispute resolution, and analyze how it resonates with or creates tension within the existing theoretical system of international law. Through this dimension of research, we can further clarify whether the "Asian Path" is merely a summary of experiences or constitutes a theoretical contribution with independent academic status.

In response to the aforementioned core questions, this study proposes the following two important theoretical innovations:

1. "Three-Dimensional Analytical Framework":

- Normative Innovation: Analyzes how regional practices in Asia provide new sources for the generation and evolution of international law rules.

- Institutional Choice: Explores the unique institutional building and cooperation models created by Asian countries to adapt to their own characteristics.

- Civilizational Translation: Investigates how traditional Asian cultural resources are creatively translated into the language and practice of modern international law.

This framework emphasizes multi-dimensional interaction and analyzes the internal mechanics of international law evolution from a dynamic perspective. Under the dimension of "Civilizational Translation," this study further proposes three operational mechanisms: Conceptual Translation(e.g., translating the concept of "harmony and integration" into "extensive consultation, joint contribution, and shared benefits"); Institutional Grafting (e.g., the Dubai International Financial Centre integrating "Sharia Law" with modern arbitration systems); Trauma Transformation (e.g., India transforming its history of colonial-era food exploitation into legal claims in WTO negotiations). This expansion turns "Civilizational Translation" from an abstract slogan into a theoretical tool with analytical power.

2. Theoretical Framework of the "Asian Path":

- Consultative Multilateralism: Highlights the inclusivity and consultative spirit advocated by Asian countries in regional cooperation.

- Development Right Priority: Prioritizes the core interests of developing countries and promotes the formulation of fair international rules.

- Civilizational Mutual Learning Mechanism: Emphasizes the deep integration of traditional Asian civilizations with modern international law, providing normatively innovative contributions of global value to international law.

Secondly, to connect the aforementioned core framework with broader academic dialogue, this study introduces two key theoretical perspectives as support:

This study explicitly places the "Asian Path" within the scope of "Global South Epistemology,[39]"arguing that it is not merely a policy choice but a way of knowing the world and law rooted in unique historical, cultural, and philosophical traditions.Simultaneously, drawing on the perspective of "Relational International Law,[40]" this study highlights the dependence of the Asian model on relational networks and contextual adaptation during rule operation, thereby providing a jurisprudential explanation for its flexibility and resilience.

Ultimately, based on all the constructions above, this study demonstrates that Asia is no longer merely a responder to international rules but has emerged as a nascent normative force, proactively leveraging its unique normative systems and civilizational resources to shape the future global order.

2.3 Research Significance

By systematically constructing the theoretical framework and practical genealogy of the "Asian Path," the significance of this study transcends the mere summarization of regional experience. It offers triple systemic contributions to the international legal system and global governance, which currently stand at a crossroads.

2.3.1 Theoretical Significance: Breaking Paradigm Monopoly and Reconstructing the Knowledge System

[39] For a systematic exposition of the “Global South Epistemology,” see: Chimni, BS 2012, ‘Capitalism, Imperialism, and International Law in the Twenty-First Century’, *Oregon Review of International Law*, vol. 14, pp. 17-45. Eslava, L 2017, ‘Bandung, the Global South, and International Law’, in L Eslava, M Fakhri & V Nesiah (eds), *Bandung, the Global South, and International Law: Critical Pasts and Pending Futures*, Cambridge University Press, Cambridge.

[40] For the theoretical framework of “relational international law”, see: Michaels, R 2017, ‘Law and Recognition: Towards a Relational Concept of Law’, in N Roughan & A Halpin (eds), *In Pursuit of Pluralist Jurisprudence*, Cambridge University Press, Cambridge, pp. 81-102.

The core theoretical significance of this study lies in its systematic deconstruction and paradigmatic challenge to the deeply entrenched Western-centric narrative of international law. By proposing core norms such as "Consultative Multilateralism" and "Development Right Priority," it demonstrates that the evolution of international law is not confined to the singular path of "Liberal Institutionalism." By anchoring the "Asian Path" in the philosophical foundation of "Global South Epistemology," this study not only provides a solid justificatory basis for it but also promotes the transformation of international law theory from a specific knowledge based on Western history into a global knowledge system genuinely nourished by multiple civilizations. This provides a brand new theoretical lens for understanding the future landscape of international law.

2.3.2 Practical Significance: Providing an "Asian Prescription" for Global Governance Failures

On a practical level, the "Asian Path" refined in this study provides viable alternative solutions and reform tools for addressing the increasingly severe "global governance failures." When Western-dominated governance models reach impasses on transnational issues such as climate change and public health, the "incremental reform" (e.g., the ASEAN human rights mechanism), "relational governance" (e.g., the SCO counter-terrorism framework), and "symbiotic development" (e.g., the Belt and Road Initiative) advocated by Asia demonstrate a more inclusive, flexible, and resilient governance wisdom. These solutions provide an actionable blueprint for developing countries to deeply participate in global rule-making and defend their own policy space for development (e.g., India's practices in the WTO), and are reshaping the practical landscape of global governance.

2.3.3 Methodological Significance: Providing Analytical Tools for "Civilizational Compatibility"

Methodologically, the breakthrough of this study lies in providing a concrete path for transforming civilizational characteristics into analytical tools for international law. The constructed "Three-Dimensional Analytical Framework," particularly the three mechanisms under its "Civilizational Translation" dimension—"Conceptual Translation," "Institutional Grafting," and "Trauma Transformation"—successfully operationalizes the abstract concept of "civilizational compatibility." This set of methodological tools enables academia and policymakers to transcend the "traditional-modern" binary opposition, systematically identify, interpret, and evaluate the creative contributions of non-Western practices to international law, thereby laying a methodological foundation for future cross-civilizational legal comparison and research.

In summary, the significance of this study lies in achieving an academic leap from "deconstruction" to "construction": theoretically deconstructing the myth of Western-centrism, practically establishing effective governance solutions, and methodologically pioneering an analytical path for mutual learning among civilizations. This not only provides key components for the intellectual construction of a "post-Western" international order but also injects indispensable Asian momentum into steering the international legal system towards a more just, inclusive, and effective future.

2.4 Research Limitations and Future Prospects

While constructing the theoretical framework of the "Asian Path," this study also upholds the spirit of academic reflection, offering a clear-eyed insight into its conceptual tensions and unresolved practical challenges. These limitations do not detract from the value of this research; instead, they chart a clear path for subsequent exploration. Future research can deepen and expand upon the following three critical dimensions, progressing from internal to external concerns:

2.4.1 The Question of Conceptual Coherence: The Tension Between Unity and Diversity

As a holistic theoretical construct, the validity of the "Asian Path" hinges on its ability to successfully distill a common normative core while acknowledging the vast internal diversity within Asia (such as the profound historical and cultural divergences among sub-regions like China-Japan-South Korea, ASEAN, India, and the Middle East). Although this study has preliminarily identified shared principles like "Consultative Multilateralism" and "Development Right Priority," the explanatory power and mediating capacity of this conceptual framework remain tested when confronted with sharp geopolitical contradictions within Asia (e.g., sovereignty disputes). Future research urgently needs to test the resilience and adaptability of these normative kernels under pressure through more diverse case comparisons. This constitutes a stress test for the theoretical framework built in section 2.2 of this paper.

2.4.2 The Question of Practical Efficacy: Balancing "Consensus" and "Effectiveness"

This study reveals the normative distinctiveness of the "Asian Path," but its governance efficacy still requires empirical verification. The core dilemma lies in: could the "gradual consensus-building" model championed by this approach, while maintaining regional harmony, come at the cost of rule enforcement capability and decision-making efficiency? In areas requiring urgent action, such as human rights and the environment, does the "consensus-through-consultation" principle risk causing agenda delays or norm dilution? Future research needs to conduct detailed case tracking and impact assessments on this issue, which directly relates to the sustainability of the "weak institutionalization-strong adaptability" paradigm summarized in section 1.4 of this paper.

2.4.3 The Question of Theoretical Transcendence: The Paradox of "Alternative" or "Replication"

The ultimate ambition of the "Asian Path" is to offer an alternative that transcends Western models. However, it itself faces the interrogation of the "paradox of power": As major Asian powers rise, how can this approach avoid replicating the hegemonic logic it seeks to critique, thereby falling into a new "Great Power Centrism"? Furthermore, the extent to which its theoretical elements (such as gradualism, relational governance) can be applied to other Global South regions like Africa and Latin America will be the litmus test for its transformation from a "Regional Approach" into a genuine "Global South Approach." This question points directly to the core proposition of this paper—the ethical boundaries and universal value of "Asia as a Normative Power." Future work should be dedicated to cross-regional comparison to test its true theoretical contribution.

3 Research Methodology and Literature Critique

To ensure that the argumentation regarding the "Asian Path" possesses both empirical depth and theoretical acuity, this study methodologically adopts the principle of triangulation and explicitly embeds itself within the critical and post-colonial legal studies lineage in its academic stance. This chapter aims to systematically elaborate the operational plan and the coordinates of scholarly dialogue for this research, laying a transparent and reliable foundation for the development of subsequent chapters.

3.1 Research Methodology: Triangulation and Operationalization Plan

This study employs methodological triangulation,[41] constructing a multi-dimensional andstereoscopic argumentation system through the cross application of comparative constitutional analysis, critical case studies, and treaty text analysis. This ensures a comprehensive capture of the

[41] For a classic discussion of the "triangulation" as a social science research strategy, see: Denzin, NK 1978, *The Research Act: A Theoretical Introduction to Sociological Methods*, McGraw-Hill, New York., p. 291.

complex facets of the "Asian Path" from the perspectives of historical depth, process mechanisms, and normative effectiveness.

At the level of comparative constitutional analysis, this study aims to explore the logic of how Asian countries incorporate international law at the fundamental constitutional level. To this end, we have selected seven case countries based on four criteria: regional representativeness, diversity of legal systems, political-economic models, and degree of participation in regional cooperation: East Asia selects China and Japan. Both countries share a civil law tradition yet incorporate elements of a socialist market economy and a capitalist market economy respectively, providing ideal samples for observing differentiated practices within similar legal traditions. South Asia is represented by India, whose deep common law background provides a crucial legal tradition supplement to the Asian legal landscape.Southeast Asia selects Indonesia (mixed legal system) and Malaysia (featuring both common law and Islamic legal characteristics), showcasing the diversity and complexity of legal cultures in this region. Central Asia and West Asia are represented by Kazakhstan (unique governance under a resource-based economy) and Turkey (Eurasian bridge and mixed legal tradition) respectively.

Through a horizontal comparison of provisions in the constitutions of the aforementioned countries concerning sovereignty (e.g., territorial integrity, non-interference in internal affairs), the guarantee of the right to development (e.g., economic sovereignty, sustainable development), and obligations for international cooperation, this study clearly reveals the differentiated strategies adopted by Asian constitutional orders while adhering to the common core principle of sovereign equality (such as China's advocacy of the "community with a shared future for mankind" concept[42], the provision for the primacy of international law in Article 98 of the Japanese Constitution,[43] and the varying reservations of different countries towards the jurisdiction of international courts[44]). This thereby lays a solid domestic legal foundation for the "Asian Path."

At the level of critical case studies, this study employs process-tracing to conduct in-depth analyses of several typical cases, including the South China Sea Arbitration and the negotiations for the Regional Comprehensive Economic Partnership (RCEP). Case selection is based on their landmark significance in terms of rule interpretation, creation, or application.

In the *South China Sea Arbitration* case,[45] the research focus is not on the historical rights claims *per se*, but on the unique argumentative structure employed by China and other relevant states, which deeply couples historical narratives with the provisions of the UN Convention on the Law of the Sea. This reflects a common practical tendency among Asian states: striving to reconcile historical claims with modern legal rules through interpretation and innovation *within* the existing international legal system, rather than seeking to overturn it.

In the RCEP negotiations, the study focuses on the principle of "consultation precedence"[46] introduced in its dispute settlement mechanism. This institutional innovation vividly embodies the preference for harmony and relationship preservation within Asian culture, signaling the

[42] The Constitution of the People's Republic of China (Official website of the Standing Committee of the National People's Congress/China Government Website); The CPC Central Committee 2021, *Resolution on the Major Achievements and Historical Experiences of the Party's Century-Long Struggle*, 11 November.

[43] Constitution of Japan, art 98.

[44] For a comparison of the attitudes of various countries toward reservations of international jurisdiction, see: Romano, CPR 2007, 'The Shift from the Consensual to the Compulsory Paradigm in International Adjudication: A Proposal for a New Research Agenda', *NYU Journal of International Law and Politics*, vol. 39, no. 4, pp. 791-872. This document systematically reviews the different positions of various countries.

[45] See the arbitral award in *The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China) 2016, Award, PCA Case No. 2013-19, 12 July*, and the Declaration of the Government of the People's Republic of China on Territorial Sovereignty and Maritime Rights and Interests in the South China Sea issued by the Chinese government.

[46] See Regional Comprehensive Economic Partnership (RCEP), Chapter 19, *Dispute Settlement*, which embodies the principle of "consultation first" in negotiations and mediation.

transformation of Asian states from passive rule-takers to active rule-makers, demonstrating their capacity for contextual adaptation in global governance.

At the level of treaty text analysis, to grasp the normative trends of Asian practice from a macro perspective, this study conducted quantitative analysis of over 50 treaties concluded by Asian countries covering key areas such as security, economy and trade, and the environment. Treaty selection covered different periods, fields, and participants to ensure the breadth and representativeness of the sample.

The analysis found a significant increase in the "incorporation rate"[47] of concepts like the "community with a shared future for mankind" into treaty texts, intuitively demonstrating the normative influence of Asian ideas on regional cooperation.

Simultaneously, the research revealed a general preference among Asian countries for informal consultation mechanisms and the pathways for strengthening soft law norms. These findings clarify the potential of development-oriented treaties to amend the traditional liberal hegemonic order, providing important empirical reference for the diversification of the international legal system.

As shown in the table below, the three research methods each have their own strengths and support each other, together forming the solid methodological foundation of this study.

Research Methodology	Core Materials and Cases	Core Problem to be Solved
Comparative Constitutional Analysis	This study selects the constitutional texts of seven countries—China, Japan, India, Indonesia, Malaysia, Kazakhstan, and Turkey—focusing on clauses related to sovereignty and the right to development.	Asian countries share common logics in accepting international law at the level of fundamental law, while employing differentiated strategies (such as differences in the expression of "a community with a shared future for mankind").
Key Case Studies	It conducts in-depth analysis of 12 typical cases, including the South China Sea Arbitration and the RCEP negotiations, employing a process tracking method.	It reveals the practical wisdom and contextualized strategies of Asian countries in the creation, interpretation and application of specific rules (such as the introduction of the "negotiation first" principle).
Treaty Text Analysis	It quantitatively analyzes over 50 treaties concluded by Asian countries.	Identify the trend characteristics of Asian practices in terms of clause innovation and mechanism design preferences (such as soft law), and examine their normative

[47] The treaty database constructed in this study primarily comes from the UN Treaty Collection and the official websites of various Asia-Pacific regional organizations. A complete list of treaties and a coding manual are provided in Appendix 1 of this paper. The quantitative trend regarding the inclusion of the concept of "a community with a shared future for mankind" in treaties was derived by the authors through keyword frequency statistics based on the aforementioned databases.

		impact.

3.2 Academic Genealogy and Literature Critique: Critique, Dialogue, and Construction

To establish the theoretical coordinates of this research, this paper deeply embeds itself within the academic genealogy of critical legal studies and post-colonial theory, and actively engages in constructive dialogue with mainstream Western international law theories, thereby clarifying the critical, unique, and constructive nature of the "Asian Path."

The critical starting point of this research lies in systematically deconstructing the Western-centric power structure behind the discourse of international law's "universality." Using Antony Anghie's theory of colonial international law [48]as an analytical tool, this paper traces how the "standard of civilization" historically created a double standard of sovereignty and long positioned the non-Western world as the object of international law. This critique aims to clear the ground, creating the premise for the development of alternative narratives.

Following this deconstruction, this study actively engages in dialogue with different knowledge traditions to position itself. On one hand, we examine the blind spots and inadequacies of liberal international law theory[49] and its vision of order in explaining Asian practices, such as its difficulty in fully accounting for Asia's "Consultative Multilateralism" security logic. This dialectical engagement forms the core of the systematic philosophical debate with Western theories in Chapter 5 of this study. On the other hand, this study aligns with and builds upon intellectual resources such as Upendra Baxi's "Southern Epistemology,"[50] ensuring that the construction of the "Asian Path" is deeply rooted within the broader academic tradition critiquing Western intellectual hegemony.

The ultimate academic stance is constructive, aiming to establish the normative identity and theoretical subjectivity of the "Asian Path." Through the aforementioned critique and dialogue, we forcefully argue that Asian practices are not a deviation from or a simple supplement to international law, but rather a proactive normative innovation stemming from a different civilizational background. It signifies a fundamental shift of Asia from a consumer of international legal thought to a contributor and co-creator, providing indispensable civilizational resources for the future of international law.

In summary, this chapter, serving as the general outline of the entire paper, systematically constructs the meta-framework of the research. We first established the real-world and theoretical background framed by "Global Power Shift" and "Critique of Western Centrism," from which we derived the systematic elaboration of the core research questions, theoretical innovations, and research methods concerning the "Asian Path."

Through the aforementioned work, this chapter has preliminarily demonstrated the legitimacy and necessity of establishing the "Asian Path" as a theoretical framework possessing autonomous normative content and analytical value. It is not a closed conclusion, but rather an open initial proposition awaiting historical and empirical verification.

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[48] See Antony Anghie's seminal work: Anghie, A 2005, *Imperialism, Sovereignty and the Making of International Law*, Cambridge University Press, Cambridge.This book systematically argues for the symbiotic relationship between international law and colonialism.

[49] For a representative exposition of liberal international law theory, see ： Slaughter, A 2004, *A New World Order*, Princeton University Press, Princeton.

[50] For Upendra Baxi's "Southern Epistemology" and his critique of the hegemony of knowledge in international law, see: Baxi, U 1998, 'Voices of Suffering and the Future of Human Rights', *Transnational Law & Contemporary Problems*, vol. 8, pp. 125-169.

It is precisely this theoretical presupposition that provides sufficient rationale for delving into the depths of history. The discussion below will transition to the second chapter of this research, shifting from theoretical construction to organizing the historical genealogy. That chapter will vertically examine the evolutionary trajectory of international law in Asia, aiming to find solid historical substantiation and generative logic for the theoretical conception of the "Asian Path" proposed in Chapter One, thereby revealing its dynamic process from forced acceptance to the awakening of subjectivity, and further to creative participation.

Chapter II The Historical Dimension: The Evolution of International Law in Asia

The narrative of international law in Asia is far from a history of passive reception; it is a vast panorama replete with struggles for subjective agency, creative adaptation, and normative disruption. [51]This chapter aims to traverse the layered peaks of history, longitudinally deconstructing the multiple roles Asia played in the evolution of international law from regional norms to a global architecture—it was simultaneously the bearer of ancient civilizational orders (such as the tributary system[52], Dharmashastra,[53] and Sharia[54]), the disciplined object[55] under colonial hegemony, and ultimately, the subject that reshaped its own identity within international law.

Tracing the journey from pre-colonial intellectual achievements to the tense and unequal encounter with Western colonial jurisprudence, we aim to reveal that the modern history of international law in Asia is, at its core, a history of the continuous activation and reinterpretation of traditional norms amidst modern transformation. It profoundly exposes the power dynamics underlying the claim of universality in international law and set the stage for Asia's historic leap from being a "recipient" of rules to becoming a "co-builder" in the post-colonial era.[56]

1 Normative Systems in the Pre-Colonial Era

Pre-colonial Asia was not a vacuum of international law, but rather a complex normative space composed of multiple civilizational orders. This section aims to analyze the profound and complex interactions and conflicts triggered when these self-contained regional norms encountered the early globalizing Western international law. This collision was not merely a contest of power but a direct confrontation between the jurisprudential logics and worldviews of different civilizations, setting the tone for the evolution of international law in the subsequent centuries.

1.1 The East Asian Tributary System and Its Juridical Core

The Tributary System was a distinctive regional international order in the pre-modern East Asian world. Centered on the Central Dynasties of China, this system maintained long-term political and cultural coordination within the region through a set of ritualized interactions of "investiture-tribute," rooted in the concept of "governance by rites." [57]Within this framework, surrounding political entities expressed their recognition of Chinese civilization and its ritual order through regular tributary acts. In return, China, by investing their rulers as "Kings" or "Princes," bestowing generous gifts in return, and providing security guarantees, fulfilled its role as the upholder of the order. This two-way interaction transcended mere political subordination,

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[51] For pioneering research on non-European traditions in the history of international law, see: Alexandrowicz, C. H. 1967. *An Introduction to the History of the Law of Nations in the East Indies*. Oxford: Clarendon Press. For the subjectivity of Asia in the history of international law, see: Anand, R. P. 2004. *Studies in International Law and History: An Asian Perspective*. Leiden: Martinus Nijhoff Publishers.

[52] For a classic study of the tributary system as a regional international relations system in Asia, see: Hamashita, Takeshi. 2008. *China, East Asia and the Global Economy: Regional and Historical Perspectives*. Edited by Linda Grove and Mark Selden. New York: Routledge.

[53] For information on international law practice in pre-colonial South Asia, see: Alexandrowicz, C. H. 1967. *An Introduction to the History of the Law of Nations in the East Indies*. Oxford: Clarendon Press. (Chapter 2)

[54] Regarding Islamic law siyar as a system of international law, see: Khadduri, Majid. 1966. *The Islamic Law of Nations: Shaybani's Siyar*. Baltimore: Johns Hopkins Press.

[55] For the most powerful theoretical critique of this process, see: Anghie, Antony. 2005. *Imperialism, Sovereignty and the Making of International Law*. Cambridge: Cambridge University Press.

[56] For a classic deconstruction of the universality of international law and power relations, see: Koskenniemi, Martti. 2001. *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960*. Cambridge: Cambridge University Press.

[57] For classic studies that define the tributary system as a pre-modern East Asian regional international order, see: Fairbank, John K., ed. 1968. *The Chinese World Order: Traditional China's Foreign Relations*. Harvard University Press. See also Zhang , Qixiong. 2014. "The Origin of the Principles of the Chinese World Order: Inheritance and Alienation in Modern East Asian International Relations." *Bulletin of the Institute of Modern History, Academia Sinica* no. 84.

constituting a stable relational model bound by ritual and emphasizing mutual recognition and the fulfillment of obligations.[58]

The juridical basis of the Tributary System was deeply embedded in the Confucian "All-under-Heaven worldview" and the doctrine of "differentiating the civilized (Xia) from the barbarian (Yi)." Its core lay in defining the boundaries of order through cultural identity, rather than relying on the precise delineation of territorial sovereignty.[59] Under this paradigm, order was constructed primarily through the attraction of civilization and cultural assimilation, not through military conquest or legal coercion. This made the Tributary System, in essence, a governance structure oriented towards relationships and social roles, whose primary goal was to maintain the harmony and hierarchical stability of the entire "All-under-Heaven."[60]

Consequently, the Tributary System exhibited a highly sophisticated operational logic in practice. Through sustained and standardized ritual exchanges, it clarified the rights, obligations, and relative status of all participating parties, thereby constructing a highly predictable and enduring framework for international relations in East Asia.[61] This self-contained order, which operated for centuries, fully demonstrates its effectiveness and uniqueness in handling international affairs in pre-modern Asia.

1.2 The Macartney Embassy: Early Conflict Between the Tributary System and the Law of Nations

The visit of the Macartney Embassy to China in 1793 was far from a routine diplomatic encounter; it was the first direct confrontation between two regional normative systems:[62] the East Asian tributary order and modern European international law. The core conflict of this event—the dispute surrounding the ritual of the "three kneelings and nine prostrations"—clearly exposed the fundamental incommensurability in the underlying logic of their respective order-building.

From the perspective of the Qing court, ritual was a constitutive element that gave substance to the political order. The ceremony of the "three kneelings and nine prostrations" before the Emperor was a legal declaration by which a visitor acknowledged the fundamental fact of their incorporation into the China-centric "All-under-Heaven" order. [63]It was not merely a cultural custom but a key ritual upholding the legitimacy and hierarchical structure of the tributary system. Therefore, the British envoy's refusal was, in juridical terms, tantamount to a denial of the Qing worldview itself.

However, from the perspective of Macartney and the European Westphalian system he represented, such a demand was an affront to the dignity and principle of equality among sovereign states. The post-Westphalian tradition of international law viewed sovereign entities as formally equal legal

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[58] Many scholars emphasize the reciprocity and relationship-building function of the tributary system; see: Hamashita, Takeshi. 2008. “The Tribute Trade System and Modern Asia.” In *China, East Asia and the Global Economy: Regional and Historical Perspectives*, edited by Linda Grove and Mark Selden, 12–26. Routledge.

[59] For a philosophical interpretation of the "Tianxia" system as an alternative world order, see: Zhao, Tingyang. 2009. “A Political World Philosophy in terms of All-under-heaven (Tian-xia).” *Diogenes* 56(1): 5.

[60] For an in-depth analysis of the "relational" governance model in Chinese diplomacy, see: Qin , Yaqing. 2010. “International Society as a Process: Institutions, Identities, and China’s Peaceful Rise.” *The Chinese Journal of International Politics* 3(2): 129;Kang , David C. 2010. *East Asia Before the West: Five Centuries of Trade and Tribute*. Columbia University Press.

[61] For detailed case studies on the long-term operation of the tributary system in specific bilateral relations, see: Alexander Woodside, Lost Modernities: China, Vietnam, Korea, and the Hazards of World History (Harvard University Press 2006); Liam C. Kelley, Beyond the Bronze Pillars: Envoy Poetry and the Sino-Vietnamese Relationship (University of Hawai'i Press 2005).

[62] For a classic study of the Macartney Embassy as a clash between two world orders, see: James L. Hevia, Cherishing Men from Afar: Qing Guest Ritual and the Macartney Embassy of 1793 (Duke University Press 1995);

[63] For a legal interpretation of the Qing Dynasty's "guest etiquette" and its construction of the world order, see: Zhang Zhilian, ‘The Qing Court’s Perception of the World Order and the Tribute System’ in Chinese Scholars and the World Order (Peking University Press 2016); also see: He Xinhua, Chapter 4 of “Majestic World: Qing Dynasty Diplomatic Etiquette and Its Analysis” (Shanghai Ancient Books Publishing House 2011).

persons, whose interactions should be based on written treaties and reciprocal rights. [64]Within this framework, performing a rite of submission to a foreign monarch was utterly unacceptable, as it fundamentally undermined Britain's legal identity as a sovereign state.

Thus, the essence of this ritual dispute was a conflict of **constitutive rules**:[65] one side viewed specific rituals as a prerequisite for constituting international legal relations (the Qing), while the other saw them as dispensable formalities, or even detrimental to core legal principles (sovereign equality) (Britain). This conflict demonstrated that European international law, which at the time considered itself universal, was itself rooted in a specific cultural and socio-historical context. When faced with a highly developed and juridically self-contained alternative order like the Tributary System, it exposed its inherent cultural particularity and limitations.[66]

The failure of the Macartney Embassy signified that the path to peacefully bridging these two visions of order at a normative level was blocked. It foreshadowed that the future "connection" of the two systems would rely not on equal juridical dialogue, but increasingly on the political, economic, and military coercion of the European powers, thus heralding the violent entrance of colonial international law in Asia.[67]

1.3 International Rules in the Islamic World: The Evolution of the Ottoman "Capitulations"

The Ottoman "Capitulations" provide another crucial case of normative interaction in the pre-colonial period. Their evolution from reciprocal agreements into instruments of inequality profoundly reveals the early trajectory of how international legal concepts were distorted by power in cross-civilizational practice.

1.3.1 The Reciprocal Origins and Legal Basis of the "Capitulations"

Initially, the "Capitulations" were not a symbol of unequal relations, but rather a reciprocal legal arrangement proactively granted by the Ottoman Empire based on its own sovereignty and Islamic legal tradition.[68] Its juridical foundation was deeply rooted in the Islamic legal system of dhimmi(protection for non-Muslims), designed to manage non-Muslim communities within the Empire, granting them a degree of judicial autonomy and guaranteeing their safety and property rights. [69]The Empire extended this internal governance wisdom to the realm of international

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[64] For a classic discussion of the Westphalian system and its principle of sovereign equality, see: Leo Gross, 'The Peace of Westphalia, 1648–1948' (1948), 42 American Journal of International Law, 20, 20–41.; For a more systematic theoretical overview, see: Stephen C. Neff, Justice Among Nations: A History of International Law (Harvard University Press, 2014), Part II.

[65] The concept of "constitutive rules" as those that create and define specific activities originates from jurisprudence and social philosophy; see John R. Searle, *The Construction of Social Reality* (Free Press 1995), pp. 27–29. When applied to international law analysis, see Nicholas Greenwood Onuf, *World of Our Making: Rules and Rule in Social Theory and International Relations* (University of South Carolina Press 1989), xiii, 341.

[66] For the most powerful critique of the claims of "universality" and cultural particularity of European international law, see: Antony Anghie, Imperialism, Sovereignty and the Making of International Law (Cambridge University Press 2005), pp. 32-38, 195-200.

[67] For a systematic study of the expansion of 19th-century colonial international law in Asia through force and unequal treaties, see: R. P. Anand, Studies in International Law and History: An Asian Perspective (Leiden: Martinus Nijhoff Publishers 2004) ch 3; Lydia H. Liu, The Clash of Empires: The Invention of China in Modern World Making (Harvard University Press 2004) intro.

[68] For pioneering research on the "surrender treaty" as an active diplomatic tool of the Ottoman Empire, see: Thomas Naff, 'The Ottoman Empire and the European States System, 1815 1914', in Hedley Bull and Adam Watson (eds), The Expansion of International Society (Clarendon Press 1984) ch10.; ANuri Yurdusev, 'The Ottoman Attitude toward Diplomacy' in Ottoman Diplomacy: Conventional or Unconventional? (ed ANuri Yurdusev, Palgrave Macmillan 2004) 5–35.

[69] For a classic study on the "protection of non-Muslims" system in Islamic law and its evolution into a principle of international law, see: Majid Khadduri, *War and Peace in the Law of Islam* (Johns Hopkins Press, 1955), particularly the chapter on "Aman" (right of passage). For a study on the specific practice of this system in the Ottoman Empire, see: Karen Barkey, *Empire of Difference: The Ottomans in Comparative Perspective* (Cambridge University Press, 2008). For a specific analysis of trade privileges and jurisdiction in treaties, see: Maurice H. van den Boogert, *The Capitalations and the Ottoman Legal System: Qadis, Consuls and Beratlıs in the 18th Century* (Brill 2005, University Press, 2008), ch

intercourse, granting merchants from European states like France and England trade privileges and legal immunities within the Empire through treaties.[70]

The original intent of this arrangement reflected the pragmatism and confidence of the Ottoman Empire. It was not a cession of sovereignty, but rather a mode of its exercise, aimed at regulating and attracting foreign commerce while bringing complex inter-religious and cross-civilizational interactions within a controllable legal framework. At this stage, the rights and obligations within the treaties were reciprocal or negotiable, embodying the efforts of the Ottoman Empire, as a powerful sovereign entity, to construct an international order within its autonomous legal system.[71]

1.3.2 The Beginning of Colonial Alienation and the Shift in Legal Discourse

However, as European powers grew in military and economic strength and deepened their logic of colonial expansion, the nature of the "Capitulations" began to undergo a fundamental alienation.[72] European powers gradually ceased to view these treaties as privileges granted based on Ottoman law, instead reinterpreting them as inalienable, perpetual rights derived from European international law.

The key to this alienation lay in Europe's seizure and reconstruction of legal discourse. European legal narratives began systematically portraying the Ottoman Islamic legal tradition as "backward" and "abnormal," while championing their own legal systems as the "civilized" and "universal" standard. By constructing this preconditioning discourse of the "standard of civilization,"[73] the European powers cloaked their actions—unilaterally expanding the privileges of the "Capitulations" (such as extending consular jurisdiction to interfere in the Empire's internal affairs) and refusing to fulfill their reciprocal obligations—in a veneer of "legitimacy."[74]

Thus, the "Capitulations" began to transform from an endogenous, reciprocal normative practice of the pre-colonial period into a legal tool for European powers to externally erode Ottoman sovereignty. This evolution signalled that the dominant logic of normative interaction was shifting from negotiation based on civilizational traditions to coercion based on power asymmetry, providing an important paradigmatic precursor for the full establishment of the modern unequal treaty system in Asia.[75]

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[70] For details on the specific content and historical context of early Ottoman treaties with France and other European countries, see: Daniel Goffman, The Ottoman Empire and Early Modern Europe (Cambridge University Press 2002), pp. 147-175; for a detailed analysis of trade privileges and jurisdiction in the treaties, see: Maurice H. van den Boogert, The Capitalations and the Ottoman Legal System: Qadis, Consuls and Beratlıs in the 18th Century (Brill 2005) intro.

[71] For studies that view the Ottoman Empire as an early modern global sovereign entity and analyze its construction of international order, see: Giancarlo Casale, The Ottoman Age of Exploration (Oxford University Press 2010); for works that examine the Ottoman status from the perspective of the international system, see: Ayşe Zarakol, Before the West: The Rise and Fall of Eastern World Orders (Cambridge University Press 2022) pt II.

[72] For authoritative historical studies on how shifts in European power led to a change in the nature of “surrender treaties,” see: Donald Quataert, The Ottoman Empire, 1700–1922 (2nd edn, Cambridge University Press 2005), pp. 64–75, 120–135; see also: Umut Özsu, ‘The Ottoman Empire, the Origins of Extraterritoriality, and International Legal Theory’, in Anne Orford & Florian Hoffmann (eds), The Oxford Handbook of the Theory of International Law (Oxford University Press 2016), pp. 123–137.

[73] For a classic study of the "standard of civilization" as a core ideology of 19th-century international law, see: Gerrit W. Gong, The Standard of ‘Civilization’ in International Society (Clarendon Press 1984), especially the chapter on the Ottoman Empire; and for a representative work on its critical development, see: Antony Anghie, Imperialism, Sovereignty and the Making of International Law (Cambridge University Press 2005), pp. 32-80.

[74] For details on how consular jurisdiction evolved into a legal tool for systematically infringing upon Ottoman sovereignty in the 19th century, see: Maurice H. van den Boogert, The Capitalations and the Ottoman Legal System: Qadis, Consuls and Beratlıs in the 18th Century (Brill 2005) 189-210; Turan Kayaoğlu, Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China (Cambridge University Press 2010) ch4 (pp 104–148).

[75] For a grand historical narrative of the shift in normative interaction logic in international law from equal consultation to coercion and hierarchy, see: Arnulf Becker Lorca, *Mestizo International Law: A Global Intellectual History 1842–1933* (Cambridge University Press 2014), intro & pt I; also see: C. H. Alexandrowicz, *The Law of Nations in Global History* (edited by David Armitage and Jennifer Pitts, Oxford University Press 2017), editor's introduction.

1.4 Historical Revelations from Pre-Colonial Normative Collisions

The encounter between Asia's diverse normative systems and Western international law in the pre-colonial period is not a marginal footnote in history, but a core narrative that reshapes our understanding of the origins of the global legal order.[76] Through in-depth analysis of cases such as the Tributary System, the Macartney Embassy, and the Ottoman "Capitulations," we can transcend linear-progressive historiography and extract three critical revelations concerning the nature and evolutionary trajectory of international law. These revelations constitute the deep historical grammar underlying Asia's subsequent interactions with international law.

First, the demystification and historical questioning of the myth of international law's "universality." The mainstream narrative of international law has long portrayed it as a "civilizing" process peacefully diffusing from Europe to the globe. [77]However, Asia's early experience fundamentally challenges this. Whether it was the Tributary System's hierarchical harmonic order based on the "All-under-Heaven" worldview and "governance by rites," or the reciprocal framework of the "Capitulations" in the Islamic world rooted in its religious legal tradition, both prove the existence in pre-colonial Asia of regional international legal orders that were equally highly complex and contemporaneous with the Westphalian model. The key to the Macartney Embassy incident is that it was not a meeting between an "advanced" and a "backward" system, but a collision between two self-contained claims to universality.[78] European international law at the time demonstrated no capacity to accommodate or comprehend this alterity; its response was inherently exclusionary. This forcefully argues that the "universality" of international law, from the very start of its global expansion, was a universalization claim of local knowledge, [79]a process of establishment necessarily accompanied by the systematic negation and erasure of other normative worlds. As scholar Antony Anghie argues, the colonial encounter itself, rather than any prior European history, was the crucial site for the formation of the concept of international law's universality.[80]

Second, the systematic primacy of power logic over juridical logic in normative interaction. Theoretical normative equality often yields in practice to power asymmetry. The evolutionary trajectory of the Ottoman "Capitulations" provides a textbook case, revealing how international law can be alienated from a "framework for coexistence" into an "instrument of domination."[81] When the Ottoman Empire was strong, the "Capitulations" were an expression of its sovereign will, a proactive grant and reciprocal arrangement based on Islamic legal tradition. However, following the power shift brought by Europe's military-industrial revolution, the very same legal provisions were reconstructed by European powers through the unilateral seizure of interpretative power into perpetual and unequal privileges derived from the European "standard of civilization." This process exposes a deep-seated paradox in international law that persists to this day: its formal neutrality and claims to universality are highly susceptible to being instrumentalized by the powerful within asymmetrical power relations to entrench, rather than rectify, structural injustice. Here, juridical logic yields to power logic; law becomes the handmaiden of power, not the shield of the weak.

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[76] For a groundbreaking reconstruction of this core narrative, see: C. H. Alexandrowicz, An Introduction to the History of the Law of Nations in the East Indies (Oxford: Clarendon Press 1967); for a deeper exploration and critique of its theory, see: Antony Anghie, Imperialism, Sovereignty and the Making of International Law (Cambridge: CUP 2005).

[77] For the most systematic exposition and theorization of this narrative of "civilization," see: Gerrit W. Gong, The Standard of 'Civilization' in International Society (Oxford: Clarendon Press 1984).

[78] For a classic study of this collision as a clash of two cosmologies, see: James L. Hevia, Cherishing Men from Afar: Qing Guest Ritual and the Macartney Embassy of 1793 (Durham: Duke University Press 1995).

[79] For a critique of the universality of international law as the "ultimate claim to the globalization of local knowledge," see: Martti Koskenniemi, 'Histories of International Law: Dealing with Eurocentrism' (2011) 32 Rechtsgeschichte 152, 160.

[80] Antony Anghie, Imperialism, Sovereignty and the Making of International Law (Cambridge: CUP 2005) 3. Its core argument is: "The concept of sovereignty and the jurisprudence of managing cultural differences were shaped in response to the challenges of colonial encounters."

[81] For a detailed legal history study of this alienation process of the "surrender treaty," see: Turan Kayaoğlu, Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China (Cambridge: CUP 2010) ch 3.

Third, the construction of the "standard of civilization" and its role as the ideological basis for systemic exclusion. Early normative collisions gave rise to and solidified an ideological tool serving colonial expansion—the standard of civilization.[82] Europe did not simply conquer Asia by force; it first, through a system of knowledge discourse, divided the world into a hierarchy of "civilized," "barbarian," and "savage." Within this discourse, European practices like Westphalian sovereignty and treaty diplomacy were championed as the universal standard of "civilization," while the "rites" of the Tributary System and the Ottoman "Capitulations" were deliberately demeaned as "particular customs" or "backward practices" emblematic of "Oriental despotism." This epistemological violence preceded and served physical violence. It provided a self-absolving moral and legal justification for all subsequent unequal treaties, consular jurisdiction, and even colonial rule itself. Excluding entities like China and the Ottoman Empire from "full international legal personality" was no longer seen as unjust, but packaged as a provisional status of "awaiting their civilization." The specter of this 19th-century standard of civilization still looms, implicitly or explicitly, in modern debates over "democracy" vs. "authoritarianism," "universal values" vs. "Asian values," influencing membership and voice within the international community.[83]

In summary, the normative conflicts of the pre-colonial period reveal that the history of international law is by no means a singular, smooth process of universalization, but rather a fierce arena of competition, selective absorption, and coercive substitution. Asia in this era was not a passive object receiving rules, but a subject possessing its own mature juridical traditions and demonstrating complex agency in these collisions. Rediscovering this history is not merely about "setting the record straight," but about undertaking a profound work of intellectual archaeology—deconstructing the power structures behind international law's claims to universality and revealing the systemic exclusion of the non-Western world by the "standard of civilization."[84]

This critical historical perspective provides indispensable context for understanding the subsequent comprehensive legal alienation of the colonial era (Section 2.2) and Asia's creative use of international law during the decolonization period (Section 2.3). It tells us that the subsequent struggles of Asian states for sovereign equality were far more than the acquisition of legal technique; they were a profound normative struggle—a persistent effort to break the shackles of the standard of civilization and re-inscribe a plural world into the vision of international law. Only by grounding ourselves on this rediscovered historical foundation can we envision a global legal future that truly transcends Western-centrism and embraces plural modernities.

2 Legal Alienation and Sovereignty Erosion under Colonial Rule

Colonial rule was not exercised solely through force, but achieved systemic erosion of sovereignty through a set of sophisticated “legal technologies.” This chapter aims to reveal how institutions such as consular jurisdiction and unequal treaties transformed violent colonialism into a mode of governance carried out “according to law.” Through cases such as the Shanghai International Settlement and Japan’s dual roles, we will analyze the operational mechanisms of this legal alienation and critique the deeply rooted “civilizational hierarchy” behind it. Ultimately, this chapter will argue that the legacy of colonial law has not disappeared, but is instead covertly reproduced in certain meso-level technical domains of contemporary international law.

2.0 Historical Context Frame

[82] See also: Gerrit W. Gong. See also: A critique from the perspective of discursive power: Brett Bowden, The Empire of Civilization: The Evolution of an Imperial Idea (Chicago: University of Chicago Press 2009).

[83] For an analysis of the continued repercussions of the “standards of civilization” in modern international law, see: Martti Koskenniemi, ‘Race, Hierarchy and International Law: Lorimer’s Legal Science’ (2016) 27 European Journal of International Law 415.

[84] For the “genealogical” or “archaeological” approach to the history of international law, see: Matthew Craven, ‘Introduction: International Law and its Histories’ in Matthew Craven and others (eds), Time, History and International Law (Leiden: Martinus Nijhoff 2007).

In order to enable readers to fully understand the subsequent legal analysis in this article, this context frame aims to briefly explain several core historical concepts and institutions that repeatedly appear in the paper. These concepts constitute the foundational background of the international order in pre-colonial Asia and later became the basis for collision and integration with Western colonial international law.

2.0.1. The East Asian Tributary System

Essence: This was the dominant framework of international relations and legal order in the premodern East Asian world (covering modern China, the Korean Peninsula, Japan, Vietnam, and parts of Southeast Asia). It was a regional international system centered on the Chinese imperial dynasty, hierarchical in nature but not absolutely coercive.

Operational Mechanism: The core of the system was the highly ritualized, two-way practice of "investiture–tribute."

Tribute: Monarchs of surrounding countries dispatched envoys to present symbolic gifts ("tribute") to the Chinese emperor and perform a set of complex rituals, the most central of which was the "three kneelings and nine prostrations" (three kneelings, each followed by three prostrations). This act formally acknowledged the supreme status and civilizational centrality of the Chinese emperor.

Investiture: The Chinese emperor, in turn, bestowed gifts far exceeding the value of the tribute in the form of "return rewards," formally recognizing ("investing") the monarch's legitimacy to rule, and simultaneously promising protection in the event of threats.

Jurisprudential Core and Features: Based on 'rule by ritual' and the 'tianxia worldview': The legitimacy of the order derived from Confucian ritual norms and cultural identity, rather than from Westphalian sovereignty, equality, or territorial absolutism. It regarded the world ("tianxia") as a unified community differentiated by degrees of civilization.

Cultural boundaries over territorial boundaries: The system focused more on whether an actor accepted and participated in the rituals of Chinese civilization than on precise legal delineations of borders.

Relationship-oriented: It emphasized mutual obligations and long-term harmony within a hierarchical structure rather than contractual relations based on equal rights.

2.0.2. The Unequal Treaty System

• **Essence:** This refers to a series of treaties imposed by Western powers—and later Japan—on Asian countries (such as China, Japan, Siam/Thailand, and Korea) from the 19th to the early 20th century through force or the threat of force. These treaties contained highly asymmetrical provisions that systematically eroded the sovereignty of the Asian signatory states.
• **Historical Origin:** It is commonly traced to the *Treaty of Nanjing* (1842) signed between China and Britain after the First Opium War (1839–1842). The immediate trigger of this war was the conflict between the Qing dynasty's strict prohibition of the opium trade and Britain's efforts to protect its opium smuggling interests.
• **Core Provisions:** These treaties typically included one or more of the following:
o **Cession of territory:** For example, the *Treaty of Nanjing* ceded Hong Kong Island to Britain.
o **Indemnities:** The defeated state paid enormous war reparations to the victor.
o **Opening of treaty ports:** Forced opening of major port cities for residence and trade by foreign merchants.
o **Fixed (treaty) tariffs:** Deprivation of the state's right to autonomously set import duties; tax rates were "negotiated," often pushed to extremely low levels.

o **Consular jurisdiction/extraterritoriality:** One of the most destructive provisions. It stipulated that foreign nationals within the territory of the Asian signatory state were not subject to local laws; if involved in a case, they were to be tried by their own consuls under their national laws. This directly undermined judicial sovereignty.
o **Unilateral most-favored-nation treatment:** Any privilege granted by the Asian signatory state to one contracting party would automatically be extended to all other contracting parties.
o **Expansion through a typical case: The *Siam–Japan Treaty of Amity, Commerce and Navigation* (1899):**
This treaty is a key case for understanding the dynamic evolution of "unequal treaties." It marked Japan's shift—after learning Western international law through the Meiji Restoration and successfully revising its own unequal treaties with Western powers—toward imposing the same unequal logic on its Asian neighbors.
In this treaty, Japan forced Siam (modern Thailand) to accept unequal provisions including consular jurisdiction and tariff restrictions. This demonstrates that the "unequal treaty system" was not only a tool of Western colonialism but also a power model that could be mimicked and replicated by later actors, revealing the complexity and transmissibility of the colonial order.

2.0.3. The Islamic World's Conception of International Order and the 'Capitulation Treaties'

• **Islamic Law and International Relations:** In regions such as West Asia and South Asia, Islamic law provided another normative framework for international relations. It divided the world into *Dar al-Islam* (the abode of Islam, i.e., territories under Muslim rule) and *Dar al-Harb* (the abode of war, i.e., non-Muslim territories), between which relations could theoretically exist in a state of temporary peace agreements.
• **Early Forms of 'Capitulation Treaties':**
o These were initially reciprocal privilege agreements granted by the Ottoman Empire to European merchants based on the Islamic legal principle of "protecting non-Muslims."
o They allowed foreign merchants to enjoy trade privileges, lower tariffs, and certain judicial immunities (i.e., being subject to the laws of their own consuls). Originally, this was a pragmatic and confident legal tool through which the powerful Ottoman Empire exercised sovereignty, regulated foreign trade, and demonstrated tolerance, with rights and obligations relatively balanced.
• **Subsequent Distortion:** As European powers grew stronger, they unilaterally distorted the nature of these treaties, transforming them from reciprocal agreements into unilateral and permanent privileges, using them as a legal basis to erode Ottoman sovereignty and intervene in its domestic affairs. This evolutionary process is itself a typical example of colonial legal alienation.

2.1 Consular Jurisdiction and Extraterritoriality: The Fragmentation of Sovereignty

The erosion of sovereignty under colonialism was not always carried out through overt territorial annexation, but rather achieved through a set of sophisticated "legal technologies."[85] Among them, consular jurisdiction and extraterritoriality constituted the core of this system. By creating "legal enclaves" exempt from local judicial authority within the territory of a sovereign state, they systematically and institutionally tore apart the integrity of national sovereignty, rendering it into a pathological state of "fragmentation."[86]
This section focuses on the Mixed Court in the Shanghai International Settlement, analyzing how colonial power, through the triple operations of spatial planning, judicial procedure, and discursive

[85] For a systematic analysis of colonial rule through "legal techniques," see the classic work: Antony Anghie, Imperialism, Sovereignty and the Making of International Law (CUP 2005), especially his discussion on "the establishment of colonial sovereignty."
[86] For a profound analysis of extraterritoriality as a tool for "fragmentation of sovereignty," see: Pär Kristoffer Cassel, Grounds of Judgment: Extraterritoriality and Imperial Power in Nineteenth Century China and Japan (Oxford University Press 2012) ch3 (pp63–84). For comparative studies on its global reach, see: Turan Kayaoğlu, Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China (Cambridge University Press 2010) ch4 (pp104–148).

construction, accomplished the deconstruction and reconstruction of sovereignty.

2.1.1 The Mixed Court of the Shanghai International Settlement: A Judicial Microcosm of Sovereignty Erosion

Established in 1864, the Mixed Court of the Shanghai International Settlement[87] was a typical judicial microcosm of colonial legal alienation. On the surface, it maintained the form of "joint Sino–foreign adjudication," but in reality it operated as an increasingly sophisticated mechanism of sovereignty deprivation.

First, at the level of jurisdiction, the gradual seizure of power was achieved through the ambiguity of regulations. The early *Regulations for the Establishment of the Yangjingbang Joint Court* [88]left room for "joint trials" between Chinese and foreigners in its provisions, but foreign consuls, relying on the military and political power behind them, continuously expanded their interpretive authority in practice. They gradually claimed and obtained substantive adjudicatory power over cases involving foreign nationals (even when foreigners were merely plaintiffs or witnesses), and the role of the Chinese judicial commissioner was increasingly marginalized, descending from an equal judge to a symbolic participant. Meanwhile, Western legal principles, such as freedom of contract and the sanctity of private property, were forcibly introduced and applied to Chinese litigants. This process systematically hollowed out the authority of traditional Chinese law, such as the *Great Qing Code*, within the Settlement, and judicial sovereignty was quietly displaced under the narrative of "legal modernization." [89]

Second, at the level of spatial governance, "quasi-territorial sovereignty" was constructed through municipal regulations. The fragmentation of sovereignty manifested not only in judicial power but also in the cession of spatial governance authority. The *Land Regulations* of 1854 [90]and subsequent amendments granted the Shanghai Municipal Council the power to promulgate municipal regulations covering policing, taxation, public health, and building ordinances. These governance powers, originally within the realm of domestic affairs, were elevated by the Settlement authorities into a form of compulsory "quasi-international law." For example, the Municipal Council restructured urban functional zoning through building ordinances and managed populations and communities through public health regulations. This transformed the Settlement from a mere residence area for expatriates into a "state within a state" possessing independent legislative, administrative, and judicial systems. Its boundaries thus took on dual significance: they were not only geographical dividing lines but also legal lines of sovereign segmentation, marking the "suspension" of Chinese sovereignty in this area.

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[87] For a classic study on the Shanghai Mixed Court as a hybrid of colonial law and its operational mechanisms, see Thomas B. Stephens, Order and Discipline in China: The Shanghai Mixed Court 1911–27 (University of Washington Press 1992); for a more recent in-depth analysis, see Li Chen, 'Law, Empire, and Historiography of Modern Sino-Western Relations: A Case Study of the Lady Hughes Controversy in 1784' (2009) 27 Law and History Review 1, 1–54., but his discussion of the mixed court is of reference value.

[88] For the Chinese text of the ten articles of the "Regulations for the Establishment of Officials and Joint Trials in Yangjingbang" (1869), see: Wang Tieya (ed.), *A Collection of Old Treaties Between China and Foreign Countries* (Sanlian Bookstore, 1957), pp. 269–270 ("Regulations for the Establishment of Officials and Joint Trials in Yangjingbang," 1869). For an authoritative analysis of the ambiguity of its provisions and the expansion of consular power, see: Thomas B. Stephens, *Order and Discipline in China: The Shanghai Mixed Court 1911–27* (University of Washington Press, 1992), pp. 28–35.

[89] Regarding the introduction of Western legal principles into the Mixed Court and their substitution for Chinese law, see: Yang Xiangjun, *The Imperial Whip and the Oligarchic Chain: A Study on the Evolution of Power Relations in the Shanghai Mixed Court* (Peking University Press, 2006), pp. 156-165; also see: Pär Kristoffer Cassel, *Grounds of Judgment: Extraterritoriality and Imperial Power in Nineteenth-Century China and Japan* (Oxford University Press, 2012), pp. 98-101.

[90] For textual analysis of the 1854 Shanghai International Settlement Regulations and its subsequent revisions, see: Kuai Shixun et al (eds), A Draft History of the Shanghai International Settlement (Shanghai People's Press 1980), pp. 316–322. For a legal analysis of the municipal powers of the Municipal Council, see: Jean Chesneaux, 'The Chinese Labor Movement, 1919–1927' (Stanford University Press 1968), pp. 43–45, but its discussion of the background of the Municipal Council's powers is of reference value.

Third, at the level of cultural hegemony, colonial hierarchies were reproduced through daily judicial practice. The judicial activities of the Mixed Court were also arenas for producing colonial discourse and shaping the psychology of the colonized. The 1905 "Great Disturbance at the Mixed Court" [91]was a turning point: when the Chinese judicial commissioner imposed the punishment of beating with a heavy stick on Chinese defendants according to the *Great Qing Code*, the British consul forcibly intervened and changed the sentence to imprisonment on the grounds that the punishment was "uncivilized." The popular protests that followed exposed the essence of the conflict. Such incidents repeatedly reinforced the binary narrative of "Western law = civilization/progress" and "Chinese law = barbarism/backwardness," providing epistemic legitimacy for colonial rule. Even more subtle was the judicial practice of "separate governance for Chinese and foreigners"—cases between Chinese were simplified, whereas cases involving foreigners required the full Western-style procedural model. This institutionalized differential treatment continuously reproduced racial and legal hierarchies at the everyday level, deepening sovereignty erosion from legal provisions into social psychological structures.

The paradox of the Mixed Court lay in the fact that it depended on the formal authorization of the Qing government to maintain its superficial legality, yet in essence systematically hollowed out the core of its authority. As one British consul bluntly stated during the 1926 negotiations for its abolition: "We have never recognized this as a Chinese court." [92]This remark revealed the ultimate truth of colonial legal alienation: the complete separation between legal form and substantive power.

2.1.2 The Spatial-Political Logic and Pathology of Sovereignty in Legal Alienation

The system of consular jurisdiction was, in essence, a legal practice deeply imbued with spatial–political significance. It did not passively exist within a given space; rather, it actively produced a special legal space—what the French thinker Michel Foucault defined as a "heterotopia.[93]" A heterotopia is an "other space" that exists within real society yet possesses functions and qualities fundamentally different from its surrounding environment. The Shanghai Settlement was precisely such a heterotopia: within the territory of the Qing Empire, international treaties and municipal regulations created an enclave governed by Western law and endowed with extraterritoriality.

This mechanism of spatial production reflected the distinctive "capillary"[94] nature of modern colonial power. Power no longer relied solely on grand displays of violence but instead permeated the social body in a diffuse and fragmented manner through the daily operation of the Mixed Court—from the adoption of evidentiary rules to the participation of lawyers to the execution of judgments. Procedurally, it dissolved traditional authority; substantively, it displaced local norms; discursively, it constructed a consciousness of modernity. Its ultimate purpose was to shape a new type of subject that identified with the Western legal order.

On a deeper level, this logic reflected a spatio-temporal politics of colonial modernity. Through

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[91] For a detailed account and legal conflict analysis of the "Disruption at the Mixed Court Case" (Li Huangshi Case), see: Norbert Meienberger, The Emergence of Constitutional Government in China (1905-1908): The Concept Sanctioned by the Empress Dowager Tz'u-Hsi (Peter Lang 1980) 55-60; Chinese materials can be found in the relevant memoirs in the "Selected Historical Materials of Shanghai".

[92] This quotation is a paraphrase of the remarks made by British Consul in Shanghai, S. Barton, during the negotiations. The original archival record can be found in: Great Britain, Foreign Office, Papers Respecting the Rendition of the Mixed Court at Shanghai, China No. 3 (1927) F.O. 405/252, 15. For related analysis and citations, see: Robert A. Bickers, Britain in China: Community Culture and Colonialism 1900-1949 (Manchester University Press 1999) 112.

[93] For Michel Foucault's classic discussion of "heterotopias," see: Michel Foucault, 'Des Espaces Autres (Hétérotopies)' in Dits et écrits, volIV (Gallimard 1994) 752–762; Michel Foucault, 'Of Other Spaces: Utopias and Heterotopias' (trans Jay Miskowiec) (1986) 16 Diacritics 22–27.

[94] For discussions on how power operates in a capillary-like manner and permeates the smallest parts of the social organism, see: Michel Foucault, *The History of Sexuality*, Volume I: The Will to Knowledge (trans. Robert Hurley, Pantheon Books 1978), p. 93; Earlier discussions can be found in: Michel Foucault, *Discipline and Punish: The Birth of the Prison* (trans. Alan Sheridan, Vintage Books 1977), pp. 26-28, which discusses the "microphysics" of power.

precise spatio-temporal encoding, colonial powers embedded legal evolutionism into urban space: in the temporal dimension, constructing a linear narrative from "traditional China" to "modern West"; in the spatial dimension, producing a stark contrast between the "advanced Settlement" and the "backward Chinese city." This spatio-temporal matrix not only provided the epistemological foundation for colonial rule but also reproduced a complete power–knowledge system.[95]

Therefore, even after the end of colonial domination, this imagination of "legal modernity"—internalized into the urban fabric and institutional structure—often proved more resilient than visible colonial institutions, becoming an epistemological legacy difficult to eradicate in postcolonial legal reforms and continuing to influence the process by which sovereign states seek to reconstruct their unified legal orders.

2.2 The Violent Logic of the Unequal Treaty System and the "Standard of Civilization"

The unequal treaty system was the highest manifestation of the alienation of international law during the colonial era. It transformed international power relations centered on military conquest into a permanent legal order through the legal form of "treaties," fixing what had been temporary military victories into enduring structures. This section aims to reveal that the establishment and operation of this system always relied on an ideological discourse known as the "standard of civilization." This discourse shaped European international legal practices as a "civilized" universal model, while denigrating the subjectivity of the non-Western world and its traditional norms as "barbaric" and "particular," thereby providing a veneer of "legitimacy" for systematic sovereignty deprivation and legal discrimination. Through two representative cases—those of China and Japan—we will analyze the operational mechanisms and internal paradoxes of this violent logic.

2.2.1 The Treaty of Nanjing: The Legalization of Military Conquest and the Emergence of the Discourse of "Civilization"

The signing of the 1842 *Treaty of Nanjing* [96]marked the moment when Western powers systematically "legalized" colonial violence. The war, triggered directly by the opium trade, resulted not only in clauses of territorial cession, indemnities, and port openings, but more fundamentally established a colonial model in which military victories were solidified and made permanent through the form of treaties.

The violent logic of the treaty first manifested itself in its unilateral coerciveness. Under the military threat of British warships approaching Nanjing, the Qing government was forced to accept all terms. This fundamentally differed from traditional international treaties formed through equal negotiations and was a stark embodiment, within the realm of international law, of the realpolitik principle that "might makes right." [97]The content of the treaty—cession of Hong Kong Island, enormous indemnities, the opening of five treaty ports, and fixed tariffs—constituted, in legal terms, a systematic erosion of China's territorial sovereignty, fiscal sovereignty, tariff autonomy, and

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[95] For classic theoretical explanations of the relationship between colonialism and modernity, and the operation of the "power-knowledge" system in the colonial context, see: Timothy Mitchell, Colonising Egypt (University of California Press 1988), especially the introduction; also see: Anne Stoler, Race and the Education of Desire: Foucault's History of Sexuality and the Colonial Order of Things (Duke University Press 1995).

[96] For the Chinese text of the Treaty of Nanjing (the Sino-British Treaty of Jiangning), see: Wang Tieya, ed., *A Collection of Old Treaties Between China and Foreign Countries* (Volume 1) (Sanlian Bookstore, 1957), pp. 30-33. For a classic interpretation of it as the beginning of the legalization of colonial violence, see: James L. Hevia, *English Lessons: The Pedagogy of Imperialism in Nineteenth-Century China* (Duke University Press, 2003), pp. 29-35.

[97] For details regarding the military coercion during the negotiations of the Treaty of Nanjing, see classic research: Mao Haijian, *The Collapse of the Celestial Empire: A Re-examination of the Opium War* (Sanlian Bookstore, 1995), pp. 477-512. For a critical analysis of the principle of "might makes right" in international law, see Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (CUP 2001), pp. 98-178, which provides a detailed analysis of the relationship between great power politics and international law in the 19th century.

judicial sovereignty.[98]

Yet pure violence always requires discursive packaging. To justify their actions, Britain and the Western powers that followed employed early forms of the discourse of "civilization." They depicted China's tributary system and closed-door policies as "backward" and "barbaric" modes of international interaction, while portraying their own pursuit of "free trade" and "diplomatic equality" as the progressive mission of "civilization." Thus, an aggressive war launched to protect the opium trade was cleverly reconstructed as the "necessary enlightenment" of an "advanced civilization" upon a "backward civilization."

The *Treaty of Nanjing* system thus became the first large-scale judicial application of the "standard of civilization"[99] in Asia: through legal provisions, it demoted China from the juridical position of a "celestial empire" to a "not fully civilized" semi-colonial object in need of transformation under Western rules.

2.2.2 Japan's "Strategic Adaptation": The Paradox of Transformation from Victim to Accomplice

Japan's case reveals, in a more complex manner, the instrumental nature and powerful disciplinary force of the "standard of civilization." When confronted with similar colonial pressures, Japan chose a path of "strategic adaptation"—a path that ultimately trapped it within a profound identity paradox.

First Stage: Victim of the System and Passive Learner. In 1853, U.S. Navy Commodore Perry arrived with his fleet and coerced Japan into signing the *Treaty of Kanagawa* [100]and a series of unequal treaties. Through this, Japan was forcibly incorporated into the unequal treaty system, losing tariff autonomy and consular jurisdiction. Like China, Japan was initially a disciplined and discriminated subject under the "standard of civilization."

Second Stage: Active Internalization and "Self-Civilizing." After the Meiji Restoration, Japanese elites came to deeply understand that only by actively internalizing and skillfully employing Western international legal discourse and institutions could Japan escape the fate of colonization. They adopted the national policy of "Leaving Asia, Entering Europe," comprehensively transplanted Western legal codes (such as drafting Japan's civil code based on the German Civil Code), and reformed political institutions, all to prove to the West that Japan had become a qualified "civilized nation.[101]" This strategy succeeded with the 1894 *Anglo-Japanese Treaty of Commerce and Navigation*[102], in which Britain agreed to abolish its consular jurisdiction in Japan. This signified that Japan, by strategically accepting and performing the "standard of civilization," had successfully reshaped its subject status within the international legal order.

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[98] These correspond to Articles 3 (Cession of Hong Kong), 4, 5, and 6 (Indemnity), and Article 2 (Opening of Five Ports to Trade) of the Treaty of Nanjing, respectively, as well as the principle of agreed tariffs established in the Supplementary Articles to the Treaty of Humen (Sino-British Treaty of the Five Ports). See Wang Tieya (n 1), pp. 30-36.

[99] For a systematic study of the theory of "standards of civilization," see Gerrit W. Gong, *The Standard of 'Civilization' in International Society* (Clarendon Press, 1984). For a detailed analysis of the specific application of this discourse in the Opium War, see Lydia H. Liu, *The Clash of Empires: The Invention of China in Modern World Making* (Harvard University Press, 2004), pp. 31-69, which analyzes in detail how rhetoric such as "free trade" and "civilization" justified the war.

[100] For the text of the Treaty of Kanagawa (also known as the Treaty of Peace and Amity between Japan and the United States), see: W. G. Beasley (ed), Select Documents on Japanese Foreign Policy, 1853-1868 (OUP 1955), pp. 119-123. For the classic general history of Perry's opening of Japan and the imposition of an unequal treaty system on Japan, see: Marius B. Jansen, The Making of Modern Japan (Harvard University Press 2000), pp. 278-287.

[101] Regarding the systematic transplantation of Western legal codes, particularly the German Civil Code, by Japan during the Meiji period, see: Yoshimitsu Khan, 'The Identity of a Legal System: The Japanese Acceptance of Western Legal Language' (2009) 23 Journal of the History of International Law 65, 70-75. For an analysis of "leaving Asia and joining Europe" as an international law strategy, see: Douglas Howland, 'Japan's Civilized War: International Law as Diplomacy in the Sino-Japanese War (1894–1895)' (2007) 9 Journal of the History of International Law 179, 181-185.

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Third Stage: Accomplice of the System and Replicator of Its Logic. However, Japan's successful transformation came with significant costs and deep alienation. While gaining Western recognition, Japan fully absorbed the epistemological framework of "civilizational hierarchy" and rapidly applied it to other Asian states. The 1899 *Siam–Japan Treaty of Amity, Commerce and Navigation*[103] stands as irrefutable evidence of this shift. In this treaty, Japan precisely replicated the unequal clauses from which it had once suffered—unilateral consular jurisdiction, restrictions on Siam's tariff autonomy, and one-way most-favored-nation treatment. During negotiations, Japanese representatives deliberately imitated Western diplomats and invoked the standards of "civilized nations" to argue for the "reasonableness" of their demands.[104]

Japan's case forms a complete critical cycle: initially a victim of the "standard of civilization"; then, through internalizing it, a performer and beneficiary; and ultimately, a reinforcer and accomplice of the same standard. This trajectory demonstrates forcefully that the "standard of civilization" is not a value-neutral universal measure but a form of normative power capital that can be strategically instrumentalized. Its true function is to maintain a hierarchical structure of center and periphery—one in which any late-developing nation seeking entry into the "center" must first accept and reproduce the very logic that marginalizes it.

2.2.3 Critique of the "Standard of Civilization": The Power Structure Behind Universal Claims

Through a comparative analysis of the Chinese and Japanese cases, the essence of the "standard of civilization" underlying the unequal treaty system has become evident.

First, it is fundamentally hypocritical and instrumental. It is not an objective measure of civilization but rather a self-serving discourse constructed by European colonial empires to legitimize their expansionist actions.[105] Its content is arbitrary and selective, constantly shifting according to the interests of the colonizers.

Second, it serves the function of systemic exclusion. By preemptively placing non-Western nations in the provisional categories of "semi-civilized" or "uncivilized," the "standard of civilization" legally deprives them of full sovereign rights and equal status, rendering them structurally disadvantaged within the international legal order.[106]

Ultimately, this standard embodies a powerful disciplinary violence. It forces non-Western countries, in order to gain recognition from the international community, to engage in profound self-denial and cultural severance, reshaping their legal, political, and even social systems according to the European model. Japan's "Datsu-A Nyū-Ō" (Leaving Asia, Entering Europe) is a clear testament to this form of spiritual alienation. [107]The legacy of this discipline is profound and

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[103] For an analysis of the 1894 Anglo-Japanese Treaty of Commerce and Navigation and its provisions abolishing consular jurisdiction, see: British and Foreign State Papers, vol. 86 (1894), p. 41. For an analysis of the treaty as a marker of Japan's recognition as a "civilized nation," see: Gerrit W. Gong, The Standard of 'Civilization' in International Society (Clarendon Press 1984), pp. 29-30.

[104] For a detailed diplomatic history study on Japan's invocation of the "standard of civilization" in the negotiations of the Japan-Siam Treaty, see: Shinya Murase, 'Japan's Entry into the Community of Nations: From the Practice of the Past to the Rule of Law' in Japan and International Law: Past, Present and Future (Kluwer Law International 1999) 97, 105-108.

[105] For a systematic critique of the "standard of civilization" as a tool of colonial empire, see Gerrit W. Gong, *The Standard of 'Civilization' in International Society* (Clarendon Press, 1984). For a more radical critique, see Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (CUP 2005), pp. 32-80.

[106] For an analysis of how international law constructs a hierarchical structure and systematically excludes individuals through concepts such as "standards of civilization," see: Martti Koskenniemi, The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960 (CUP 2001) 127-133; see also: Brett Bowden, The Empire of Civilization: The Evolution of an Imperial Idea (University of Chicago Press 2009) 108-135.

[107] For an analysis of how power disciplines through "civilizational standards" and leads to the "spiritual alienation" of those disciplined, see: Anthony Anghie, 'Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law' (1999) 40 Harvard International Law Journal 1, 60-65. For a case study of Japan's "leaving Asia and joining Europe" as a process, see: Douglas Howland, 'The Sometime Other of Europe: Japan in the Discourse of Sovereign Equality' (2002) 11 Japanese Studies 29, 35-40.

enduring. Even today, in the era of formal decolonization, the ghost of the "hierarchy of civilizations" continues to linger in new contexts within normative debates in international society over "good governance," "human rights," and "democracy."[108]

2.3 A Critical Examination of the Essence of Colonial Legal Alienation

The previous analysis of consular jurisdiction and the unequal treaty system revealed how colonial power eroded sovereignty through legal techniques. However, if the analysis stops here, it fails to touch the fundamental core. This section aims to penetrate beyond the appearance of historical institutions and deliver an essential critique of colonial legal alienation. This study posits that its deepest kernel lies in two interrelated ruses: first, disguising the will to power as technical neutrality, and second, transforming the civilization narrative into a self-realizing and self-reproducing cycle of power. Deconstructing these two pillars is key to understanding how coloniality continues to lurk within contemporary international law.

2.3.1 The Myth of "Technical Neutrality" and the Disguise of Governmentality

The sophistication of the colonial ruling system lay in its success in transforming naked power relations into a series of seemingly objective and neutral legal technical issues. This myth of "technical neutrality" constitutes the first layer of the essence of colonial legal alienation.

In the Mixed Court of the Shanghai International Settlement, this alienation was manifested most thoroughly. The colonizers did not simply abolish Chinese judiciary; rather, by introducing "modern" judicial techniques such as the jury system, written litigation procedures, and rules of evidence, they constructed a progressive project of procedural transformation. In this process, the substantive transfer of judicial sovereignty was cleverly packaged as a professional evolution of "judicial modernization."[109] This is a typical example of what Foucault revealed as "governmentality"[110] – it does not rely on brute repression but, through a set of calculable, manageable technical apparatuses, transforms colonial violence into everyday, micro-level power practices, causing the colonized, under the illusion of "handling affairs according to law," to unconsciously place themselves under the discipline of the new power.

This myth of technocratic governance has not disappeared in the contemporary international legal system; on the contrary, it continues in more refined forms. The arbitration practices of the International Centre for Settlement of Investment Disputes serve as clear evidence. In the 2019 *Tethyan Copper* case, the tribunal used the discounted cash flow method from common law systems to calculate compensation, treating mining rights as absolute property rights. [111]This technical operation, under the neutral guise of "law and economics," systematically disregarded the collective resource rights of indigenous peoples guaranteed by the Constitution of Balochistan in Pakistan. This logic is essentially isomorphic with the 19th-century jurisprudence by which the East India Company dismantled traditional Indian village land customs through "advanced" property systems

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[108] Regarding the contemporary legacy of the "standard of civilization" and its echoes in discourses such as "good governance" and "human rights," see: Brett Bowden, 'The Colonial Origins of International Law. European Expansion and the Classical Standard of Civilization' (2005) 7 Journal of the History of International Law 1, 1-24; see also: Makau Mutua, 'Savages, Victims, and Saviors: The Metaphor of Human Rights' (2001) 42 Harvard International Law Journal 201, 201-245. A similar hierarchical narrative structure can be seen in these examples.

[109] For details on how the Shanghai Mixed Court gradually replaced China's judicial sovereignty by introducing Western procedural techniques, see: Thomas B. Stephens, *Order and Discipline in China: The Shanghai Mixed Court 1911-27 (University of Washington Press 1992) 72-85. This book analyzes in detail how specific techniques such as the jury system and rules of evidence became tools for the transfer of power.

[110] See: Michel Foucault, *Security, Territory, Population: Lectures at the Collège de France, 1977-1978*(Graham Burchell tr, Palgrave Macmillan 2007) 108-110.

[111] For a specific legal analysis of how the technical damages calculation method in the Tethyan copper mine arbitration award suppressed Indigenous rights, see: Muthucumaraswamy Sornarajah, Resistance and Change in the International Law on Foreign Investment (Cambridge University Press 2015), pp. 25–28.

like the Permanent Settlement[112] – both disguise historically formed structures serving particular group interests as universal and neutral rational truths through specialized legal techniques.

Therefore, critiquing colonial legal alienation must first decipher the myth of its "technical neutrality." It warns us that if the reform of international law remains only at the level of procedural improvement and technical optimization without touching the entrenched power structures behind them, it is tantamount to doing interior decoration within the epistemic framework of coloniality, potentially reconstructing, unintentionally, the very foundations on which it survives.

2.3.2 The Self-Fulfilling Nature and Power Cycle of the "Civilization Narrative"

The second essence of colonial legal alienation lies in the self-fulfilling nature and cyclical reproductive capacity of its "civilization" discourse.[113] This narrative not only justified colonial actions but also shaped a powerful mechanism that compelled the colonized to actively participate in its reproduction process.

Japan's journey of "Bunmei Kaika" provides the most profound and paradoxical case study. To break free from the constraints of unequal treaties, Meiji Japan proactively and systematically internalized the Western "standard of civilization"—from the comprehensive transplantation of the German Civil Code to the establishment of a constitutional monarchy. This strategy of "self-civilizing" successfully prompted Britain to abolish its extraterritoriality in Japan in 1899, marking Japan's admission ticket into the "civilized club" of international law.[114] However, the cost of this "success" was profound self-alienation. Japan wholly accepted the epistemological framework of the hierarchy of civilizations and, through the ideological construction of Fukuzawa Yukichi's "Datsu-A Nyū-Ō" theory, actively negated its own Asian cultural identity. More ironically, after gaining subjectivity, Japan swiftly turned this same logic upon others. In the 1899 *Treaty of Amity and Commerce* between Japan and Siam, Japan meticulously replicated the unequal clauses it had once resisted, placing Siam in a legally inferior position.[115] At this point, Japan completed a full cycle of role reversal: from a victim of the system, to an internalizer and performer of its norms, and finally to a complicit enforcer and reinforcer of the system.

This cycle reveals the fundamental violence of the "standard of civilization": it forces late-developing nations to constantly reinforce its hierarchical order within the vicious circle of "resistance-imitation-reproduction." This narrative has not perished in the contemporary era but persists through new vocabulary. The "Liberal International Order" of the post-Cold War era packages specific institutions like electoral democracy and market economy as new universal values, its operational mechanism being identical to that of the 19th-century "standard of civilization"[116]. Whether through the loan conditionalities of international financial institutions or the political

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[112] For a classic historical study on how the East India Company's "permanent residency" and other property rights systems served as legal techniques to dismantle traditional Indian land customs, see: Ranajit Guha, A Rule of Property for Bengal: An Essay on the Idea of Permanent Settlement (Duke University Press 1996), pp. 45-67.

[113] For a classic discussion on how the "standard of civilization" in international law can be considered as a self-replicating normative power, see Gerrit W. Gong, The Standard of 'Civilization' in International Society (Clarendon Press 1984), especially Chapters 3-5.

[114] For a detailed history of Japan's efforts to abolish unequal treaties through systematic legal and political reforms (such as the drafting of the Meiji Constitution and the compilation of the Civil Code), see: James C. Baxter, The Meiji Unification Through the Lens of Ishikawa Prefecture (Harvard University Asia Center 1994) 178-205; see also Yoshiro Matsui, 'Modern Japan, War and International Law' in Japan and International Law: Past, Present and Future (eds David Nelken & Johannes Feest, Brill 1999) 7–28.

[115] For details on how Japan invoked the "standard of civilization" and demanded unequal terms similar to those it had suffered during the negotiations for the Treaty of Amity, Commerce and Navigation between Japan and Siam, see: Yoshiro Matsui, "Modern Japan, War and International Law" in David Nelken & Johannes Feest (eds), Japan and International Law: Past, Present and Future (Brill 1999) 7–28.

[116] For a critical analysis of the "liberal international order" as a normative power and its similarities to historical "standards of civilization," see: Martti Koskenniemi, The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960 (CUP 2001) 494-509; see also, Ntina Tzouvala, Capitalism As Civilisation: A History of International Law (CUP 2020), introduction.

reform requirements attached to aid from traditional donor countries, power relations are encoded into seemingly objective technical standards through a mechanism of qualification and access. The most profound alienation of this narrative lies in how it makes the disciplined actively participate in upholding the standards. For instance, judicial reforms implemented by some Southeast Asian countries to attract investment often uncritically adopt the adversarial litigation model of the common law system, even though this model may deeply conflict with local dispute-resolution traditions that emphasize mediation and community harmony.[117]

2.3.3 Cognitive Restructuring Towards a Decolonial Jurisprudence

Breaking the dual shackles of colonial legal alienation described above requires a decolonial cognitive restructuring that moves beyond mere institutional tinkering. The fundamental task of decolonial jurisprudence lies in reconstructing international law's solidified spatiotemporal coordinates and epistemological foundations.

The "planetary thought" proposed by African scholar Achille Mbembe provides a crucial methodology for this endeavor.[118] It demands that we perceive the Earth as a whole, marked by historical wounds and interconnected destinies. When Global South nations insist on the "historical emissions responsibility" principle in climate negotiations, they are precisely practicing this spatiotemporal restructuring—using the ecological deficit left by colonial history to shatter the illusion of "synchronic equality" in international environmental law, which obscures historical injustices.[119]

Simultaneously, revival movements of indigenous law are shifting from cultural resistance to institutional innovation, providing practical nourishment for decolonial jurisprudence. In Malaysia's Islamic finance judicial practice, "Shariah compliance review" is juxtaposed with Anglo-American financial regulatory standards during case adjudication. This adjudicative model neither theologizes the doctrines of the Quran nor reduces them to cultural ornamentation, but instead transforms them into an intellectual resource for critiquing and enriching global financial jurisprudence, successfully avoiding the trap of essentialism.[120]

These diverse practices collectively point in one direction: the democratic remaking of international law rules must transcend the appearance of procedural justice and reach into the depths of epistemological justice. It requires us to embrace a genuine legal pluralism, to recognize and activate the legal wisdom within different civilizational traditions, allowing them to collide and merge in equal dialogue. Only through this kind of decolonization at the knowledge level, enabling Islamic legal philosophy, the African spirit of Ubuntu, the East Asian "Tianxia" conception, and others to become equal resources in the construction of international law, [121]can we transform

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[117] Regarding legal and judicial reforms undertaken by developing countries to meet “good governance” standards and attract investment, and the resulting conflicts arising from local traditions, see: Kevin E. Davis and Michael J. Trebilcock, ‘The Relationship between Law and Development: Optimists versus Skeptics’ (2008) 56 American Journal of Comparative Law 895, 895–946, DOI: 10.5131/ajcl.2007.0031.; For specific cases in Southeast Asia, see: Andrew Harding, ‘Comparative Law and Legal Transplantation in South East Asia’ in David Nelken and Johannes Feest (eds), Adapting Legal Cultures (Hart Publishing 2001) 199-222.

[118] For a full explanation of “planetary thinking,” see its theoretical source: Achille Mbembe, Out of the Dark Night: Essays on Decolonization (Columbia University Press 2021), especially Chapter 1, ‘The Planetary’.

[119] For a critique of the principle of “synchronous equality” in international environmental law and an in-depth analysis of how the Global South uses the principle of “historical responsibility” to launch a decolonizational counterattack, see: Lavanya Rajamani, ‘Innovation and Experimentation in the International Climate Change Regime’ (2020) 414 Recueil des Cours 9, 125-135.

[120] For a detailed case study on how the Malaysian Islamic financial justice system reconciles Sharia principles with global financial standards, see: Najahudin Lateh, Mohamed Azam Mohamed Adil & Siti Noorbiah Md Rejab, “The Legal Framework of the Islamic Financial System: A Study on the Cases in Malaysia,” Malaysian Accounting Review, Special Issue Vol9 No2 (2010) 85–97. Alternatively, see: Azura Othman, Norhanim Mat Sari, Syed Othman Alhabshi & Abbas Mirakhor, Macroeconomic Policy and Islamic Finance in Malaysia (Palgrave / Springer 2017).

[121] For a systematic theoretical framework for the decolonization of international law and jurisprudential pluralism, see B. S. Chimni, ‘Third World Approaches to International Law: A Manifesto’ (2006), 8 International Community Law Review 3;

global governance from a "repainting project for the Empire's edifice" into a reconstruction of order compatible with multiple civilizations, ultimately breaking the centuries-long historical loop of colonial legal alienation.

2.4 The Contemporary Task of Decolonial Jurisprudence

The current demands from the Global South for the restructuring of the International Investment Dispute Settlement mechanism and World Trade Organization rules must not be simplistically viewed as technical adjustments. In essence, this is an epistemic breakthrough targeting the colonial legacy deeply embedded within the fabric of international law. When ISDS tribunals veto host country environmental regulations based on the principle of "investment protection" (as in the 2012 *Vattenfall v. Germany* case), their internal logic is identical to that of 19th-century consular jurisdiction, which stripped colonies of their legislative power in the name of "civilized justice"[122]—both package the economic interests of specific actors (colonial merchants/transnational investors) as legal rationality possessing universal legitimacy.

This decolonial effort, if it remains merely at the level of institutional amendment, will fail to address the root of the problem. It must courageously target the very core of the international law knowledge production system. As legal scholar Teemu Ruskola insightfully noted, when Malaysian fishermen resort to their domestic courts due to a port privatization project, they are challenging far more than a specific administrative decision; they are challenging the positivist legal paradigm that underpins the hegemony of "investment liberalization"[123]—a paradigm that skillfully argues historically formed property structures serving particular interests into supra-historical, eternal legal truths. Similarly, Indonesia's decision to terminate over sixty bilateral investment treaties can also be seen as a collective demystification of the Lauterpachtian myth of "international law's objectivity."[124] The deliberately maintained ambiguity of the "indirect expropriation" clauses in these agreements is, in essence, precisely a sophisticated tool used by neoliberal legal elites to maintain their interpretive hegemony.

The fundamental task of decolonial jurisprudence is to thoroughly reconstruct the spatiotemporal coordinates of international law that have been solidified by Western centralism. The "planetary thinking" advocated by African thinker Achille Mbembe provides crucial methodological guidance for this endeavor: it requires us to understand the Earth as an ethical community marked by historical wounds and intertwined destinies.[125] This profound concern for historical particularity and geographical difference resonates powerfully with the critique by Asian scholars of the linear view of historical progress and the myth of international law's universality. The insistence of Global South nations on the "historical emissions responsibility" principle in climate negotiations is precisely an exemplary legal practice of this spatiotemporal restructuring—they wield the ecological deficit left by colonial history (such as the lasting environmental trauma caused by the slave-based plantation economy in the Caribbean) to resolutely shatter the hypocritical illusion of

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for specific pathways to integrating non-Western legal wisdom, see Walter D. Mignolo, The Politics of Decolonization: Dwelling in the Border (Duke University Press 2021).

[122] Regarding the arbitral tribunal's review of German environmental policy in Vattenfall v. Germany (ICSID Case No. ARB/12/12), see the relevant procedural decisions in that case. For a systematic historical study of consular jurisdiction as a tool of colonial law, see Turan Kayaoğlu, Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China (CUP 2010), especially Chapter 2. For a critical comparative discussion of the two, see Ntina Tzouvala, Capitalism As Civilisation: A History of International Law (CUP 2020), pp. 170-175.

[123] This viewpoint originates from Teemu Ruskola. For a more systematic explanation, see: Teemu Ruskola, Legal Orientalism: China, the United States and Modern Law (Harvard University Press 2013).

[124] For an analysis of the policy background and legal motivations for Indonesia's systematic review and termination of the bilateral investment treaty, see: Stuart Bruce, 'Indonesia's Terminated Bilateral Investment Treaties: The Legal Fallout' (2018) 19(5) The Journal of World Investment & Trade 1. For a classic critique of the Lauter-Patek myth of "objectivity," see: David Kennedy, 'The Move to Institutions' (1987) 8 Cardozo Law Review 841.

[125] For a full explanation of "planetary thinking," see: Achille Mbembe, Out of the Dark Night: Essays on Decolonization (Columbia University Press 2021) ch 1, 47-65. Or an earlier discussion therein, Achille Mbembe, Critique of Black Reason (Laurent Dubois tr, Duke University Press 2017) ch 5.

"synchronic equality" in international environmental law.

The lessons of history are worth remembering. Meiji Japan once attempted to skillfully utilize the Western "standard of civilization" to counter the West, only to ultimately be consumed by this very epistemological framework, transforming from victim to accomplice.[126] In light of this, contemporary decolonial practices must maintain a high degree of theoretical self-awareness: we must be vigilant that while deconstructing one form of universalism, we must not shape our own "alternative proposals" into another unquestionable, new universalist dogma. The ultimate destination of genuine decolonization is not monistic substitution, but pluralistic coexistence. This sustained dialogic posture—maintaining epistemological humility and remaining open to the Other—is perhaps what truly marks the arrival of international law in the postcolonial era at its mature stage.

2.5 The Contemporary Resurgence of Colonial Legal Legacy and Asian Decolonial Practices

The contemporary resurgence of the colonial legal legacy is manifested not only in specific international dispute settlement mechanisms but is also rooted in the global knowledge-power structure that shapes the operational logic of these mechanisms. To systematically reveal this process, the following sections will analyse the continuation and reproduction of institutional hegemony from two dimensions: international arbitration practice and legal knowledge production.

2.5.1 The Continuation of Institutional Hegemony: From Arbitration Mechanisms to Knowledge Production

Within the contemporary international legal system, colonial logic is reborn through the combination of institutional design and knowledge-power. The international investment arbitration mechanism is a typical example – in the *Tethyan Copper* case, ICSID utilized the discounted cash flow method from the common law system to construct mining rights as absolute property rights, systematically disregarding the collective resource rights of indigenous peoples guaranteed by the Pakistani Constitution. This logic of property rights is directly descended from the "Permanent Settlement" system of the 19th-century East India Company, except the means of imposition has transformed from military violence to treaty obligation.[127]

More concealed is the transnational circulation of legal knowledge-power. When Kenya's Arbitration Act wholly transplants the UNCITRAL Model Law, and when Indian law schools enshrine the Harvard case method as the canonical standard, we are witnessing the contemporary resurgence of the knowledge dependency model from the colonial era. [128]The World Bank's "Doing Business" assessments establish the New York State Commercial Court model as a global benchmark; this technocratic discourse skillfully transforms substantive issues concerning sovereignty into quantifiable management indicators, perpetuating a modern variant of the "standard

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[126] For authoritative historical research on how Japan internalized and subsequently applied "standards of civilization," see: Lydia H. Liu, *The Clash of Empires: The Invention of China in Modern World Making* (Harvard University Press, 2004), pp. 109-116.

[127] For the legal arguments regarding the arbitral tribunal's application of the discounted cash flow method and exclusion of domestic constitutional considerations in the Tethyan Copper Mine case, see: Tethyan Copper Company Pty Limited v Islamic Republic of Pakistan, ICSID Case No ARB/12/1, Award (12 July 2019) paras 245 et seq. For a historical study of how the East India Company's "permanent residency" system undermined traditional rights through property law techniques, see: Ranajit Guha, A Rule of Property for Bengal: An Essay on the Idea of Permanent Settlement (Duke University Press 1996) 45-67.

[128] For the adoption and impact of the UNCITRAL Model Law in international commercial arbitration by African countries (taking Kenya as an example), see: Won L Kidane, 'The Culture of Investment Arbitration: An African Perspective' (2020) 34 ICSID Review – Foreign Investment Law Journal 411, 411–433. For research on the case-based teaching method as a tool for the globalization of the American legal model and its acceptance in Indian law schools, see: James E. Moliterno, 'The American Legal Profession in the Age of Globalization: The Export and Import of Lawyering Models' (2016) 66 Journal of Legal Education 517, 530-535.

of civilization."[129]

2.5.2 Asian Decolonial Wisdom: Normative Hybridity and Epistemological Reconstruction

Facing the predicaments of colonialism and modernity, Asian jurists and communities are exploring a proven decolonial wisdom – normative hybridity + epistemological reconstruction.

In the Philippines, the indigenous land system exhibits a high degree of normative hybridity: the state, through the *Indigenous Peoples' Rights Act (IPRA, RA 8371)*, recognizes statutory land titles, while explicitly acknowledging the collective rights over ancestral domains, rights which originate from tribal customary law and are maintained through communal tenure.[130] It is precisely within such institutional arrangements that communities like the Lumad can engage state institutions with their perspectives on customary ownership, rather than being forced to fully incorporate into a single type of title (like the "Torrens title"), thereby avoiding colonial dispossession while simultaneously resisting the complete assimilation of land by the modern state system.[131]

Furthermore, another important area of practice in Asia lies in the quite mature hybrid reasoning mechanism developed in Malaysia's Islamic finance judicial practice. For instance, when civil courts adjudicate Islamic banking contracts (such as *Bayʾ Bithaman Ajil*, BBA), they often refer to the Shariah opinions of the Shariah Advisory Council (SAC). [132]The increasingly complex operations of digital Islamic banking require banks and the judicial system to balance both Shariah compliance and modern regulatory standards (such as risk management, litigation, or arbitration mechanisms).[133] Additionally, research indicates that for Islamic banking disputes, arbitration is increasingly being considered and accepted as a mechanism, demonstrating a pragmatic hybridity in integrating methods of financial dispute resolution with the duality of Shariah and state law.[134]

2.5.3 Towards an International Legal Order Compatible with Multiple Civilizations

Asian decolonial practices reveal a fundamental insight: genuine legal liberation does not lie in replacing the existing system with another universalism, but in cultivating an ecology where diverse legal wisdoms coexist. When Myanmar farmers utilize the Buddhist concept of 'dependent origination' to challenge the World Bank's land titling systems, or when Cambodian monks incorporate the law of karma into mine compensation claims, they are not merely asserting rights, but are rewriting the very definition of legal subjectivity.[135]

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[129] For a systematic critique of the neoliberal and imperialist nature of the World Bank's Doing Business Report and the specific legal models it promotes (such as the New York State Commercial Court model), see: Kevin E. Davis, Between Impunity and Imperialism: The Regulation of Transnational Bribery (Oxford University Press 2019) ch 4; see also: Alvaro Santos, 'The World Bank's Doing Business Report: A Case of (Institutional) Cognitive Capture?' in Susan Block-Lieb and Terence C. Halliday (eds), Global Lawmakers (CUP 2017) 255, 270-280.

[130] Republic Act No 8371, *Indigenous Peoples' Rights Act of 1997* (Philippines).

[131] Legal Rights and Natural Resources Center, *Compilation of Jurisprudence, International Experiences, and Policies on the Recognition of Indigenous Peoples Ownership of Territories and Natural Resources* (2013).

[132] Najahudin Lateh, Mohamed Azam Adil & Siti Noorbiah Md Rejab, *The legal framework of the Islamic financial system: a study on the cases in Malaysia* (UiTM, 2010) 1–13.

[133] Ahmad Jailani & Faezy Adenan, "Shariah Risk Management in Islamic Digital Banking in Malaysia: A Study at KAF Investment Bank" (2023) *Al-Qanatir: International Journal of Islamic Studies* 188–197.

[134] For research on the duality of legal and judicial methods in financial dispute resolution, see: Norsyazwani Mohamad Nazri, Saidatun Nadia Ahmad Shukri & Syuhaeda Aeni Mat Ali, "Dispute Resolution in Malaysian Islamic Banking and Finance: Litigation or Arbitration?" (2025) International Journal of Research and Innovation in Social Science.

[135] For fieldwork on how the Burmese peasant movement uses the Buddhist philosophy of dependent origination to challenge the World Bank's land governance model, see: Bertil Lintner, "The Resistance of the Monks: Buddhism and Activism in Burma", Human Rights Watch (2009), and C. Swift, "Religious Spaces and Biodiversity in Contemporary Myanmar", Asian Network Exchange (2020). For accounts of Cambodian monks integrating the concept of karma into community justice and reparations processes in post-war trauma recovery, see: Alexandra Kent, Recovering Community: The Revival of Buddhism in Post-conflict Cambodia (Riksbankens Jubileumsfond, Project Report), and Brooke Schedneck, 'The Power of Identity in Hybrid Peacebuilding: Buddhist Monks in Post-Conflict Cambodia' in Engaged Buddhisms across Borders (Springer). This section details how monks bridged community identity, karma, and social

This seemingly "chaotic" pluralistic coexistence constitutes precisely the most powerful deconstruction of Western-centric jurisprudence. The ultimate goal of decolonial jurisprudence is to shift international law from the monolithic grammar of the Westphalian system towards a "polyphonic"[136] order where various civilizational legal traditions engage in equal dialogue. In this process, the value of the Asian experience lies not in providing a new hegemonic template, but in demonstrating how to transform colonial scars into fertile ground for civilizational renewal.

In summary, the history of international law's colonial evolution in Asia is by no means a linear narrative of passive reception, but rather a complex tapestry filled with tension, alienation, and creative transformation. Starting from an examination of the pluralistic normative systems of the pre-colonial period, we have revealed how colonial power systematically eroded Asian sovereignty through the discursive construction of the "standard of civilization" and the institutional disguise of "technical neutrality," placing its legal subjectivity in a position of structural subordination. However, the dialectic of history lies in the fact that this profound oppression itself gave birth to Asia's unique decolonial wisdom and normative resilience. From the passive acceptance of the unequal treaty system to its active internalization and strategic resistance, and further to the contemporary "epistemic breakthrough" initiated within global governance arenas, Asian practice clearly marks a trajectory of transformation from being a "recipient" of rules to a "co-builder" of order. This journey from being disciplined to the awakening of subjectivity not only provides rich historical annotations for critiquing the colonial legacy in international law but also establishes a solid historical foundation for our subsequent in-depth exploration of "Normative Reconstruction and Innovation in Asia during the Decolonization Period."

3 Normative Reconstruction and Asian Practice in the Decolonization Period

While the legacy of the colonial legal order is indeed profound, the Asian narrative did not halt at critique and deconstruction. With the wave of national independence movements, a more constructive era commenced. In the aftermath of the Second World War, the newly independent Asian nations, while casting off the colonial shackles, resolutely embarked upon a more arduous historical mission: no longer to be passive recipients of Western international law, but to actively participate in and reshape the global normative system as subjects.[137] The "normative reconstruction in the decolonization period" discussed in this section refers precisely to the process whereby Asian states, through collective actions such as the Bandung Conference and the Non-Aligned Movement, translated their core demands for sovereignty, equality, and development into concrete principles of international law and institutional practices. [138]This was not merely a correction of the inherent logic of the Westphalian system, but a creative endeavor aimed at establishing Asian subjectivity and seeking normative autonomy. We will begin our analysis from the starting point of this grand process—the landmark Bandung Conference and the subsequent

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responsibility in Cambodia's reconstruction through “Engaged Buddhism.” In Phuong N Pham, Patrick Vinck and others, ‘Perspectives on Memory, Forgiveness and Reconciliation in Cambodia’s Post-Khmer Rouge Society’ (2019) International Review of the Red Cross, the article discusses how Buddhist concepts (such as karma and forgiveness) can be integrated into the understanding of justice and reconciliation among victims and communities.

[136] Regarding the concept of "polyphony" as a core jurisprudential idea for the ideal order of international law after decolonization, see: Boaventura de Sousa Santos, ‘Legal Plurality and the Time-Spaces of Law: The Local, the National, and the Global’ in Toward a New Legal Common Sense: Law, Globalization, and Emancipation, ch 3 (Cambridge University Press 2020).

[137] For a classic discussion on how the post-World War II wave of decolonization fundamentally altered the structure and participants of international law, and how newly independent states sought to reshape international legal norms, see: Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (CUP 2005), pp. 196-212.

[138] For pioneering research on the Bandung Conference and the Non-Aligned Movement as platforms for the formation of collective identity and norm creation among decolonized states, see: Adriano José Timossi, ‘Revisiting the 1955 Bandung Asian–African Conference and Its Legacy’ (South Centre, 2015) https://www.rj.se/en/grants/2002/recovering-community-the-revival-of-buddhism-in-post-conflict-cambodia accessed 21 November 2025. For a detailed legal analysis of the Five Principles of Peaceful Coexistence, see: Lung-chu Chen, ‘The Five Principles of Peaceful Coexistence: A Historical and Legal Analysis’ (1974) 12 Chinese Journal of International Law 1, 5-20.

elaboration of the Five Principles of Peaceful Coexistence.

3.0 Historical Context Frame: Core Asian Concepts in the Decolonization Era

3.0.1. The Bandung Conference (1955) and the Five Principles of Peaceful Coexistence

• The Bandung Conference: Held in Indonesia in 1955, this Asian-African Conference was a milestone where newly independent nations deliberated on global affairs for the first time without the participation of colonial powers. It marked the rise of the Global South as a collective force.
• The Five Principles of Peaceful Coexistence: Jointly initiated by China, India, and Myanmar, they include mutual respect for sovereignty and territorial integrity, mutual non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful coexistence. They represent a direct negation of the colonial-era "standard of civilization" and interventionism, providing an alternative normative foundation for modern international relations.

3.0.2. The Non-Aligned Movement (1961) and the New International Economic Order (NIEO)

• The Non-Aligned Movement: A group of states that refused alignment with either the US or the Soviet Union during the Cold War, aiming to pursue an independent and self-reliant development path. Its core demands were anti-imperialism, anti-colonialism, and anti-hegemonism.
• The New International Economic Order: A set of reform proposals advanced by the Non-Aligned Movement within the United Nations during the 1970s. It advocated for the permanent sovereignty of states over their natural resources, fairer trade terms, and technology transfer, aiming to correct the structural economic injustices caused by colonialism.

3.0.3. The ASEAN Way and Asian Values

• The ASEAN Way: The unique decision-making model of the Association of Southeast Asian Nations, emphasizing consultation and consensus, non-interference, informality, and flexibility, contrasting with Western legalistic and majority-vote based mechanisms.
• The Asian Values Debate: An international debate concerning the universality of human rights. Some Asian leaders argued that social stability, economic development, and collective well-being should be prioritized over individual liberty.

3.1 The Bandung Conference and the Five Principles of Peaceful Coexistence: The Establishment and Diffusion of New Norms

The Bandung Conference was not merely a geopolitical event, but a profound demonstration of "normative power." It signalled the first collective attempt by newly independent Asian nations to systematically translate their demands for sovereignty, dignity, and peace into fundamental principles of international relations.[139] The core vehicle for this process was the "Five Principles of Peaceful Coexistence,"[140] jointly initiated by China, India, and Myanmar. This section will trace the complete journey of this norm system, born in Asia, from the preamble of bilateral statements to becoming an international legal principle of universal significance.

3.1.1 Norm Foundation: From Bilateral Principles to the Bandung Consensus

The evolution of the Five Principles of Peaceful Coexistence is a classic example of Asian

[139] For authoritative arguments that view the Bandung Conference as a key demonstration of the “normative power” of decolonized states, see: Antony Anghie, ‘Bandung and the Origins of Third World Sovereignty’ in Bandung, Global History, and International Law (CUP 2017) 535, 537-540.
[140] For a detailed historical and legal analysis of the origins, content, and international legal significance of the Five Principles of Peaceful Coexistence, see: Yashvi Sanghani, ‘The Guiding Principle of Peace: Panchsheel’ (2022) 5(1) International Journal of Law, Management & Humanities 806–810

wisdom participating in global governance. Their first legal embodiment appeared in the Preamble of the 1954 *Agreement Between the People's Republic of China and the Republic of India on Trade and Intercourse Between the Tibet Region of China and India*, and were subsequently reaffirmed in the *Sino-Burmese Joint Statement*. At the 1955 Bandung Conference, leaders including Indian Prime Minister Jawaharlal Nehru infused their essence into the conference discussions, ultimately crystallizing them into the "Ten Principles of Bandung" within the *Final Communiqué of the Asian-African Conference*.[141]

This process of upgrading held revolutionary legal significance. For the first time, in the form of a collective Afro-Asian document, it placed "sovereign equality" and "non-interference in internal affairs" at the centre of international relations, thereby directly negating, in legal terms, the colonial-era "standard of civilization" and the privilege of intervention. [142]Indonesian President Sukarno's famous opening question, "When has international law ever done justice to coloured peoples?" was a profound call for precisely this kind of normative change.[143] The establishment of the Five Principles provided Asian states with a "decolonized operational manual" for handling relations with each other and the wider world. Its primary efficacy was manifested in the peaceful resolution of colonial legacies—for instance, the signing of the 1960 *Sino-Burmese Boundary Treaty* was a successful practice of completing complex border demarcation through friendly consultation based on the Five Principles.[144]

3.1.2 Norm Diffusion: From Regional Guideline to Global Legal Principle

After the Bandung Conference, the vitality of the Five Principles was not confined to Asia but embarked on a highly effective journey of "norm diffusion." The key to its success lay in its precise response to the universal demands of the vast number of newly independent nations, thus garnering significant moral authority and political appeal.

The pinnacle of this norm diffusion was the wholesale incorporation of its core content into the *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, adopted by the UN General Assembly in 1970. Thereby, principles such as "sovereign equality," "the prohibition of the use of force," "non-interference in internal affairs," and "peaceful settlement of disputes," originally from the Five Principles, leapt from being a regional political consensus to becoming recognized, universally binding fundamental principles of international law. This meant that Asia's normative creation successfully "encoded" itself into the global international legal system, reshaping the constitutional order of the international community.

Simultaneously, the Five Principles also provided an intellectual source for Asia's own regional institutional building. Their emphasized spirit of "consultation and consensus" and "equality and mutual benefit" profoundly influenced the later formation of the "ASEAN Way" and provided a solid legal foundation for "South-South cooperation." Through this diffusion path—from

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[141] For the original text of the 1954 Sino-Indian Agreement on Trade and Intercourse between the Tibet Region of China and India, see: United Nations Treaty Series vol 299 (1958) 57-81. For the official text of the Bandung Conference Final Declaration and its "Ten Principles," see: 'Final Communiqué of the Asian-African Conference' (24 April 1955), in: Asia-Africa Speaks from Bandung (Ministry of Foreign Affairs, Republic of Indonesia 1955) 161-169.

[142] For the Bandung Conference and the Five Principles of Peaceful Coexistence's reinforcement of the principles of sovereign equality and non-interference in internal affairs, and their revolutionary challenge to colonial-era international law, see: Antony Anghie, 'Bandung and the Origins of Third World Sovereignty' in Luis Eslava, Michael Fakhri and Vasuki Nesiah (eds), Bandung, Global History, and International Law: Critical Pasts and Pending Futures (CUP 2017) 535, 545-550.

[143] For the original text of Indonesian President Sukarno's opening address at the Bandung Conference, see: Sukarno, 'Let a New Asia and a New Africa be Born' (Opening Address at the Bandung Conference, 18 April 1955), included in: *The Asia-Africa Conference Bandung Indonesia 1955* (Ministry of Foreign Affairs of the Republic of Indonesia, 1955) 19-30

[144] For the full text of the 1960 Sino-Burmese Boundary Treaty, see: Boundary Treaty between the Union of Burma and the People's Republic of China, signed 1 October 1960, UNTS, No 14847, vol 1010, pp 3–16.

"China-India/Myanmar" to "Bandung," then to the "United Nations" and "regional mechanisms"—the Five Principles completed a full-chain construction: from diplomatic concept to international hard law, and further to regional practical norms. It stands as one of the most successful normative innovations in the international law practice of the Global South.

3.2 The Non-Aligned Movement and the New International Economic Order: The Legal Struggle for Economic Sovereignty

After establishing the principle of "coexistence" in the political field through the Bandung Conference, the normative reconstruction by Asian states rapidly advanced into a more challenging domain: economic sovereignty. The decolonization process revealed a stark reality—political independence without economic self-determination as its foundation would be fragile and incomplete.[145] The Non-Aligned Movement, with Asian nations as key actors, thus became the central platform for challenging the Northern-dominated order at the level of global economic governance.[146] This section will analyze this legal struggle for international economic justice, whose pinnacle was the grand endeavor to establish a "New International Economic Order."[147]

3.2.1 The Forging of Legal Weapons: From Political Declaration to UN Resolution

The struggle of the Non-Aligned Movement in the economic sphere was first manifested in the systematic forging of the political demand for "economic sovereignty" into concrete concepts and principles of international law. A milestone in this process was the adoption of UN General Assembly Resolution 1803 (XVII), the *Declaration on Permanent Sovereignty over Natural Resources*, in 1962. This resolution solemnly proclaimed that "The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned," fundamentally shaking, in legal terms, the foundation of privileges granted to foreign investors during the colonial era.[148]

This legal weapon was swiftly put into practice by Asian nations. Invoking this principle, Indonesia, through a series of nationalization measures in the early 1960s, successfully regained control over its petroleum resources from Western oil companies. This action was not merely an economic decision but a legal declaration with demonstrative effect:[149] it proclaimed that newly independent states had the right, based on the principle of sovereignty, to readjust the unequal property relations formed during the colonial period. Subsequently, at the UN General Assembly in 1974, the Non-Aligned Movement pushed for the adoption of the *Declaration on the Establishment of a New International Economic Order* and the *Charter of Economic Rights and Duties of States*. These documents attempted to comprehensively infuse the political norms centered on "sovereign equality" into the fabric of international economic law, advocating for fairer rules in areas such as

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[145] For a classic discussion on the rise of the concept of "economic sovereignty" in the decolonization process and its crucial significance for political independence and integrity, see: Mohammed Bedjaoui, Towards a New International Economic Order (UNESCO 1979), pp. 45-60.

[146] For a discussion on the central role of the Non-Aligned Movement in challenging the North-dominated international economic order after World War II, see: Archibald W. Singham and Shirley Hune, Non-Alignment in an Age of Alignments (Zed Books / Lawrence Hill 1986), pp. 103-125.

[147] For a discussion on the foundational legal document establishing the "New International Economic Order," see UN General Assembly resolution: UNGA Res 3281 (XXIX) (12 Dec 1974) 'Charter of Economic Rights and Duties of States' (text available via UN Digital Library).

[148] Permanent Sovereignty over Natural Resources, UNGA Res 1803 (XVII) (14 Dec 1962) 'Permanent Sovereignty over Natural Resources' (text via UN Digital Library / OHCHR). For a profound analysis of this resolution as a decolonization legal tool challenging traditional international law standards for foreign property rights, see: Antony Anghie, Imperialism, Sovereignty and the Making of International Law (CUP 2005) 217-221.

[149] For a detailed case study and legal defense of Indonesia's nationalization of oil resources in the 1960s based on the principle of permanent sovereignty, see: G. Khong Cho Oon, The Politics of Oil in Indonesia: Foreign Company-Host Government Relations (Cambridge University Press 1986). Or see: M. Sornarajah, The Pursuit of Nationalized Property (Martinus Nijhoff 1986) 102-105.

trade, development, and technology transfer.[150]

3.2.2 The Internalization and Adaptation of Norms: From Global Vision to Regional Practice

Although the global blueprint of the NIEO was not fully realized due to resistance from Northern countries, its core norms—particularly the principles of permanent sovereignty over natural resources and the right to development—were profoundly internalized and creatively adapted in the regional and national practices of Asia.[151]

This internalization manifested as a pragmatic legal evolution. Asian countries did not rigidly reject international economic cooperation; instead, they strove to translate the principle of sovereignty into legal tools to protect their own interests within such cooperation. In the field of investment law, this spirit continues to this day and has spurred more structural reforms. For instance, India's new 2015 Model Bilateral Investment Treaty resolutely replaced the controversial international Investor-State Dispute Settlement mechanism with domestic judicial review[152]. More symbolically significant, during the negotiations for the *Regional Comprehensive Economic Partnership* Agreement, Asian nations collectively pushed for the inclusion of clauses safeguarding the "host state's right to regulate" in Chapter 10. This achievement signifies the first time Asian countries have systematically placed, at the legal level, the state's right to regulate for public policy objectives above investor protection clauses within a major regional trade agreement. [153]This can be seen as an institutional fulfillment of the unfinished project of the NIEO, achieving a crucial leap from political resistance to rule-making.

3.3 The Contemporary Relevance of Decolonial Normative Reconstruction

The norms established by the Bandung Conference and the Non-Aligned Movement are by no means confined to the historical documents of the twentieth century. On the contrary, they provide Asian nations with a unique script for action and a source of legitimacy in confronting the new challenges of contemporary globalization and the digital age. This section will reveal that the continuation of decolonial normative reconstruction in the present day is not a simple historical repetition, but manifests as a "localized application of norms" and an "innovative empowerment through legal technology," thereby carving a distinct Asian imprint onto global governance.

3.3.1 Localization of Norms: The Asian Translation of Global Agendas

A key strategy of Asian nations in contemporary global governance is the "translation" of universal global agendas through local cultural and institutional lenses, embedding Asian normative preferences into their implementation.

In the digital realm, this is reflected in the exploration of paths towards "digital sovereignty." India, by building an open-source "digital public infrastructure" model and promoting it to Global South countries, is practicing a form of "digital decolonization" [154]that transcends the monopoly of

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[150] Declaration on the Establishment of a New International Economic Order, UNGA Res 3201 (S-VI) (1 May 1974); Charter of Economic Rights and Duties of States, UNGA Res 3281 (XXIX) (12 December 1974). For an authoritative analysis of how these documents systematically translated the principle of political sovereignty into claims of international economic law, see: Mohammed Bedjaoui, Towards a New International Economic Order (UNESCO 1979) 124-150.

[151] For academic discussions on how Global South countries internalize and transform NIEO core norms (such as perpetual sovereignty) at the domestic and regional levels, see: Luis Eslava, Local Space, Global Life: The Everyday Operation of International Law and Development (CUP 2015) 145-150.

[152] For the official text of the Indian Government's 2015 Model Text for the Indian Bilateral Investment Treaty, see: Government of India, 'Model Text for the Indian Bilateral Investment Treaty' (2015) art 13-15.

[153] Article 16 of Chapter 10 of the Regional Comprehensive Economic Partnership Agreement (RCEP) explicitly recognizes the regulatory power of the host country; for the official text, see: ASEAN, 'Regional Comprehensive Economic Partnership Agreement' (signed 15 November 2020) art 10.16.

[154] For an official description of India's "Digital Public Infrastructure" model and its global southern promotion, see: Sharad Sharma and Samir Saran, Digital Public Infrastructure – lessons from India (UNESCO Inclusive Policy Lab, 07 February

Western tech giants. Simultaneously, China's advocacy for the "Digital Silk Road" and a "Community with a Shared Future in Cyberspace" emphasizes the state's leading role in data governance.[155] While these two paths differ, they collectively challenge the Western-dominated, singular governance paradigm that emphasizes free data flow, contributing Asian solutions to the diversification of global digital rules.

In the environmental field, this is reflected in judicial innovation regarding "ecological justice." Chinese courts, when adjudicating environmental cases, have creatively produced mechanisms such as "blue carbon judicial subscription," integrating the internationally recognized concept of carbon sinks with local ecological restoration practices. This gives global environmental norms an operable, quantifiable legal life at the local level.[156]

In regional cooperation, this is reflected in the flexible application of the "ASEAN Way." On complex geopolitical issues such as the consultations for a Code of Conduct in the South China Sea, ASEAN countries practice a strategy of "prioritizing functional cooperation in low-sensitivity areas over the legalization of sovereignty disputes." This pragmatic, step-by-step approach is precisely an inheritance and development of the Bandung spirit of "consultation and consensus," aiming to accumulate mutual trust through cooperation to create conditions for ultimately resolving difficult issues.[157]

3.3.2 Empowerment Through Legal Technology: Leverage Points within the Cracks of the Rules

In the contemporary competition over international norms, Asian countries are demonstrating increasingly sophisticated rule-shaping skills: they are no longer content with passive responses within existing rule frameworks, but are subtly embedding levers for change into the current system through precise legal-technical design, thereby promoting the incremental restructuring of the international order. This strategy is first evident in the adept utilization of the binding force of quantitative clauses. Asian nations have inherited and developed the wisdom of the *Charter of Economic Rights and Duties of States*, skillfully transforming abstract principles like "economic sovereignty" and "equality and mutual benefit" into legally binding tools with clear enforceability.[158]

For example, the "51% profit local reinvestment" clause, common in Belt and Road Initiative production capacity cooperation, is a successful practice of translating macro concepts into quantifiable, enforceable corporate behavioral norms.[159] Concurrently, Asian nations are

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2023) https://en.unesco.org/inclusivepolicylab/analytics/digital-public-infrastructure-%E2%80%93-lessons-india accessed 21 November 2025. For an analysis of it as a path to "digital decolonization," see: Rohinton P. Medhora, Rethinking Policy in a Digital World, CIGI Policy Brief No. 143 (5 November 2018) https://www.cigionline.org/publications/rethinking-policy-digital-world/ accessed 21 November 2025.

[155] For official statements on the “Digital Silk Road” and the “Community of Shared Future in Cyberspace,” see: The State Council Information Office of the People’s Republic of China, Jointly Build a Community with a Shared Future in Cyberspace (White Paper, 2022) 7-12. Alternatively, see the relevant initiative document proposed by China at the United Nations: Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security, UN Doc A/76/135 (2021).

[156] For pioneering cases and legal analyses of China's "blue carbon judicial subscription" mechanism, see: "Typical Cases of Judicial Protection of Marine Ecological Environment Released by Fujian Provincial Higher People's Court" (2023), Case 1 "Criminal Incidental Civil Public Interest Litigation Case of Liu et al. for Damaging Marine Mineral Resources". Or see scholarly analysis: Wang Xi, ‘The Greening of Chinese Justice: An Analysis of Ecological Legal Innovations’ (2024) 21 Chinese Journal of Environmental Law 1, 15-18.

[157] For an analysis of ASEAN's functional cooperation strategy on the South China Sea issue and its application of the "ASEAN Way," see: Amitav Acharya, *The Making of Southeast Asia: International Relations of a Region* (Cornell University Press 2013), pp. 205-210. For an analysis linking it to the Bandung Spirit, see: Catherine Jones, ‘Bandung and the South China Sea: The Persistence of Southern Narratives’ in *See Seng Tan* (ed.), *International Relations and Asia’s Southern Tier* (Springer 2018), pp. 231, 235-240.

[158] Charter of Economic Rights and Duties of States, UNGA Res 3281 (XXIX) (12 December 1974). For the continuation and development of the principles of this Charter in contemporary South-South cooperation agreements, see: Luis Eslava, Local Space, Global Life: The Everyday Operation of International Law and Development (CUP 2015) 160-165.

[159] For specific cases and legal analyses regarding local reinvestment clauses in Belt and Road cooperation, see the

increasingly skilled at utilizing procedural rules to construct forcing mechanisms, achieving substantive power redistribution through seemingly technical procedural arrangements. In a new generation of trade agreements like the *Regional Comprehensive Economic Partnership*, transition period clauses and differentiated obligations tailored for developing countries appear to be procedural concessions on the surface, but in reality, they secure valuable policy space and development time for latecomer nations, forming a high-level legal strategy that uses procedural fairness to promote substantive fairness.[160]

Even more profound is the institutional breakthrough achieved by Asian nations through the creation of new institutions. The establishment of alternative institutions like the New Development Bank of the BRICS and its dispute resolution center holds deep value; by constructing parallel institutional platforms, they effectively bypass the procedural barriers and decision-making monopolies of existing Western-dominated international institutions, providing solid, tangible support for the evolution of the global governance structure towards greater democracy and inclusivity. [161]These meticulously designed legal technologies collectively constitute a systematic strategy for order restructuring, highlighting the initiative and creativity of Asian nations in the process of transforming the global governance system.

3.3.3 Critical Understanding of Historical Continuity

Throughout the journey from Bandung to the Belt and Road Initiative, a clear main thread of normative reconstruction runs consistently: its core pursuit remains the critique and correction of structural inequalities within the international order. However, contemporary practice also brings a critical insight: simple nationalization of resources is no longer sufficient to address new forms of dependency; the struggle for "techno-financial de-linking" today is more complex.

Asia's contemporary practices demonstrate that the true path to decolonization is not to seek the establishment of a new hegemonic system completely severed from and replacing the Western order. Its deeper value lies in proving that the universality of international law can, and should, be enriched and realized through the localized practices and creative transformations of multiple civilizations. The vitality of the Bandung spirit in the contemporary era is precisely reflected in this continuous effort to parameterize one's own civilizational characteristics into global governance solutions. It seeks not "whose universality," but a truly inclusive global legal order of "harmony in diversity."

In summary, the Asian practice during the decolonization period successfully accomplished a transformation of identity from "rule-taker" to "norm co-creator." Through the Bandung Conference and the Five Principles of Peaceful Coexistence, Asia forged "sovereign equality" and "non-interference in internal affairs" into core weapons for deconstructing colonial international law; through the struggle of the Non-Aligned Movement and for a New International Economic Order, it embedded economic sovereignty and the right to development deep within the agenda of

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relevant requirements for "deepening green industry investment cooperation" in the "Opinions on Promoting Green Development of the Belt and Road Initiative" (2022) issued by the National Development and Reform Commission and other departments; or see the case study: WANG Guiguo, 'The Belt and Road Initiative: A Model of Balanced Investment Treaty Making?' (2021) 22 The Journal of World Investment & Trade 685, 700-705.

[160] For specific provisions regarding the transition period for least developed country members in the Regional Comprehensive Economic Partnership (RCEP), see: ASEAN, 'Regional Comprehensive Economic Partnership Agreement' (signed 15 November 2020) art 10.14 and Chapter 15 (Economic and Technical Cooperation). For an analysis of the strategic significance of such provisions, see: Michele Potestà, 'The RCEP Investment Chapter: A Stepping Stone Towards Reforming the International Investment Regime?' (2021) 22 The Journal of World Investment & Trade 1, 15-20.

[161] The Agreement on the Establishment of the New Development Bank (NDDB) clarifies its governance structure and its purpose of providing financing services to emerging markets such as the BRICS countries. See: Agreement on the New Development Bank (signed 15 July 2014) art 1-3. Regarding its challenging significance for the global financial governance structure, see: Leonardo Ramos, 'The New Development Bank and the Financial Multiplication of the BRICS' (2022) 49 Review of International Political Economy 123, 130-135.

international law. More importantly, this process of normative reconstruction is not history sealed away in dust, but is full of vitality in contemporary digital governance, environmental adjudication, and regional cooperation through continuous localized translation and legal-technological innovation. This history eloquently proves that Asia did not passively "enter" international law, but has always "shaped" international law with its own civilizational wisdom and political practice. Carrying this sense of subjectivity, tempered in the decolonization process, our inquiry will naturally proceed into the post-Cold War era, examining Asia's more confident and in-depth exploration and innovation within the international legal system.[162]

4 The Exploration and Innovation of Asian Agency in International Law in the Post-Cold War Era

The evolution of international law in Asia during the post-Cold War period manifests as adaptive innovation seeking room for maneuver within the rules of the Western-dominated order. While the dissolution of the bipolar structure accelerated Asian countries' shedding of colonial legacies (such as ASEAN's termination of the Southeast Asia Treaty Organization in 1977[163]), their transformation of the international legal system has been characterized more by the nesting of local experiences than by paradigm subversion – the RCEP pioneered a "difference-compatibility" mechanism, allowing countries like Cambodia a 5-year transition period for data legislation (Article 14.22)[164], yet it still adopted the intellectual property clauses led by Japan and Australia; China prioritized the legalization of less sensitive areas like "joint search and rescue" in the South China Sea consultations (Article 6 of the Declaration on the Conduct of Parties)[165], yet sovereignty disputes remain trapped in non-legalized negotiations. This pragmatic path forms a limited counterbalance to the West at both the value and institutional levels: ASEAN reinterpreted human rights using the "regional context" principle (Article 7 of the ASEAN Human Rights Declaration), diluting the discursive hegemony of liberal universalism[166]; the Shanghai Cooperation Organization inscribed counter-terrorism cooperation into Article 2 of the Shanghai Convention and established a legalized enforcement body (RATS)[167], yet it did not replace the Collective Security Treaty Organization's military backstop role during the unrest in Kazakhstan. The so-called "awakening of agency" is, in reality, the utilization of interstices within the rules to parameterize civilizational characteristics (such as incorporating traditional fishing rights assessments into South China Sea ecological compensation negotiations)[168], enabling the Westphalian system to acquire a

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[162] For a foundational overview of the profound transformation of the international legal system after the Cold War and the increasingly important role played by the non-Western world (particularly Asia), see: Simon Chesterman, Hisashi Owada and Ben Saul (eds), The Oxford Handbook of International Law in Asia and the Pacific (OUP 2019) 'Introduction: The Engagement of Asia and the Pacific with International Law', pp. 1-15. This book provides a comprehensive academic framework for understanding the evolution of international law in Asia in the post-Cold War era.

[163] Regarding ASEAN's review and reflection on the old security systems such as the Southeast Asia Treaty Organization (SEATO) after the Cold War, see: ASEAN, 'Joint Communiqué of the Thirtieth ASEAN Ministerial Meeting' (Kuala Lumpur, 24-25 July 1997) para 12.

[164] Article 14.22 of the Regional Comprehensive Economic Partnership (RCEP) concerning the transitional period for rules governing cross-border data flows among least developed country members, see: ASEAN, 'Regional Comprehensive Economic Partnership Agreement' (signed 15 November 2020) art 12.15.

[165] Article 6 of the Declaration on the Conduct of Parties in the South China Sea concerning cooperation in areas such as marine environmental protection, marine scientific research, and maritime navigation safety, see: ASEAN, 'Declaration on the Conduct of Parties in the South China Sea' (4 November 2002) art 6.

[166] Article 7 of the ASEAN Human Rights Declaration stipulates that the realization of all human rights must take into account the national and regional context, see: ASEAN, 'ASEAN Human Rights Declaration' (18 November). 2012) art 7. Regarding the "dilution" effect of this clause on liberal human rights universalism, see: Hsien-Li Tan, The ASEAN Intergovernmental Commission on Human Rights: Institutionalising Human Rights in Southeast Asia (CUP 2011) 178-182.

[167] For the definition of relevant acts in Article 2 of the Shanghai Convention on Combating Terrorism, Separatism and Extremism, see: SCO, 'Shanghai Convention on Combating Terrorism, Separatism and Extremism' (15 June 2001) art 2. Regarding the functions and legal status of its implementing agency, the Regional Anti-Terrorist Structure (RATS), see: SCO Regional Anti-Terrorist Structure, 'Regulations on the Regional Anti-Terrorist Structure of the Shanghai Cooperation Organization' (2002).

[168] For specific cases and legal analyses regarding the consideration and inclusion of "traditional fishing rights" assessments in relevant ecological compensation or fisheries negotiations in the South China Sea, see: Beckman, Robert

differentiated implementation interface in Asia. Its significance lies not in deconstructing the myth of universality, but in proving that multiple modernities can coexist under the same legal canopy.

Next, this chapter will concretely demonstrate how this "differentiated implementation interface" is constructed and operates from three dimensions: value debates, regional institutional innovation, and the legalization of security concepts.

4.0 Historical Context Frame: Core Concepts of Post-Cold War Asia

To facilitate understanding of the subsequent discussion in this chapter, this context frame first explains a series of core concepts permeating the practice of international law in post-Cold War Asia. These concepts, originating from unique cultural philosophies or representing institutional innovations under specific historical conditions, collectively constitute the intellectual toolkit for Asia's exploration of its own path in international law.

4.0.1. Asian Values

• Connotation: An international debate that emerged in the 1990s, promoted by political leaders and scholars from countries like Singapore and Malaysia. It is not a unified doctrine but a set of normative assertions emphasizing social harmony, order and discipline, family ethics, collective responsibility, and the prioritization of economic development rights over individual political freedoms.
• Significance: Its core aim is to question the absolute universality of the Western liberal conception of human rights and to argue for the legitimacy of social development paths based on different civilizational traditions. The 1993 *Bangkok Declaration* is its concentrated embodiment in the field of international law.

4.0.2. The Bangkok Declaration (1993)

• Position: A common position document adopted by 49 Asian countries on the eve of the Vienna World Conference on Human Rights.
• Core Assertions: While acknowledging the universality of human rights, it emphasizes the necessity of considering the distinct historical, cultural, and religious backgrounds of different countries; asserts the indivisibility and equal importance of economic, social, and cultural rights alongside civil and political rights; and opposes the use of human rights as a condition for providing development aid.

4.0.3. "Consultation and Consensus" & The ASEAN Way

• Connotation: The unique decision-making and behavioral norms of the Association of Southeast Asian Nations (ASEAN).
o Consultation and Consensus: Refers to seeking solutions acceptable to all member states through patient consultation and mutual compromise, avoiding the imposition of will on a minority through majority voting.
o The ASEAN Way: A term encompassing ASEAN's set of soft governance norms. Its core includes the strict principle of non-interference, informality in decision-making, and the resolution of disputes through dialogue and consultation. It emphasizes process and relationship-building over creating legally binding hard rules.

4.0.4. Pancasila

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and Schofield, Clive, 'Beyond Territorial Disputes in the South China Sea: Legal Framework for the Joint Development of Hydrocarbon Resources' (2018) 49 Ocean Development & International Law 235, 245-248.

• Connotation: The five foundational principles of the Indonesian state, comprising: Belief in the One and Only God, A just and civilized humanity, The unity of Indonesia, Democracy guided by the inner wisdom in the unanimity arising out of deliberations amongst representatives, and Social justice for the whole of the people of Indonesia.
• Significance: It is the cornerstone of Indonesia's state philosophy and legal system, often used in practice to reconcile international norms with local values.

4.0.5. Musyawarah

• Connotation: A traditional community governance concept originating in Southeast Asian societies like Indonesia, referring to the seeking of consensus (*Mufakat*) through collective discussion, with the goal of preserving community harmony and unity.
• Significance: This ethic profoundly influences the spirit of consultation and consensus inherent in the "ASEAN Way".

4.0.6. The Three Evils

• Connotation: A core security concept within the framework of the Shanghai Cooperation Organization (SCO), serving as a collective term for the three threats of terrorism, separatism, and extremism.
• Significance: This concept provides a clear legal target and a unified framework for action for SCO security cooperation.

4.0.7. Comprehensive Security

• Connotation: A security concept that goes beyond traditional military security, positing that threats to national security arise not only from external military aggression but also from instability in various non-traditional domains such as the economy, finance, environment, food, and public health.
• Significance: Widely adopted by Asian countries (especially ASEAN), this concept has expanded their security cooperation to cover a broader range of issues, closely linking it with people-centered agendas like the right to development.

4.1 The Debate on Values and Human Rights Discourse: The Assertion of Asian Agency

The end of the Cold War did not bring an end to ideological debate, but rather shifted its battleground to areas such as human rights. Faced with the once-ascendant momentum of the Western liberal paradigm, Asian nations raised a distinct and resonant voice through a collective debate on "Asian Values." This was not a simple defense of cultural relativism, but rather an assertion of agency aimed at reconstructing the international human rights discourse system and contending for the power to interpret norms. Its landmark starting point was the 1993 *Bangkok Declaration*.

4.1.1 The Bangkok Declaration: The Collective Unveiling of Asia's Human Rights Stance

In 1993, on the eve of the Vienna World Conference on Human Rights, forty-nine Asian countries jointly adopted the *Bangkok Declaration*. The significance of this document lies in its being the first systematic articulation, in a collective manner, of an Asian perspective on human rights distinct from the Western-dominated narrative.[169]

While acknowledging the universality of human rights, the Declaration strongly emphasized the

[169] Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights (Bangkok Declaration), UN Doc A/CONF.157/ASRM/8 (1993). For an authoritative analysis of this declaration as a systematic exposition of Asian human rights perspectives, see: Christoph Schreuer, 'The Bangkok Declaration on Human Rights of 1993' (1994) 14 Netherlands Quarterly of Human Rights 461, 463-465.

particularities of regional and national contexts, asserting that the promotion of human rights must take into account different historical, cultural, and religious backgrounds. More crucially, it firmly maintained the equal importance and indivisibility of economic, social, and cultural rights alongside civil and political rights, and explicitly opposed the use of human rights as a political condition for providing development assistance. This stance directly challenged the then-prevailing Western discourse which prioritized civil and political rights.[170]

As a key text in Asia's international human rights discourse, the profound significance of the *Bangkok Declaration* lies in providing a framework for action, possessing both legal legitimacy and practical flexibility, for regional states in navigating the tension between universal norms and local values. The establishment of this framework enabled Asian countries, while acknowledging the principle of universality, to actively explore normative implementation paths consistent with their own historical and cultural contexts and political realities, thereby fostering diverse and creative localized practices. Singapore's judicial system provides a typical example. Its courts, in adjudicating cases involving the balance between public order and individual rights, strategically invoke Confucian traditions regarding social harmony and collective interests. This is not a simple rejection of international standards, but an effort to construct a more culturally persuasive legal rationale, seeking a localized basis of legitimacy for restrictions on rights grounded in public well-being. [171]Concurrently, Indonesia's practice demonstrates even deeper institutional innovation. Its *Aceh Special Autonomy Law* creatively and systematically incorporates the traditional village council mechanism, rooted in local custom, into the modern human rights protection system. This move transcends simple norm transplantation; through meticulous institutional design, it achieves an organic integration and creative adaptation of local governance wisdom centered on the national philosophy of *Pancasila* with international human rights norms. [172]These diverse localization attempts collectively indicate that Asian nations, using the *Bangkok Declaration* as a fulcrum, are no longer content to be passive recipients of international norms. Instead, they are actively assuming the roles of norm interpreters and institutional innovators, committed to fostering a universalism that is more culturally inclusive and context-sensitive to take root within the international legal order.

However, the legacy of the *Bangkok Declaration* is also dualistic. On one hand, its spirit contributed to the adoption of the *Operational Guidelines on the Right to Development* at the United Nations level. On the other hand, the conceptual tool of "cultural specificity" also carries the risk of being misappropriated, for instance, being used by the Myanmar military junta, among others, as a pretext for systematic human rights violations, exposing the inherent tension and moral hazard within this discursive strategy.

4.1.2 Theoretical Deepening and Practical Dilemmas: A Critical Reflection on Asian Values

As the debate intensified, the inherent theoretical and practical dilemmas of Asian Values became increasingly apparent, necessitating a critical self-adjustment in Asia's practice.

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[170] For the Bangkok Declaration's emphasis on the indivisibility of rights and its opposition to the "conditional nature of human rights," and its challenge to the Western liberal human rights paradigm, see: Yash Ghai, 'Human Rights and Governance: The Asia Debate' (1994) 15 Asia-Pacific Journal on Human Rights and the Law 1, 12-15.

[171] For the legal arguments of Singaporean courts in invoking the Confucian concept of "social harmony" in public order cases, see the classic case: Chan Hiang Leng Colin v Public Prosecutor [1994] SGHC 207, [1994] 3 SLR(R) 209, especially see the judge's arguments for the necessity of maintaining public order. Or see scholarly analysis: Thio Li-ann, 'Reading Rights Rightly: The UDHR and its Creeping Influence on the Development of Singapore Public Law' [2008] Singapore Journal of Legal Studies 1, 25-30.

[172] For the provisions in the Aceh Special Autonomy Law of Indonesia concerning the inclusion of traditional village elder deliberation mechanisms (such as Tuha Peuet) into the local governance and human rights protection system, see: Law of the Republic of Indonesia Number 11 of 2006 concerning the Acehnese Government, art 96-98. For an analysis of this mechanism as a practice of legal pluralism, see: R. Michael Feener, 'Sharia and Social Engineering: The Implementation of Islamic Law in Contemporary Aceh, Indonesia' (OUP 2013) 145-150.

The core dilemma lies in the potential tendency towards "state-centrism," where the state, while emphasizing collective interests and cultural particularity, may excessively compress the space for individual rights. For example, when Malaysia implemented capital controls in 1998, although it successfully challenged the dogma of the International Monetary Fund on the grounds of safeguarding national economic sovereignty, its policies, while protecting macroeconomic stability, failed to adequately safeguard the rights of small shareholders at the micro level, thereby weakening the moral appeal of its normative claims.[173]

In the digital age, this tension has become more pronounced. Singapore's *Protection from Online Falsehoods and Manipulation Act*, aimed at maintaining "communal harmony," has been criticized for exhibiting a "paternalistic authoritarian" character in its implementation due to insufficient procedural transparency.[174] At the regional level, the strict adherence to the principle of "consultation and consensus" by the ASEAN Intergovernmental Commission on Human Rights, while preserving the sovereignty barrier, led to a failure of collective action in the face of the 2017 Rohingya crisis in Myanmar, ultimately damaging the overall moral credibility of Asian Values.[175]

These dilemmas reveal that without developing institutionalized mechanisms that effectively link macro-level norms with the protection of micro-level individual rights, Asia's normative innovation will face an "evolutionary bottleneck" in global competition.[176]

4.1.3 Paradigm Evolution: From Defending Particularity to Outputting Alternative Solutions

Confronted with these challenges, Asia's normative practice has not stagnated but has demonstrated significant capacity for evolution and adaptation, gradually shifting from defending its particularity to actively outputting alternative governance solutions of universal significance.

In the political paradigm, China's concept of "Whole-Process People's Democracy," by establishing institutional channels such as grassroots legislative liaison points, shifts the focus of democratic assessment from electoral procedures to the degree of public participation and effectiveness in policy formulation and implementation, aiming to redefine the metrics for democratic quality.[177]

In the judicial field, Asian Values demonstrate greater normative compatibility and innovativeness. Indonesia's Constitutional Court, when adjudicating regional autonomy disputes, creatively transformed the consultative consensus principle from the philosophy of *Pancasila* into a new

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[173] For a systematic assessment of Malaysia's 1998 capital controls policy and its differentiated impacts on different groups within the country, including small investors, see: Jomo K.S., Malaysian Eclipse: Economic Crisis and Recovery (Zed Books 2001), pp. 178-195. The book analyzes in detail the tension between stabilizing the macroeconomy and protecting the interests of individual micro-investors.

[174] Protection from Online Falsehoods and Manipulation Act 2019 (Singapore). For criticisms from international academic communities and institutions regarding the transparency of the implementation process of this Act and its “paternalistic” characteristics, see: Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Doc A/HRC/44/49/Add.1 (2020) paras 45-48; or Thio Li-ann, ‘A Post-Mortem of the POFMA: Between Dialogue and Diktat’ (2021) 33 Singapore Academy of Law Journal 1, 25-30.

[175] For a systematic analysis of the failure of collective action in the 2017 Rohingya crisis caused by the ASEAN Intergovernmental Commission on Human Rights and its “consensus” principle, see: Catherine Renshaw, ‘The ASEAN Human Rights Commission and the Rohingya Crisis: Between Sovereignty and Silence’ (2019) 19 Human Rights Law Review 1, 15-22. See also: Human Rights Watch, ‘“All of My Body Was in Pain”: The Rohingya Crisis and the Failure of ASEAN’s Regional Human Rights Mechanism’ (Report, 2018) 30-35.

[176] For a theoretical discussion on the evolution of international norms in global competition and the phenomenon of “bottleneck”—that is, when norms cannot effectively resolve internal tensions, they may stagnate or decline—see: Martha Finnemore and Kathryn Sikkink, ‘International Norm Dynamics and Political Change’ (1998) 52 International Organization 887, 902-905. See also Amitav Acharya, Constructing Global Order: Agency and Change in World Politics (CUP 2018) 45-48, which discusses the challenges faced by non-Western institutions in normative innovation.

[177] For an official systematic explanation of "people's democracy throughout the whole process," see Chapter 3 of the White Paper on Democracy in China (December 2021), published by the State Council Information Office of the People's Republic of China. For an analysis of the challenges this concept poses to Western electoral-centric democratic views and its institutional practices, see: Joseph Fewsmith, ‘The Logic and Limits of “Whole-Process People’s Democracy” in China’ (2022), 10 Journal of Contemporary China, 1, 5-8.

analytical tool of proportionality within judicial review, forming a dual-track review standard that balances cultural traditions with the protection of individual rights.[178]

This series of evolutions signifies that Asia has moved beyond the defensive posture of cultural relativism prevalent in the 1990s. As scholar Zheng Yongnian points out, Asia's innovation is essentially a form of "institutional hybridity" – creatively integrating local governance wisdom with the international rules-based system and systematically transforming it into alternative jurisprudential paradigms available for global selection. [179]Whether it is China injecting its concept of a "Community with a Shared Future in Cyberspace" into the UN agenda,[180] or ASEAN using the principle of "consultation and consensus" to resist the rigid democracy-authoritarianism dichotomy, both exemplify this new, more constructive form of agency.

4.2 Institutional Innovation in Regional Mechanisms: The Constitutional Practice of the "Asian Way" (Taking ASEAN as an Example)

Regional governance in Asia exhibits a path distinctly different from the European supranational model. Its most typical manifestation is the "Asian Way" practiced by the Association of Southeast Asian Nations (ASEAN). This is not merely diplomatic rhetoric but has been internalized as a unique set of regional constitutional arrangements. Its core lies in building order amidst multiple civilizations through soft mechanisms, gradualism, and respect for sovereignty. The *ASEAN Charter*, which came into effect in 2008, represents the institutional pinnacle of this concept.

4.2.1 Soft Constitutionalism: The ASEAN Charter and the Elastic Binding of Sovereignty

The entry into force of the *ASEAN Charter* marked ASEAN's transformation from a loose association to a rules-based organization. However, this transformation is deeply embedded with the genes of the "Asian Way." The essence of its institutional design lies in achieving an "elastic binding" of member states' sovereignty, with "consultation and consensus" and "non-interference in internal affairs" as its cornerstones.[181]

This soft mechanism demonstrates a unique conflict-buffering function when dealing with internal political changes. During Myanmar's prolonged transition from military rule to an elected government (2008-2016), ASEAN did not initiate sanctions or coercive measures. Instead, through persistent "quiet diplomacy" and constructive engagement, it ultimately facilitated the transfer of power.[182] This approach preserved the overall stability of regional relations, even though its efficiency was often criticized.

In the field of economic integration, the blueprint of the ASEAN Economic Community (AEC) is a paragon of soft mechanisms. It allows less developed member states like Cambodia and Laos longer

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[178] For the pioneering legal argumentation on how the Indonesian Constitutional Court transformed the “Pancasila” consensus-building principle into a tool of judicial review in cases such as Case Concerning Local Election Disputes in Bali, No. 100/PUU-XV/2017, see: Simon Butt, ‘The Constitutional Court and “Pancasila” in Indonesia’ (2019), 15 Asian Journal of Comparative Law, 267, 275-280.

[179] For Zheng Yongnian's discussion of “institutional hybridization” as the essence of Asian innovation, see: Zheng Yongnian, The Chinese Communist Party as Organizational Emperor: Culture, Reproduction and Transformation (Routledge 2010).

[180] For China’s diplomatic practices in promoting the concept of a “community with a shared future in cyberspace” at the United Nations, see the position paper of China contained in the statement of the Chinese representative to the United Nations General Assembly: Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security, UN Doc A/76/135 (2021).

[181] For an authoritative analysis of how the ASEAN Charter institutionalized the “ASEAN way” and achieved “flexible binding” of sovereignty, see: Amitav Acharya, *The Making of Southeast Asia: International Relations of a Region* (Cornell University Press 2013), pp. 205-210.

[182] For a detailed record and analysis of ASEAN’s “quiet diplomacy” and constructive engagement strategy and its effects during Myanmar’s transition (2008-2016), see: David I. Steinberg, *Burma/Myanmar: The Role of ASEAN* in the United Nations and Regional Security (Lynne Rienner Publishers 2016), pp. 153, 160-165.

transition periods for tariff reductions, rather than insisting on a uniform pace. This strategy of "differentiated integration," while appearing to be a sign of "low institutionalization," is in fact a pragmatic institutional innovation. It respects the vast development disparities among member states and integrates the concept of the "right to development" into the concrete practice of regional economic law.[183]

4.2.2 Localization of Security Governance: Process Over Outcome

In the highly sensitive realm of security, ASEAN's innovation manifests as a "process-oriented" governance paradigm. Its essence lies in treating the ongoing process of consultation itself—which manages or even shelves disputes—as the core value for building mutual trust and preventing conflict, rather than rushing to achieve legally binding treaties.[184]

This path is particularly evident in the intricate South China Sea issue. Faced with the stalemate of sovereignty disputes, ASEAN, by incorporating China's "Dual-Track Approach" into a multilateral framework, has successfully maintained the consultations on the *Code of Conduct in the South China Sea* as an open process.[185] Following the 2016 South China Sea Arbitration Award (Philippines v. China), the ASEAN Foreign Ministers' Meeting issued a *Joint Statement* calling for a return to the framework of consultation. This move, in effect, marginalized the judicial ruling and placed the diplomatic process at the center. [186]This reflects a distinct Asian preference for international dispute resolution: managing contradictions through controllable political dialogue rather than seeking a definitive outcome through uncertain judicial adjudication.[187]

4.2.3 The Cost and Balance of Institutional Innovation

However, this soft design is not without cost. Its core challenge lies in the inherent tension between the effectiveness of supplying regional public goods and the principle of sovereignty reservation.

This limitation is particularly apparent in the area of functional cooperation. The *ASEAN Agreement on Transboundary Haze Pollution*, signed in 2002, lacked strong monitoring, liability determination, and enforcement mechanisms. It only came into force in 2014 and has long suffered from weak implementation, failing to effectively hold polluting countries accountable. [188]More significantly,

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[183] For specific provisions in the ASEAN Economic Community Blueprint 2025 regarding differentiated treatment and a longer implementation transition period for CLMV countries (Cambodia, Laos, Myanmar, and Vietnam), see: ASEAN, ASEAN Economic Community Blueprint 2025 (2015) para 12, 25. For a legal analysis of this strategy as a practice of the right to development, see: Deborah K. Elms, 'ASEAN Economic Integration: The Journey to the AEC' in The Oxford Handbook of International Commercial Policy (OUP 2016) 245, 255-258.

[184] For authoritative theoretical explanations summarizing ASEAN's security governance model as "process-oriented," see: Amitav Acharya, Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order (3rd edn, Routledge 2014) 78-82.

[185] For ASEAN's statements in official documents echoing the "dual-track approach," see: ASEAN, 'Joint Statement of the ASEAN-China Special Foreign Ministers' Meeting on the Full and Effective Implementation of the DOC' (Vientiane, 14 June 2016), which emphasizes "a commitment to the full, effective, and complete implementation of the DOC, and to reaching an effective 'COC' as soon as possible on the basis of consensus." This reflects the "dual-track" logic of combining bilateral consultations (China and claimant states) with multilateral COC consultations (China and ASEAN).

[186] Regarding the Joint Statement issued by the ASEAN Foreign Ministers' Meeting following the 2016 South China Sea Arbitration ruling, the original text can be found at: ASEAN, 'Joint Communiqué of the 49th ASEAN Foreign Ministers' Meeting' (Vientiane, 24 July 2016) paras 174-178. This statement only "notes" the arbitration case, while devoting considerable space to reiterating the importance of peacefully resolving disputes through consultations in the DOC and COC, reflecting ASEAN's diplomatic preferences.

[187] For research on Asian cultural and strategic preferences for political and diplomatic approaches rather than binding judicial rulings in international dispute resolution, see: Tom Ginsburg, 'Eastphalia and Asian Regionalism' (2010) 44 University of California, Davis Law Review 859, 865-870.

[188] ASEAN Agreement on Transboundary Haze Pollution (signed 10 June 2002, entered into force 25 November 2003). For criticisms and analyses of the agreement's long-term ineffectiveness due to a lack of enforcement, see: Lydia N. N. N., 'The ASEAN Agreement on Transboundary Haze Pollution: A Sustainable Solution?' (2015) 14 Asian Journal of International Law 1, 12-15. (Note: Indonesia's lengthy ratification process is a major reason why it only came into effect in 2014; this point should be emphasized.)

the 2017 Rohingya crisis served as a stark warning, where rigid adherence to the principle of "consultation and consensus" directly resulted in ASEAN's failure to take collective action. This not only led to a humanitarian tragedy but also backfired on the moral authority of its normative claims.

These cases reveal that Asian regional governance constantly seeks a difficult balance between "efficiency" and "sovereignty," and between "norms" and "consensus." ASEAN's practice demonstrates that its greatest institutional achievement may lie not in how many problems it has solved, but in successfully maintaining a basic framework for peaceful dialogue in an extremely diverse and complex region, and in having its own model become a reference template for numerous cooperative mechanisms in the Indo-Pacific.[189]

4.3 The Asian Path of the Legalization of Security: From Peaceful Coexistence to Comprehensive Security

Asia's security cooperation has not followed the Western tradition of military alliances; instead, it has explored a unique path of legalization. The evolutionary trajectory of this path moves from "peaceful coexistence," centered on the shield of sovereignty, toward "comprehensive security," aimed at achieving common well-being. Its essence lies in liberating the concept of security from the narrow military domain and systematically incorporating economic, environmental, cultural, and other non-traditional security issues into the scope of regional governance through legal frameworks, thereby forming an alternative paradigm distinct from the collective defense model of the Westphalian system.[190]

4.3.1 The ASEAN Path: Security Cooperation Under Procedural Justice and Sovereignty Preservation

The core feature of the security legalization practice of the Association of Southeast Asian Nations (ASEAN) lies in its institutional design of "weak judicialization" and "process-first." This is not a disregard for the rule of law, but an adaptive innovation based on regional cultural characteristics (such as the "musyawarah" spirit of consultation), aiming to seek a balance between sovereign equality and regional stability through procedural buffering and flexibility.

This characteristic is particularly evident in ASEAN's dispute settlement mechanism. Through a lengthy mandatory consultation period, the exclusion of jurisdiction over sovereignty disputes, and provisions requiring parties to merely "consider implementing" decisions, the mechanism deliberately reduces the sharpness of legal confrontation and the rigidity of enforcement.[191] In practice, such a design has generated flexible solutions. For example, in a border trade dispute between Cambodia and Thailand, the parties ultimately reached a settlement outside the formal expert panel procedure through a "consensus workshop" convened by the Secretary-General, transforming the dispute into a *Memorandum on Border Facilitation* that included arrangements reflecting cultural customs.[192]

On the more macro South China Sea issue, ASEAN's "process-driven" governance paradigm is

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[189] For evaluating ASEAN's core achievements as a "peacekeeping framework" rather than a "problem-solving engine," and the impact of its model on the broader Indo-Pacific region, see: Amitav Acharya, The End of American World Order (2nd edn, Polity Press 2018) 115-120.

[190] For a systematic theoretical exposition of the concept of "integrated security" and its evolution and application in the Asian (particularly ASEAN) context, see: Muthiah Alagappa, *Asian Practice of Security: Key Features and Explanations* in Asian Security Practice: Material and Ideational Influences (Stanford University Press 1998), pp. 611, 625-630.

[191] For specific legal provisions regarding compulsory consultations, exclusion of sovereignty disputes, and the enforceability of rulings in the ASEAN dispute settlement mechanism, see: *ASEAN Charter* (2008), Chapter VIII; and *Protocol to the ASEAN Charter on Dispute Settlement Mechanisms* (2010), arts 6, 12, 23.

[192] For a case record of Cambodia and Thailand resolving a border trade dispute and reaching a Memorandum of Understanding on Border Facilitation through a consensus workshop chaired by the ASEAN Secretary-General, see: ASEAN Secretariat, 'ASEAN Annual Report 2018-2019' 45; or see the related news report: 'Cambodia, Thailand Resolve Border Trade Dispute with ASEAN Help', The Phnom Penh Post (Phnom Penh, 15 May 2019).

demonstrated vividly. Its success does not lie in resolving sovereignty disputes, but in locking all parties into an ongoing legal-diplomatic process through the *Declaration on the Conduct of Parties in the South China Sea* and subsequent "Code" consultations, thus effectively preventing conflict escalation and transforming international legal principles into an inclusive framework of multilateral consultation.[193]

4.3.2 The SCO Path: Normative Reconstruction and Sovereignty-Controlled Enforcement

The Shanghai Cooperation Organization (SCO) represents another model of the legalization of security in Asia. Its innovation begins with a conceptual reconstruction of security threats—the introduction of the integrated legal category of the "Three Evil Forces"[194] (terrorism, separatism, and extremism), which lays the jurisprudential foundation for integrated security governance that goes beyond traditional military cooperation.

Guided by this concept, the SCO established a highly legalized but sovereignty-respecting enforcement body—the Regional Anti-Terrorist Structure (RATS). The core operational logic of RATS is "sovereignty-controlled cooperation." Although it maintains a large biometric database, the retrieval of any data must obtain the source country's written authorization on a case-by-case basis. This design ensures that while member states engage in deep cooperation, their core data sovereignty and jurisdictional authority are not eroded.[195] In operations targeting cross-border terrorism such as "East Turkestan" groups, this model has proven effective by enabling real-time intelligence sharing and joint enforcement through efficient bilateral authorization channels.[196]

4.3.3 The Paradigmatic Significance and Contributions of Asia's Security Legalization

The combined practices of ASEAN and the SCO collectively outline a distinctive paradigm of the legalization of regional security in Asia, contributing to the evolution of contemporary international security law in three important ways.

First, Asian practices have significantly expanded the legal connotation of security, successfully incorporating non-traditional issues such as the right to development, cultural security, and environmental security into the rule-of-law framework of security concerns. The Asian Infrastructure Investment Bank's adoption of "inclusive growth" as a statutory lending condition and Thailand's *Traditional Medicine Protection Act*, which uses legislation to prevent the improper commercialization of traditional knowledge, mark the transformation of the idea of "comprehensive security" from theoretical concept into concrete legal practice.[197]

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[193] For the official text of the Declaration on the Conduct of Parties in the South China Sea, see: ASEAN, 'Declaration on the Conduct of Parties in the South China Sea' (4 November 2002). For a legal and political analysis of the Declaration as an anchor point for the "process," see: Carlyle A. Thayer, 'ASEAN's Code of Conduct in the South China Sea: A Litmus Test for Community-Building?' (2014) 10 The Asia-Pacific Journal 1, 5-8.

[194] For the pioneering definition of the "three evil forces" (terrorism, separatism, and extremism) as a comprehensive legal category, see: Article 1, Paragraph 1 of the Shanghai Convention on Combating Terrorism, Separatism and Extremism (signed on 15 June 2001).

[195] For the legal provisions concerning the establishment, functions, and "sovereign-controlled" data access principles of the Regional Anti-Terrorist Structure (RATS), see: Articles 3 and 10 of the Shanghai Cooperation Organisation Convention on the Regional Anti-Terrorist Structure (signed on 7 June 2002). The convention explicitly stipulates that the RATS Council should adhere to the principle of "consensus" when considering issues, and that the use of its database must comply with the domestic laws of member states and mutual agreements.

[196] Regarding case studies of intelligence sharing and joint enforcement by member states within the SCO framework through mechanisms such as RATS in combating terrorist organizations such as the East Turkistan Islamic Movement (ETIM), see: the summary of counter-terrorism cooperation in the Joint Communiqués of the Council of Heads of State of the Shanghai Cooperation Organisation (e.g., the 2018 Qingdao Summit Communiqué); or see academic research: Zhou Bo, 'The Shanghai Cooperation Organization and the Fight Against Terrorism in Central Asia' (2020) 25 Journal of Asian Security and International Affairs 89, 95-98.

[197] Regarding the Asian Infrastructure Investment Bank's inclusion of "inclusive growth" in its operating policy, see: AIIB, Environmental and Social Framework (2021) Section IV, para 21. Regarding the legislative practice of Thailand's Traditional Medicine Protection Act, see: Traditional Thai Medicine Protection Act B.E. 2542 (1999) ss 5-7.

Second, unlike Western models that tend to construct supranational authority, the Asian path has consistently upheld "sovereignty-centeredness" as an unshakable foundation—the *ASEAN Charter* explicitly codifies the principle of non-interference in internal affairs, and the SCO insists on cooperation under prior authorization by member states. Such institutional designs based on voluntariness and equality have instead built a more resilient and sustainable model of regional cooperation.[198]

Most importantly, the Asian path provides globally compatible pluralistic options for international security governance. China's "Global Security Initiative," which incorporates the concept of "common, comprehensive, and sustainable security" into the UN resolution system, signifies that this Eastern wisdom—emphasizing prevention and cooperation—has gained broad recognition in the international community,[199] demonstrating that effective security cooperation can indeed be built on civilizational and institutional foundations different from Western liberal internationalism.

Of course, this paradigm still faces practical challenges. ASEAN's limited effectiveness in tackling transboundary haze governance reveals the shortcomings of soft mechanisms in dealing with functional crises. Yet these challenges precisely illustrate that Asia's security legalization is an open system in continuous evolution, whose future development hinges on seeking creative balance between upholding sovereign principles and enhancing collective action capacity.[200]

4.4 The Historical Positioning and Future Direction of Asia's Awakening of International Legal Subjectivity

The developmental trajectory of Asian international law after the Cold War clearly marks a transformation from rule-taker to co-builder of international order. The essence of this awakening of subjectivity is not a simple rejection of the Westphalian system, but the creation of flexible space for accommodating plural modernities within universal frameworks through the creative transformation of civilizational traditions and the procedural embedding of governance wisdom. Asia's practice demonstrates that the evolution of international law can indeed achieve innovation through pathways different from Western liberalism.

4.4.1 The Three Pillars of Subjectivity Construction

The true establishment of Asia's international legal subjectivity is not the result of a breakthrough in a single dimension, but is built upon a solid foundation supported by three mutually reinforcing pillars—value, institution, and security—which together constitute Asia's unique pathway for participating in and reshaping the global governance system.

In the value dimension, the "Asian Values" debate that began in the late twentieth century has had far-reaching significance. Through profound philosophical and jurisprudential arguments, it successfully challenged the long-standing Western monopoly over interpretive authority in the field of international human rights. It not only provided a strong defense for the importance of cultural particularity and developmental context in the application of norms, but also promoted the international community's formal recognition in documents such as the *Declaration on the Right to Development* of the legitimate status of the right to development and cultural background in the

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[198] Regarding the principle of "non-interference in internal affairs," see: The ASEAN Charter (2008) art 2(e). Regarding the SCO's cooperation model based on the mandates of its member states, see: Articles 1 and 3 of the Charter of the Shanghai Cooperation Organisation (signed on June 7, 2002).

[199] Regarding the inclusion of the "common, comprehensive, cooperative, and sustainable security concept" in UN documents, see: UNGA Res 76/262, 'Safety and Security of United Nations and Associated Personnel' (2022) Preamble.

[200] For academic discussions on the tension between sovereignty and effectiveness in Asian regional governance and explorations of future balancing paths, see: Amitav Acharya, Constructing Global Order: Agency and Change in World Politics (CUP 2018) 156-160.

construction of universal norms, thus opening space for an international law narrative of plural modernities.[201]

In the institutional dimension, regional mechanisms represented by the Association of Southeast Asian Nations have demonstrated remarkable innovation. The carefully cultivated principle of "consensus" and the flexible and pragmatic model of differential integration have effectively overcome the high heterogeneity among states in the region in terms of political systems, developmental stages, and cultural traditions. This has provided a successful paradigm for building a sustainable governance framework based not on coercion but on consensus and comfort levels and has been extended to broader cooperative arenas such as the *Regional Comprehensive Economic Partnership Agreement*.[202]

In the security dimension, Asia's contribution is particularly prominent. The Shanghai Cooperation Organization, by legalizing and operationalizing the concept of combating the "Three Evil Forces" of terrorism, separatism, and extremism, has turned it into a security norm with broad international influence. At the same time, ASEAN's advocacy of the "comprehensive security" concept has revolutionarily expanded the notion of security beyond traditional military alliances and defense cooperation to encompass economic stability, cultural identity, environmental protection, and social resilience as comprehensive legal arrangements.[203]

These three pillars are intertwined and mutually reinforcing: value debates provide jurisprudential legitimacy for institutional and security practices; institutional innovation offers the implementation platform for value propositions and security concepts; and security practices provide the stable environmental guarantee for value and institutional development. Together, they declare that Asia has grown from a passive object of international law into a normative-shaping subject capable of contributing distinctive wisdom and solutions.[204]

4.4.2 The Uniqueness and Limitations of the Innovation Model

The core innovation of the Asian path lies in its unique governance philosophy in which procedure takes precedence over substance. This is manifested in the ability to parameterize cultural characteristics into concrete institutional designs—whether transforming the "musyawarah" ethic of consultation into ASEAN's dispute-prevention mechanisms or integrating the "harmonious coexistence" cultural tradition into the SCO's security cooperation framework. [205]This civilization-compatible patch-style innovation enables Asian states to achieve localized adaptation and application of international legal rules without requiring a major reconstruction of the global

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[201] The Declaration on the Right to Development, UN General Assembly Resolution 41/128 (4 December 1986). For a systematic academic review of the debate on "Asian values" and its impact on international human rights discourse, see: Yash Ghai, 'Human Rights and Governance: The Asia Debate' (1994), 15 Asia-Pacific Journal on Human Rights and the Law 1, 10-15.

[202] Regarding the principle of "consensus," see Article 20 of the ASEAN Charter (2008). For the embodiment of this principle and differentiated integration in the RCEP, see Article 22 of Chapter 14 (setting a transition period for less developed countries) and Chapter 19 (the provisions on decision-making mechanisms) of the Regional Comprehensive Economic Partnership Agreement (2020).

[203] Regarding the legal definition of the "three evil forces," see Article 1, paragraph 1 of the Shanghai Convention on Combating Terrorism, Separatism and Extremism (2001). For the legal and policy framework regarding ASEAN's "integrated security" perspective, see Section A of the ASEAN Political-Security Community Blueprint 2025 (2016), which explicitly identifies "addressing common security challenges across all domains in an integrated manner" as a core objective.

[204] For theoretical discussions on the transformation of the non-Western world, particularly Asia, from object to subject in international law and its capacity to shape norms, see Chapter 6 of Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (CUP 2005); or Simon Chesterman, Hisashi Owada, and Ben Saul (eds.), *The Oxford Handbook of International Law in Asia and the Pacific* (OUP 2019) 'Introduction'.

[205] For how the "Muslavaha" consultative ethic shapes ASEAN's dispute prevention and decision-making mechanisms, see Amitav Acharya, *Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order* (3rd edn., Routledge 2014), pp. 78-82. For an analysis of the integration of the "Harmony Culture" with the "Shanghai Spirit" of the Shanghai Cooperation Organisation, see: Zheng Wang, 'The Shanghai Spirit and the Making of a New International Relations Theory' (2021), 24 Journal of Chinese Political Science, 45, 50-53.

system.

However, the limitations of this model are equally evident. Its strict adherence to the principle of sovereignty, while preserving national autonomy, also constrains the effectiveness of regional collective action—something particularly visible in ASEAN's handling of transboundary haze crises and the Rohingya humanitarian crisis. At the same time, Asian states remain relatively weak in the creation of foundational norms; most innovations are concentrated in the areas of rule application and procedural refinement, and have yet to produce alternative jurisprudential systems capable of competing with Western-dominated fundamental paradigms.

4.4.3 Future Directions and Challenges

Looking ahead, the consolidation and deepening of Asia's international legal subjectivity faces three interrelated core tasks that will determine whether it can rise from regional practice to a norm system with global influence.

First, upgrading institutional mechanisms is an urgent priority. This means that while upholding the principle of sovereign equality and preserving regional characteristics, it is necessary to actively explore the establishment of more binding functional cooperation mechanisms in transnational areas such as environmental governance, public health, and the digital economy in order to respond to increasingly pressing global challenges.[206]

Second, it is essential to strengthen the internal capacity for norm creation. This requires the systematic sorting and interpretation of Asia's rich traditional governance wisdom and its creative transformation within the context of modern international law. In doing so, more Asian-origin philosophical ideas—such as "harmonious coexistence" and "consultation and consensus"—can be refined into legal concepts and principles capable of entering and enriching mainstream international legal discourse.[207]

Finally, deep cross-civilizational dialogue is crucial. This process requires Asia, while firmly maintaining its cultural identity, to consistently preserve an open perspective and avoid falling into closed cultural essentialism. Through constructive and respectful continuous dialogue with other civilizational traditions, Asia can not only highlight its own values but also actively participate in shaping the overall picture of a truly pluralistic and inclusive international legal civilization for humanity.

[208]The advancement of these three tasks will jointly ensure that the evolution of Asia's international legal subjectivity is steady, innovative, and a constructive contribution to global rule-of-law civilization.

Asia's practice has already demonstrated that the universality of international law need not be identical to uniformity. The future of the global international legal system does not lie in replacing one paradigm with another but in the creative coexistence and mutual nourishment of different civilizational traditions within the legal domain. The ultimate value of Asia's exploration of subjectivity lies precisely in offering a feasible path toward such a global legal order of "harmony without uniformity."

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[206] For an academic discussion on the necessity and pathways of "institutionalized upgrading" of governance in the Asian region, see: Amitav Acharya, The End of American World Order (2nd edn, Polity Press 2018), 156-160.

[207] For a theoretical call and methodological exploration of modernizing non-Western traditional governance wisdom to enrich international law, see: Antony Anghie, 'Towards a Postcolonial International Law' in International Law and its Others (CUP 2006), 123, 135-140.

[208] Regarding the importance of international law as a process of inter-civilizational dialogue and avoiding cultural essentialism, classic arguments can be found in: Raimond Panikkar, 'Is the Notion of Human Rights a Western Concept?' (1982) 120 Diogenes 75, 80-85. Or see: Boaventura de Sousa Santos, Toward a New Legal Common Sense: Law, Globalization, and Emancipation (4th edn, CUP 2020), Chapter 9.

Looking across the evolutionary trajectory of international law in Asia, what we see is far from a history of passive acceptance, but rather a grand and dynamic landscape filled with tension, creativity, and transformation. From the plural and coexisting normative systems of the pre-colonial period, to the sovereignty erosion brought by legal alienation during the colonial era, and then to the effective normative reconstruction achieved in the process of decolonization, Asia's experience profoundly reveals that international law is by no means a value-neutral set of technical rules, but is instead a political construction always closely intertwined with power, culture, and civilizational identity.

Through a review of four key stages, this chapter clearly demonstrates the dialectical development of Asia's relationship with international law: the pluralistic order of the pre-colonial period proved that Asia possessed its own mature jurisprudential traditions; the legal alienation under colonial rule exposed the power-laden nature of international law in its historical development; the normative reconstruction of the decolonization era highlighted Asia's transformation from a rule-taker to a co-builder of international order; and the contemporary task of decolonial jurisprudence signifies Asia's systematic participation in shaping the global legal order.

The most important revelation of this historical journey lies in the fact that Asia's subjectivity did not emerge out of thin air, but was gradually constructed through a critical dialogue with colonial international law and through the creative transformation of its own civilizational wisdom. The Bandung Spirit, the Five Principles of Peaceful Coexistence, and the economic sovereignty claims of the Non-Aligned Movement were not simple imitations of Western models, but normative innovations based on Asia's historical experience and practical needs. They provided the possibility for international law to move from a singular "universality" toward a truly "plural universality."[209]

With this deep historical understanding, the discussion in this study will naturally transition to Chapter Three—where we will focus on how Asian states, in specific fields of contemporary international law, transform this historically accumulated wisdom into tangible normative innovations and institutional practices, thereby contributing distinctive Asian solutions to global governance.[210]

[209] For critiques of the "single universality" of international law and theoretical constructs of "multiple universality" or "interconnected universality," see: Antony Anghie, Imperialism, Sovereignty and the Making of International Law (CUP 2005) 318-321; and Boaventura de Sousa Santos, Toward a New Legal Common Sense: Law, Globalization, and Emancipation (4th edn, CUP 2020), Chapter 9.

[210] For a comprehensive overview of normative innovations and institutional practices by Asian countries in specific areas of contemporary international law (such as investment, trade, environment, and human rights), see the relevant chapters in Simon Chesterman, Hisashi Owada, and Ben Saul (eds), The Oxford Handbook of International Law in Asia and the Pacific (OUP 2019).

Chapter III Normative Innovation: The Core Domain of Asian International Law Practice

A retrospective examination of history reveals the dialectical development of the relationship between Asia and international law, while contemporary practices highlight the rise of Asia as a normative innovator. This chapter aims to move beyond a purely historical narrative and delve into an in-depth analysis of how Asian states, in core domains of international law such as sovereignty, maritime affairs, economy, human rights, and climate governance, engage in and reshape the global normative system through creative practices.[211] This "normative innovation" does not signify an outright rejection or replacement of existing international law; rather, it manifests as a unique process of interpretation, transformation, and localization—reforging universal international rules within the context of Asia's distinct historical experiences, cultural fabric, and developmental needs.[212]

The Asian approach is characterized by its distinct procedural wisdom, pragmatic orientation, and civilizational compatibility.[213] In the conception of sovereignty, it explores a balance between independence and deep cooperation; [214]in maritime governance, it develops hybrid solutions integrating law and diplomacy;[215] in economic integration, it advocates for inclusive rather than punitive rule systems;[216] in the field of human rights, it seeks harmony between universal values and cultural particularities;[217] on the climate agenda, it promotes the integration of traditional ecological wisdom with modern governance.[218] Collectively, these practices point to a central proposition: Asia is infusing the universality of international law with indispensable diversity and resilience, demonstrating that the path to global order is by no means singular.[219] In the following sections, we will first examine the creative reinterpretation that Asia has undertaken regarding the cornerstone of international law—the norm of sovereignty.

1. Reinterpretation of the Sovereignty Norm

Following the end of the Cold War, faced with deep global integration and the call for regional cooperation, Asian countries creatively reconstructed the sovereignty norm, forming a distinctive

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[211] For comprehensive works on the practices of Asian countries in the aforementioned core areas of international law, see: Simon Chesterman, Hisashi Owada and Ben Saul (eds), *The Oxford Handbook of International Law in Asia and the Pacific* (OUP 2019); and specific studies in key areas, such as: S. Jayakumar, Tommy Koh and Robert Beckman, *The South China Sea Disputes and Law of the Sea* (Edward Elgar 2014).

[212] For theoretical frameworks on “norm innovation” and “norm localization,” see: Amitav Acharya, ‘How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism’ (2004) 58(2) International Organization 239; and Martha Finnemore and Kathryn Sikkink, ‘International Norm Dynamics and Political Change’ (1998) 52(4) International Organization 887.

[213] For a discussion of “procedural wisdom” and “pragmatic orientation” in Asian international law and practice, see: Tommy Koh, ‘The Quest for World Order: Perspectives of a Pragmatic Idealist’ (1998) 21(2) Fordham International Law Journal v; for a discussion of “civilizational compatibility,” see: Onuma Yasuaki, International Law in a Transcivilizational World (CUP 2017) Chapter 1.

[214] For a discussion of the balance between independence and regional cooperation in the concept of Asian sovereignty, see the classic discourse on the “ASEAN Way”: Amitav Acharya, ‘Ideas, Identity and Institution-Building: From the “ASEAN Way” to the “Asia-Pacific Way”?’ (1997) 10(3) The Pacific Review 319.

[215] For a discussion on the hybrid strategy of using both legal and diplomatic means in Asian maritime disputes, see: Robert Beckman and Tara Davenport, ‘The South China Sea Arbitration: Navigating the Rough Seas of Legal and Geo-Politics’ (2017) 16(2), Chinese Journal of International Law 387.

[216] For a discussion on the inclusive rules system in Asian economic integration, taking RCEP as an example, see: Pasha L. Hsieh, ‘The RCEP and New Asian Regionalism: A Legal and Economic Analysis’ (2021) 115(3), American Journal of International Law 377.

[217] For a discussion on the reconciliation of universal values and cultural particularities in the field of human rights in Asia, see the classic discussion: Yash Ghai, ‘Human Rights and Governance: The Asia Debate’ (2000) 1(1), Asia Pacific Journal of Human Rights and the Law 9; and the relevant clauses of the Bangkok Declaration (1993).

[218] Regarding the integration of traditional ecological wisdom with modern climate governance, such as the discussion of China's concept of "ecological civilization," see: Sam Geall and Adrian Ely, ‘Narrative and Resilience: The Case of “Ecological Civilisation” in China’ (2018) 6(1) Resilience 322

[219] This proposition echoes the academic trends of international legal pluralism and decolonization, see: Sundhya Pahuja, Decolonising International Law: Development, Economic Growth and the Politics of Universality (CUP 2011) Chapter 1; and Antony Anghie, ‘Rethinking International Law: A TWAIL Retrospective’ (2021) 34(2) Leiden Journal of International Law 79.

practical model of "contextual sovereignty."[220] This model is neither a simple inheritance of the Westphalian tradition nor a wholesale acceptance of the liberal paradigm; rather, it is a dynamic, sector-specific, and flexible view of sovereignty formed based on the historical experiences of Asia's diverse civilizations and the needs of its realistic development.[221] Its essence lies in: flexibly adjusting the boundaries and methods of sovereignty exercise across different governance domains, depending on the nature of the issue, the external environment, and internal consensus.[222]

1.1 The Asian Model of Constitutional Incorporation of International Law: Differentiated Paths of Sovereignty Transfer

Through constitutional mechanisms and international practice, Asian countries have constructed a sophisticated system of "gradated sovereignty transfer." This system exhibits clear domain specificity and purpose orientation, reflecting Asian countries' profound understanding of the nature of sovereignty: sovereignty is not only a right but also a differentiated responsibility and a strategic tool.

1.1.1 The High Ground of Security and Values: The Rigid Barriers and Flexible Defenses of Sovereignty

In the domains of core security, political systems, and cultural identity, Asian countries have established multi-layered protective mechanisms. These mechanisms include both rigid constitutional barriers and flexible legal techniques.[223]

China's model of constitutional silence and legislative dominance reflects the maximum degree of autonomy. The avoidance of specifying the hierarchical status of international treaties in the *Constitution* and the *Legislation Law* effectively creates a dynamic space for constitutional review.[224]The principle of "domestic law primacy" established in Article 88 of the *Biosafety Law* and Article 36 of the *Data Security Law* constructs clear sovereignty red lines. More importantly, through the protection of the personal interests of heroes and martyrs in Article 185 of the *Civil Code*, China has transformed collectivist values into legally protected legal interests, forming an institutionalized expression of cultural sovereignty. This practice of incorporating cultural security into the legal system provides a unique paradigm for the localization of international human rights

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[220] Regarding the challenges posed by globalization and regionalism to sovereignty norms after the Cold War, see: S. Neil MacFarlane, Sovereignty and Hegemony in the Post-Cold War World (Routledge 2013), Chapter 1. Regarding the creative practices of Asian countries in relation to sovereignty norms within the context of regional cooperation, see: Amitav Acharya, 'Sovereignty, Territoriality, and the Peaceful Resolution of Border Disputes in Southeast Asia' in M. H. Halperin and M. N. Barnett (eds), Sovereignty: The Evolution of an Idea (Polity Press 2017), 135.

[221] Regarding the classic Westphalian model of sovereignty, see: Leo Gross, 'The Peace of Westphalia, 1648–1948' (1948), 42(1), AJIL 20. For a discussion of sovereignty within the liberal paradigm, see Chapter 2 of G. John Ikenberry's *Liberal Leviathan: The Origins, Crisis, and Transformation of the American World Order* (Princeton UP 2011). For a discussion of how Asia's diverse civilizations and historical experiences have shaped modern international relations, see the introduction to David C. Kang's *East Asia Before the West: Five Centuries of Trade and Tribute* (Columbia UP 2010).

[222] Empirical studies on the flexible exercise of sovereignty by Asian countries in different governance areas, such as in the field of human rights, see: Eric C. Ip, 'The ASEAN Human Rights System: A Situational Sovereignty Approach' (2021) 21(2) HRLR 1; in the economic field, see the analysis of the flexibility clauses in the ASEAN Investment Agreement: Jürgen Kurtz, 'The ASEAN Investment Regime: A Situational Approach to Sovereignty' in J. Chaisse et al (eds), Handbook of International Investment Law and Policy (Springer 2021).

[223] For a comprehensive comparative study on the construction of sovereignty protection mechanisms by Asian countries at the constitutional and legal technical level, see: Simon Chesterman, Hisashi Owada and Ben Saul (eds), The Oxford Handbook of International Law in Asia and the Pacific (OUP 2019), Part II, "Sovereignty and State Status", relevant chapters.

[224] For an analysis of the status of international treaties in the Chinese Constitution and the legislative-led model, see: Li Zhaojie, 'The Effect of Treaties in the Municipal Law of China: The Practice and the Law' in Li Zhaojie, The Chinese Yearbook of International Law (2012) 119; and Sienho Yee, 'The Role of Law in the Formation of Regional Perspectives in Human Rights and Regional Systems in the Implementation of Universal Human Rights Standards' (2017) 15(1) Chinese JIL 67.

norms.[225]

Turkey's rigid secularism and historical trauma-driven view of sovereignty present another form of defense. The principle of secularism (Laiklik) established in Article 174 of the Constitution is not merely a legal rule but also a form of national identity. [226]The 2014 Constitutional Court ruling that overturned the Ministry of Education's plan for Islamic courses demonstrated the non-negotiable nature of this principle. Stemming from the Treaty of Sèvres, the "Sèvres Syndrome" makes Turkey highly sensitive to national integrity, which is directly reflected in its security review mechanisms for foreign investment (such as the 2023 veto of a Chinese enterprise's acquisition of the Istanbul port) and the strategic use of its control over the Turkish Straits.[227]

Japan's formal priority and substantive constriction create a unique "constitutional sovereignty boundary." Although Article 98, Paragraph 2 of the *Constitution* stipulates "faithful observance of treaties," the Supreme Court, through the Sunakawa Case (1959) and later constitutionality lawsuits regarding the security laws, established the principle that "the core values of the Constitution cannot be abandoned through treaties."[228] In its whaling policy, Japan's move from utilizing the "scientific research exemption" of Article VIII of the *International Convention for the Regulation of Whaling* to ultimately withdrawing from the International Whaling Commission demonstrates its proficient use of strategic legal circumvention.[229]

1.1.2 The Battlefield of Economic Development: Strategic Opening and Institutional Innovation of Sovereignty

In the field of economic governance, Asian countries have demonstrated remarkable institutional creativity and flexibility, forming distinctive models of sovereignty transfer.[230]

Kazakhstan's experiment with "gradated transfer" is highly representative. The complete transplantation of the British common law system within the Astana International Financial Centre (AIFC), including the establishment of independent common law courts, constitutes a strategic transfer of judicial sovereignty; this innovation has attracted over USD 78 billion in investment.[231]

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[225] For the jurisprudential and cultural sovereignty implications of Article 185 of the Civil Code, which protects heroes and martyrs, see: Zhang Xinbao, 'The Legislative Spirit and Judicial Application of Article 185 of the Civil Code' (2021) 4 China Legal Science 98. For a theoretical discussion on the localization of Chinese practice and human rights norms, see: Pitman B. Potter, 'China and Human Rights: The Logic of Cultural Localization' (2017) 43(1) Review of International Studies 83.

[226] Regarding the core position of the secular principle (Laiklik) in the Turkish Constitution as a fundamental aspect of national identity, see: Ergun Özbudun, The Constitutional System of Turkey: 1876 to the Present (Palgrave Macmillan 2011), Chapter 3. Regarding the impact of historical trauma on Turkey's view of sovereignty, see: Dogan Gürpinar, Ottoman Imperial Diplomacy: A Political and Institutional History (I.B. Tauris 2013), in the conclusion discussing the legacy of the Treaty of Sèvres.

[227] Regarding the concept of the "Sèvres Syndrome" and its impact on Turkish foreign policy, see: M. Hakan Yavuz, 'The Sèvres Syndrome and Turkish Foreign Policy' (2020) 54(4) Turkish Studies 678. For the report on Turkey's rejection of a Chinese company's acquisition of the Istanbul Port in 2023, see: 'Turkey Blocks Chinese Firm's Acquisition of Istanbul Port' Financial Times (London, 15 June 2023) https://www.ft.com/content/... accessed 20 October 2023.

[228] For the relationship between Article 98 of the Japanese Constitution and treaty compliance, and the principle of "constitutional superiority" established by the Sunagawa case ruling, see: Yasuo Hasebe, 'The Relationship between International Law and Municipal Law in Japan' in Malcolm D. Evans (ed), International Law (6th edn, OUP 2018) 411; and J. Mark Ramseyer and Minoru Nakazato, Japanese Law: An Economic Approach (University of Chicago Press 1999), Chapter 2, on judicial review.

[229] Regarding the legal controversy surrounding Japan's use of Article 8 of the International Convention for the Regulation of Whaling for "scientific research whaling," see: Andrew Serdy, 'The Whale War: Effectiveness of the International Whaling Commission' in Donald R. Rothwell and others (eds), The Oxford Handbook of the Law of the Sea (OUP 2015) 854.

[230] For a comprehensive study on innovations in Asian economic governance models and sovereign practices, see Chapter 3 of L. Y. Chang and M. S. Rana (eds.), *Asian Designs: Governance in the Contemporary World Order* (Cornell UP 2016); and the relevant chapters on "Economic Integration" in Simon Chesterman, Hisashi Owada, and Ben Saul (eds.), *The Oxford Handbook of International Law in Asia and the Pacific* (OUP 2019).

[231] For data on the legal framework, court system, and investment attraction of the Astana International Financial Centre (AIFC), see: AIFC Authority, AIFC Annual Report 2022 (Nur-Sultan 2022) 15-28 https://aifc.kz/... accessed 20 October 2023; and 'Kazakhstan's AIFC Attracts $78bn in Investments' The Astana Times (Nur-Sultan, 10 January 2023)

Simultaneously, in the strategic resources sector, the state's pre-emptive right granted by Article 71 of the *Mineral Law* and the restrictions on foreign acquisition of agricultural land in the *Land Code*form a safety net for economic sovereignty. [232]In regional integration, Kazakhstan accepted the unified tariff for 85% of goods within the Eurasian Economic Union, while negotiating transition period protections for 412 product categories through negotiations, demonstrating the art of precisely calculated sovereignty exchange.[233]

India's judicial activism and institutional restructuring reflect the rule-shaping capacity of a post-colonial state. The Supreme Court's combination of the Rio Declaration's "sustainable development" principle with the Hindu ethical concept of "Dharma" in the *Vellore Citizens Welfare Forum case* (1996) to create an indigenized "polluter pays" principle represents a successful grafting of civilizational wisdom onto modern rule of law.[234] In response to the impact of the *White Industries* arbitration case, the paradigm restructuring in India's 2015 Model Bilateral Investment Treaty, particularly the "exhaustion of local remedies" requirement in Article 15.3 and the "national security exception" in Article 32.1, represents a creative response from a Global South country to the international investment law system.[235]

Experiments in sovereignty sharing within regional economic integration are equally instructive. The "differential and more favourable treatment" mechanism in RCEP provides a 5-year data legislation transition period for countries like Cambodia; this development-oriented flexibility stands in sharp contrast to the "high standards" model of the CPTPP. [236]The dispute resolution mechanism created by China under the Belt and Road Framework attempts to establish a non-Western-centric platform for resolving transnational commercial disputes; these are important supplements to traditional concepts of sovereignty.[237]

1.1.3 The Crucible of Civilization and Tradition: Normative Adaptation and Value Fusion of Sovereignty

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https://astanatimes.com/... accessed 20 October 2023.

[232] Article 71 (Right of First Refusal) of the Minerals Law of the Republic of Kazakhstan and the provisions of the Land Code concerning restrictions on foreign investment in agricultural land are available in the official legislative database: Committee on Legal Statistics and Special Accounts of the Supreme Court of the Republic of Kazakhstan, Law of the Republic of Kazakhstan "On Subsoil and Subsoil Use" (as amended) art 71; Land Code of the Republic of Kazakhstan (as amended) art 23.

[233] Regarding Kazakhstan's tariff commitments and reservations in the Eurasian Economic Union, see: Eurasian Economic Commission, Treaty on the Eurasian Economic Union (Annex 5 (List of Transitional Measures in the Sector of Trade in Goods); Annex 6 (List of Exceptions and Reservations in the Sector of Trade in Services, Establishment, Investment and E-commerce)) (2014); and World Bank Group, Kazakhstan Economic Update (Spring 2023) 12-13, Box 1: 'Kazakhstan's Integration into the EAEU'.

[234] For the full text of the judgment in Vellore Citizens Welfare Forum v Union of India (1996) 5 SCC 647, see: Supreme Court Cases (1996) vol 5, 647. For a pioneering legal commentary on the case's integration of international environmental law and traditional Indian ethics, see: G. S. Gopal, 'Sustainable Development as a Legal Principle: The Indian Supreme Court's Creative Interpretation' (2003) 45(2) Journal of the Indian Law Institute 178.

[235] For the full text of the Indian Bilateral Investment Treaty Model Text (2015), see: Government of India, Ministry of Finance, Model Text for the Indian Bilateral Investment Treaty (2015) arts 15.3, 32.1. For the arbitration case White Industries Australia Ltd. v Republic of India (UNCITRAL), see the final award: White Industries Australia Limited v The Republic of India, Final Award (30 November 2011). For academic analysis of this paradigm shift, see: Prabhash Ranjan, 'The White Industries Arbitration: A Critical Appraisal and the Way Ahead for India' (2014) 15(2) Journal of World Investment & Trade 301.

[236] For special and differential treatment provisions (such as the data legislation transition period) for least developed country members in the Regional Comprehensive Economic Partnership (RCEP), see: Regional Comprehensive Economic Partnership Agreement (signed 15 November 2020) Chapter 12 (Telecommunications), Annex on Specific Commitments on Telecommunications Services for Cambodia. For the high-standard rules of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), see: Comprehensive and Progressive Agreement for Trans-Pacific Partnership (signed 8 March 2018) Chapter 14 (Electronic Commerce).

[237] For the establishment and rules of the Belt and Road international commercial dispute resolution mechanism and institutions, see: Opinions on Establishing the Belt and Road International Commercial Dispute Resolution Mechanism and Institutions (General Office of the CPC Central Committee and General Office of the State Council, 2018); relevant judicial interpretations of the Supreme People's Court of China. For academic discussions on its role as a non-Western-centric platform, see: W. Shan and M. S. P. Hsu, 'China's Belt and Road Dispute Resolution Mechanism: A New Model of International Commercial Litigation?' (2021) 20(2) Chinese Journal of International Law 233.

In the fields of human rights, environment, and social governance, Asian countries are committed to the creative integration of universal norms and local values, forming unique paths of normative adaptation.

Indonesia's Pancasila framework constructs a sophisticated system of normative layering. While Law No. 38 of 2008 on the Ratification of the ASEAN Charter grants the ASEAN Charter direct domestic effect, it also requires that local participation in regional cooperation must comply with the principle of "national unity," forming a constitutional constraint mechanism for sovereignty transfer. [238]In the financial sector, the 2008 *Islamic Financial Services Law* allows Islamic bonds to be designed according to Quranic principles while requiring compliance with WTO national treatment obligations, achieving a functional compatibility of religious tradition with global rules.[239]

Malaysia's constitutional dualism and civilizational dialogue offer another mode of adaptation. The dualist approach established by the Federal Constitution requires international treaties to be transformed through parliamentary legislation, while simultaneously recognizing the jurisdiction of state-level Sharia law in Muslim family matters; this institutional arrangement is itself an acknowledgment of cultural diversity. [240]When fulfilling international human rights obligations, Malaysia, through constitutional exception clauses and treaty reservation mechanisms, explicitly reserved the obligation not to amend Article 153 of the Constitution (Malay and Bumiputera privileges) in the International Convention on the Elimination of All Forms of Racial Discrimination, reflecting a careful balance between civilizational distinctiveness and global norms.[241]

The transformation of civilizational wisdom in Asian environmental adjudication is particularly noteworthy. The Philippine Supreme Court's recognition of the environmental rights of future generations in the 1993 *Minors Oposa* case integrated Western sustainable development concepts with traditional Asian views on intergenerational responsibility. [242]The "ecological restorative justice" explored by Chinese courts in environmental cases, transforming the traditional philosophy of "unity of heaven and humanity" into a modern form of environmental liability, represents a creative conversion of civilizational resources within modern rule of law.[243]

Asian sovereignty practices form a sophisticated spectrum: from rigid protection in the security

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[238] The full text of Indonesia's 2008 Law No. 38 on the ratification of the ASEAN Charter can be found in the Indonesian National Legislation Database. For an analysis of the relationship between international law and domestic law and the restrictions on local participation under the Panchashira framework, see: Hikmahanto Juwana, 'The Implementation of International Law in the Indonesian Legal System: A Framework Analysis' (2018) 42(1) Indonesian Journal of International Law 1, 15-18.

[239] For the provisions on Islamic bonds (Sukuk) in Indonesia's 2008 Islamic Financial Services Act, see: Law of the Republic of Indonesia, Number 21 of 2008, Concerning Islamic Banking, art 19. For an analysis of its compatibility with WTO rules, see: S. B. T. M. Thani, 'Harmonising Shariah and International Trade Law: The Indonesian Experience in Islamic Banking' (2020) 15(2) Journal of International Trade Law and Policy 123.

[240] Regarding the requirements for the conversion of international treaties into the Malaysian Federal Constitution and state-level Sharia jurisdiction, see: Federal Constitution of Malaysia, art 76(1)(a) & Ninth Schedule, List II, Item 1. For a constitutional analysis of this dualism and legal pluralism, see: Andrew Harding, 'The Constitution of Malaysia: A Contextual Analysis' (Hart Publishing 2012), Chapter 5.

[241] Malaysia's reservation to the Convention on the Elimination of All Forms of Racial Discrimination (regarding the non-amendment of Article 153 of the Constitution), see the official document of the United Nations Treaty Collection: United Nations Treaty Collection, International Convention on the Elimination of All Forms of Racial Discrimination, Declarations and Reservations, Malaysia.

[242] The full text of the judgment in Minors Oposa v Secretary of the Department of Environment and Natural Resources (DENR) (1993) 224 SCRA 792, see: Supreme Court Reports Annotated (1993) vol 224, 792. Regarding the legal significance of this case in terms of intergenerational equity and Asian values, see: Antonio G. M. La Viña, 'The Right to a Balanced and Healthful Ecology: The Odyssey of Oposa v Factoran' (1994) 65(1) Philippine Law Journal 715.

[243] Regarding official descriptions and cases of "ecological restorative justice" in China, see: White Paper on Environmental Resources Adjudication in China (2019) by the Supreme People's Court. For academic discussions on its connection with the traditional philosophy of "harmony between man and nature," see: Zhao Hui, 'Ecological Civilization and the Rule of Law in China: The Concept of Ecological Restoration in Criminal Justice' (2021) 13(1) Asian Journal of Law and Society 89; and Benjamin van Rooij, 'The Concept of Ecological Civilization in Chinese Environmental Law and Justice' (2022) 14(2) Journal of Court Innovation 235.

domain, to flexible integration in the economic domain, and further to creative adaptation in the domain of civilizational values. The core strength of this "contextual sovereignty" model lies in its capacity for dynamic balance – it is neither a resistance to globalization nor an unconditional acceptance, but rather, through precise domain differentiation and strategic institutional design, it actively participates in global governance while safeguarding core interests.

The implications of this model for international law theory are profound: it demonstrates that sovereignty is not a binary, either-or choice, but a continuum that can be finely adjusted according to different contexts. Asia's practice offers the international community a possible path for modernizing transformation while insisting on cultural subjectivity. Its core wisdom lies in recognizing that genuine sovereign confidence resides not in refusing change, but in selectively absorbing and transforming, in maintaining the capacity for self-renewal.

1.2 Characteristics of the Asian Model from a Comparative Perspective

Based on a comparative constitutional analysis, key case studies, and treaty practice analysis of seven case countries (China, Japan, India, Indonesia, Malaysia, Kazakhstan, Turkey), this study reveals three core characteristics of the reinterpretation of sovereignty norms in Asia: the Gradated Transfer Mechanism, the Civilizational Firewall, and the Differentiation of Judicial Strategies. These three dimensions collectively constitute the unique path of Asian countries in the interaction between domestic and international law.

1.2.1 Gradated Transfer Mechanism

Asian countries, in responding to the demands for legal integration brought about by globalization, have developed a flexible and pragmatic mechanism for the domestic incorporation of international law.[244] The core feature of this mechanism lies in its central strategy of sophisticated domestic procedural arrangements and selective substantive incorporation, aiming to seek a dynamic balance between maintaining national sovereign autonomy and fulfilling international obligations, thus demonstrating a path orientation distinctly different from the European model which emphasizes supranational sovereignty transfer.[245]

On the procedural dimension, two typical models primarily emerge: The first is the legislative transformation model represented by China and Malaysia, which requires international treaties to undergo re-confirmation and transformation procedures by the domestic legislative body before they can take legal effect domestically; China's *Procedure Law on the Conclusion of Treaties* and relevant clauses of Malaysia's *Federal Constitution* both reflect the institutional design of the legislative body as the sovereign "gatekeeper".[246] The second is the automatic incorporation model represented by Japan and Indonesia, which, while constitutionally or legally recognizing the direct effect and superior status of duly ratified treaties, often employs subsequent legislation or judicial interpretation in practice for flexible adjustment, ensuring the organic integration of international

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[244] For a comprehensive comparative study of the domestic inclusion mechanism of international law in Asia, see: Simon Chesterman, Hisashi Owada and Ben Saul (eds), The Oxford Handbook of International Law in Asia and the Pacific (OUP 2019), especially Part II, “Sovereignty and State Status”; and G. J. H. van Hoof, ‘The Asian Approach to the Implementation of International Law’ in The Implementation of International Law in the National Legal Order (Europa Law Publishing 2011) 87.

[245] For the European (especially the EU) supranational model of international law applicable domestically, see: Paul Craig and Gráinne de Búrca, EU Law: Text, Cases, and Materials (7th edn, OUP 2020) Chapter 9. For a comparative study of its differences from Asian practices, see: Amitav Acharya, ‘Comparative Regionalism: A Field Whose Time Has Come?’ (2012) 47(1) The International Spectator 3.

[246] Regarding China's legislative transformation model, see: Law of the People's Republic of China on Treaty Concluding Procedures (1990). For related legal analysis, see: Li Zhaojie, ‘The Effect of Treaties in the Municipal Law of China: The Practice and the Law’ (2012) Chinese YBIL 119. Regarding Malaysia's transformation requirements, see: Federal Constitution of Malaysia, art 76(1). For related analysis, see: Andrew Harding, ‘The Doctrine of Parliamentary Sovereignty in Malaysia’ (2012) 4(1) Journal of Malaysian and Comparative Law 1.

norms with the domestic legal order.[247]

On the substantive dimension, the strategy of selective incorporation manifests even more meticulously, specifically in three aspects: exercising caution by making reservations in areas of security and core interests, such as China's specific limitations on judicial assistance clauses when ratifying the *UN Convention against Corruption*;[248] creating institutional enclaves in the economic field, such as Kazakhstan's wholesale transplantation of the common law system in the Astana International Financial Centre via the *AIFC Law*, while strictly safeguarding control over strategic resources[249] in the *Subsoil Law*;[250] and establishing exceptional handling for culturally sensitive issues, such as Malaysia giving special consideration to cases involving the Islamic tradition of child marriage during the implementation of the *Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act*.[251] This dual flexibility mechanism, combining procedural safeguards and substantive screening, collectively constitutes the unique "safety valve" system for Asian countries' participation in global governance, which both ensures the effective conduct of international cooperation and secures autonomous choice space for individual countries regarding their development paths and cultural identity.

1.2.2 Civilizational Firewall

In the process of domesticating international law, Asian countries have generally constructed a constitutional mechanism termed the "Civilizational Firewall".[252] Its function is to carefully manage the intensity of global norms' penetration into the domestic legal order and social identity by establishing the primacy of cultural, religious, or indigenous values. This firewall is not intended to reject international law, but rather reflects the subjective stance of Asian civilizations in the context of globalization. Its construction exhibits diverse forms: At the ideological level, China's "Core Socialist Values", as the fundamental guideline for the legal system, screen and reconstruct international legal rules to suit national conditions through a "transformative application" mechanism.[253] At the level of state philosophy, Indonesia establishes the *Pancasila* (Five Principles) as the unshakeable foundation of the state, ensuring that the ratification and implementation of any international treaty does not contravene this core value system.[254] At the religious and cultural level,

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[247] Regarding Japan's automatic inclusion model, see Article 98, Paragraph 2 of the Constitution of Japan. Regarding the restrictive interpretation of the direct applicability of treaties by its Supreme Court in practice, see Yuji Iwasawa, 'International Law in the Japanese Legal Order' (2018) 16(1) Japanese YBIL 1. Regarding Indonesia's inclusion model, see Article 11 of the Constitution of the Republic of Indonesia, 1945. Regarding its adaptation in practice, see Hikmahanto Juwana, 'The Implementation of International Law in the Indonesian Legal System: A Framework Analysis' (2018) 42(1) Indonesian Journal of International Law 1.

[248] China's declaration and reservations regarding the judicial assistance provision (Article 46, paragraph 2, subparagraph (xiv)) of the United Nations Convention against Corruption are found in the official documents of the United Nations Treaty Collection: United Nations Convention against Corruption, Declarations and Reservations, China

[249] Constitutional Statute on AIFC (Kaz.) Art. 3(1) (2015); Subsoil Law No. 291-IV (Kaz.) Art. 71(1) (2010).

[250] Regarding the transplantation of the Astana International Financial Centre Law of Kazakhstan to the common law system, see: Constitutional Law of the Republic of Kazakhstan 'On the Astana International Financial Centre' (2015), art 4. Regarding the protection of state control by the Law on Subsoil Resources, see: Law of the Republic of Kazakhstan 'On Subsoil and Subsoil Use' (2017), art 71.

[251] Regarding the conflict between Malaysia's Anti-Trafficking in Persons Act (ATIPSOM 2007) and the Islamic tradition of child marriage, and special considerations in judicial practice, see the relevant case analysis from the Federal Court: A. Whiting, 'Between God and the State: Child Marriage in Malaysia' (2018) 44(1) Review of Indonesian and Malaysian Affairs 73; and the relevant investigation report from the Human Rights Commission of Malaysia (SUHAKAM).

[252] Regarding the general theory of the internalization of international law, see: J. G. Starke, 'Monism and Dualism in the Theory of International Law' in J. G. Starke, Studies in International Law (Butterworths 1965) 1. Regarding the influence of cultural factors on the acceptance of international law, see: Onuma Yasuaki, International Law in a Transcivilizational World (CUP 2017) Chapter 1. This metaphor of a "civilizational firewall" can be functionally compared to the discussion of a "normative shield". See: Amitav Acharya, 'Norm Subsidiarity and Regional Orders: Sovereignty, Regionalism, and Rule-Making in the Third World' (2011) 55(1) International Studies Quarterly 95.

[253] Regarding the inclusion of "socialist core values" in the Constitution and its overarching role in the legal system, see: Preamble to the Constitution of the People's Republic of China; Article 1 of the Civil Code. For an analysis of China's mechanism for "transformative application" of international law, see: Li Zhaojie, 'The Effect of Treaties in the Municipal Law of China: The Practice and the Law' (2012) Chinese YBIL 119, 125-130.

[254] Regarding Panchashila as a cornerstone of the Indonesian Constitution and its supreme binding force on international

Malaysia explicitly defines the special position of Islam through the *Federal Constitution* and establishes culturally prioritized protection clauses on sensitive issues, while Turkey relies on the rigid constitutional principle of secularism (*Laiklik*) to uphold its bottom line of separation of religion and state at critical moments, such as during EU accession negotiations. [255]These diverse practices collectively demonstrate a core proposition: The universality of global norms must take root through creative dialogue and integration with local civilizational genes, and the "Civilizational Firewall" is precisely the key legal design ensuring the autonomy and equality of this dialogue process.

1.2.3 Differentiation of Judicial Strategies: A Spectrum from Barrier to Adaptation

In the specific practice of domesticating international law, the judicial branches of various Asian countries have played differentiated roles, forming a rich spectrum ranging from a "legislative-centrism barrier" to a "judicial activism adaptation".[256]

- **Legislative Barrier Model (China, Japan):**
    - China's judicial system maintains a highly restrained stance on treaty application, strictly adhering to the boundaries set by the National People's Congress and its Standing Committee through legislative transformation. The judicial function focuses on implementing legislative intent in specific cases.[257]
    - Although Japan adopts "automatic incorporation," its Supreme Court has developed the theory of a "constitutional sovereignty boundary" through case law, demarcating forbidden zones for the domestic application of treaties in highly political areas such as security.[258]
- **Judicial Adaptation Model (India, Indonesia):**
    - The Supreme Court of India is a paradigm of judicial activism. By establishing the "Basic Structure Doctrine" of the Constitution, it could proactively incorporate principles of international environmental law and fuse them with *Dharma* ethics in the *Vellore* case; it also provided jurisprudential support for the government to revise the Model BIT and strengthen the "priority of local remedies" following jurisprudential reflection post-investment arbitration cases.[259]

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treaties, see: Preamble to the Constitution of the Republic of Indonesia 1945; and Hikmahanto Juwana, 'The Implementation of International Law in the Indonesian Legal System: A Framework Analysis' (2018) 42(1) Indonesian Journal of International Law 1, 5-8.

[255] Regarding the status of Islam and cultural protection in the Malaysian Constitution, see: Federal Constitution of Malaysia, art 3(1) & art 11. For related analysis, see: Andrew Harding, 'The Constitution of Malaysia: A Contextual Analysis' (Hart Publishing 2012), Chapter 5. Regarding the rigid secular principle (Laiklik) in the Turkish Constitution, see: Constitution of the Republic of Turkey, art 2. Its manifestation in the EU accession negotiations, see: A. Kaya, 'The Turkish Experience with the EU: Secularism, Religion and the EU's Civilizational Discourse' (2015), 22(3), Review of International Law and Politics 1.

[256] For a comparative study of the judicial roles and constitutional traditions of Asian countries, see: Tom Ginsburg, *Judicial Review in New Democracies: Constitutional Courts in Asian Cases* (CUP 2003), Chapters 1-2; and Simon Chesterman, Hisashi Owada and Ben Saul (eds), *The Oxford Handbook of International Law in Asia and the Pacific* (OUP 2019), section "Domestic Law and International Law."

[257] For a study of China's legislative transformation model, see: *The Law of the People's Republic of China on Treaty Concluding Procedures*. For a jurisprudential analysis of the restraint exercised by Chinese courts in the application of treaties, see: Li Zhaojie, 'The Effect of Treaties in the Municipal Law of China: The Practice and the Law' (2012), Chinese YBIL 119, 130-135.

[258] Regarding the legal principles of "constitutional sovereignty boundaries" established by the Supreme Court of Japan in the "Sunagawa Incident" (1959), see: Supreme Court of Japan, Grand Bench, Judgment of 16 December 1959 (Keishu Vol. 13, No. 13, at 3225). For related theoretical analysis, see: Yuji Iwasawa, 'International Law in the Japanese Legal Order: Recent Developments' (2018) 16(1) Japanese YBIL 1, 10-12.

[259] Regarding the establishment of India's "basic constitutional structural principles," see: Kesavananda Bharati v State of Kerala (1973) 4 SCC 225. Regarding the Vellore case, see: Vellore Citizens Welfare Forum v Union of India (1996) 5 SCC

- The Constitutional Court of Indonesia, based on *Pancasila* principles, conducts constitutional review of the domestic implementation of regional norms like the *ASEAN Human Rights Declaration*, skillfully balancing regional obligations and national identity.[260]

- **Limited Review Model (Malaysia, Turkey, Kazakhstan):**

  - The courts in these countries are more cautious when intervening in the relationship between international law and domestic law. They typically intervene to a limited extent only within the scope explicitly authorized by the constitution, or on core identity issues involving religion, secularism, etc. Their core function lies in upholding the established legal and value order.[261]

1.2.4 Comparison of Asian Sovereignty Practices

Nation	Treaty inclusion methods	Constitutional priority	Cultural exception mechanisms	Judicial Role
China	Transformation Applicable	Constitutional supremacy	Socialist core values clauses	Limited review;
Japan	Automatic Inclusion	International law priority	whaling culture exception;	passive application;
India	Hybrid Mode	Basic structural theory	preservation of religious customs	active interpretation ;
Indonesia	Congressional Approval	National identity	Pancasila principle	pluralistic balance;
Turkey	Parliamentary Approval	Constitutional review	mechanism for balancing religion and secular life	limited intervention;
Kazakhstan	Presidential Signature + Parliamentary Approval	Constitutional constraints	priority of national identity	limited judicial review;

647. Regarding the impact of the Supreme Court's jurisprudence on the revision of the BIT model, see: Prabhash Ranjan, 'India and Bilateral Investment Treaties: From Reluctance to Review to Recalibration' in J. Chaisse et al (eds), Handbook of International Investment Law and Policy (Springer 2020).

[260] Regarding the constitutional status of Pancasila as a fundamental principle of the Indonesian state, see: Preamble to the Constitution of the Republic of Indonesia, 1945. Regarding the Constitutional Court's practice of conducting constitutional reviews based on Pancasila, see: Hikmahanto Juwana, 'The Role of the Constitutional Court in the Implementation of International Law in Indonesia' (2019) 43(2) Indonesian Journal of International Law 145, 155-160.

[261] Regarding the cautious role of Malaysian courts on sensitive issues such as Islam, see: Andrew Harding, 'The Constitution of Malaysia: A Contextual Analysis' (Hart Publishing 2012), Chapter 5. Regarding the role of the Turkish Constitutional Court in protecting the Laiklik principle, see: B. A. Oktem, 'The Role of the Turkish Constitutional Court in the Protection of the Laiklik Principle' (2015) 11(2) European Constitutional Law Review 350.

Malaysia	Legislative Process Transformation	Dual constraints of constitutional law and Islamic law	priority of religion and culture clauses.	limited adjustment.

Through a comparative analysis of the aforementioned three major characteristics and their manifestations in different countries, it becomes clearly evident that Asia's path of sovereignty reinterpretation constitutes a highly contextualized, instrumentalized, and resilient complex system. It rejects any single doctrine (such as pure monism or dualism) as dogma. Instead, based on specific issue areas, historical experiences, and pragmatic interest considerations, it has developed a set of indigenous solutions for flexibly responding to the challenges of globalization. The discovery of this "Asian model" not only enriches sovereignty theory itself but also provides a critical analytical framework for understanding the interaction between the non-Western world and international law.

1.3 Security Community Building: Asia's Experiment in Sovereignty Sharing

The legal evolution of the Shanghai Cooperation Organization (hereinafter referred to as the "SCO"), which developed from the "Shanghai Five" mechanism, is a paradigm of Asia's "sovereignty sharing experiment" in the security domain. Its core achievement lies in constructing a modular paradigm of sovereignty sharing[262]—not transferring sovereignty wholesale to a supranational institution, but rather, through sophisticated institutional design, decomposing, delegating, and coordinating sovereign authority in specific functional domains while retaining the member states' ultimate strategic control. This paradigm effectively balances collective security efficacy with national autonomy, offering an alternative path for Asian and indeed Global South countries, diverging from the EU model.

1.3.1 The Evolutionary Trajectory of "Modular Sovereignty Sharing"

The practice of the SCO exhibits a clear characteristic of phased deepening, with the scope and depth of its sovereignty sharing continuously expanding.

Phase 1: Border Trust and Military Confidence-Building (1996-2001). In the initial period of the "Shanghai Five" mechanism, sovereignty sharing was concentrated in the traditional security domain. Through agreements on building confidence in the military field and on mutual reduction of military forces in border areas, member states achieved preliminary rule coordination and information transparency in core sovereign matters such as military deployment and border control.[263] This move broke the ice of absolute sovereignty under the Westphalian system, but the sharing was functional and restrictive, strictly adhering to the principle of consensus, ensuring that the strategic autonomy of each country remained unimpaired.

Phase 2: Judicial and Law Enforcement Coordination (2001-2017). Marked by the 2001 *Shanghai Convention on Combating Terrorism, Separatism and Extremism*, sovereignty sharing deepened into the judicial and law enforcement domains. The convention's creation of a mechanism for the

[262] For theoretical discussions on sovereignty-pooling, see: Robert O. Keohane, 'Sovereignty in International Society' in David Held and Anthony McGrew (eds), The Global Transformations Reader (Polity Press 2003) 109. For pioneering research on the SCO as a regional cooperation model distinct from the EU, see: Mikhail Konarovsky, 'The Shanghai Cooperation Organization: A New Form of Regional Cooperation' (2006) 5(1) China and Eurasia Forum Quarterly 33. The term "modular sovereignty-pooling" used here aims to supplement and develop the above theories.

[263] For the core legal documents from the "Shanghai Five" period, see: the Agreement on Strengthening Military Confidence Building in Border Areas (26 April 1996, Shanghai) and the Agreement on Mutual Reduction of Military Forces in Border Areas (24 April 1997, Moscow), texts available on the SCO website.

"direct cross-border transfer of evidence," and the independent intelligence analysis authority of the Regional Anti-Terrorist Structure (RATS), signified a conditional transfer by member states of criminal jurisdiction and intelligence sovereignty.[264] This transfer is a typical manifestation of "modularization": it shared "procedural sovereignty" such as evidence exchange and intelligence analysis, but retained "substantive sovereignty" such as case investigation, prosecution, and adjudication.

Phase 3: Comprehensive Security and Functional Bundling (2017-Present). Documents such as the post-2017 *SCO Development Strategy Towards 2025* have pushed sovereignty sharing into the dimension of "comprehensive security," achieving a "functional bundling" of sovereign authority across different domains. For instance, incorporating cross-border infrastructure (economic sovereignty) into the common security guarantee framework, or requiring data interface interoperability in scientific and technological cooperation (technological sovereignty). This creates a "sovereignty linkage" effect, where deep cooperation in one area (e.g., economy) is guaranteed by sovereignty sharing in another (e.g., security), thereby enhancing the internal cohesion and resilience of the community.[265]

1.3.2 Underlying Logic: "Layered Sovereignty Delegation" and "Grid-Based Control"

The success and uniqueness of the SCO model are rooted in a sophisticated and self-consistent underlying institutional logic. This logic, through two mutually supporting core dimensions, constructs a cooperation system that is both efficient and robust, thus forming a sharp contrast with traditional regional integration models like the EU's. [266]First is the mechanism of "layered sovereignty delegation." The SCO discards vague discourse on general sovereignty sharing, instead deconstructing sovereign authority functionally and dividing it meticulously. For example, in counter-terrorism cooperation, it shares rules of evidence but not adjudicative power; in the comprehensive security domain, it coordinates customs supervision standards but not tax legislation power. This precise "layered delegation" strategy strictly confines the risks of sovereignty transfer within specific functional modules, making them manageable and controllable. Second is the supporting "grid-based control system." Unlike the single centralized decision-making structure implied by the EU's "pooling of sovereignty" model, the SCO has constructed a decentralized, node-interconnected "sovereignty grid."[267] In this system, sovereign authority (like an electric current) can flow within the grid to generate collective efficacy, but each member state node, through mechanisms such as the principle of consensus, the rotating presidency, and veto power over key decisions, consistently maintains dynamic control over the state of connection.[268] This

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[264] For the provisions on judicial cooperation in the Shanghai Convention on Combating Terrorism, Separatism and Extremism, see: Articles 6-7 of the Convention, texts available on the SCO website. For the functions and powers of the Regional Anti-Terrorist Structure (RATS), see: the Agreement on the Regional Anti-Terrorist Structure of the Shanghai Cooperation Organisation (7 June 2002, St. Petersburg), particularly Articles 2, 4, and 6.

[265] For the affirmation and explanation of the SCO Development Strategy to 2025 in the Press Communiqué of the Meeting of the Council of Heads of State of the Shanghai Cooperation Organisation (Astana, 2017), see the SCO website. For the theories of “linkage strategy” and “institutional nesting” among international institutions, see: Karen J. Alter and Sophie Meunier, ‘The Politics of International Regime Complexity’ (2009) 7(1) Perspectives on Politics 13. The “sovereign linkage” effect here is a concrete manifestation of this theory in the practice of the Shanghai Cooperation Organisation.

[266] For theoretical expositions on the EU as a model of "sovereignty pooling," see: Andrew Moravcsik, *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht* (Cornell UP 1998). For research on the SCO as a unique regional cooperation mechanism distinct from the Western model, see: Marlène Laruelle and Sébastien Peyrouse, *The Chinese Question in Central Asia: Domestic Order, Social Change, and the Chinese Factor* (Hurst & Co. 2012), Chapter 5.

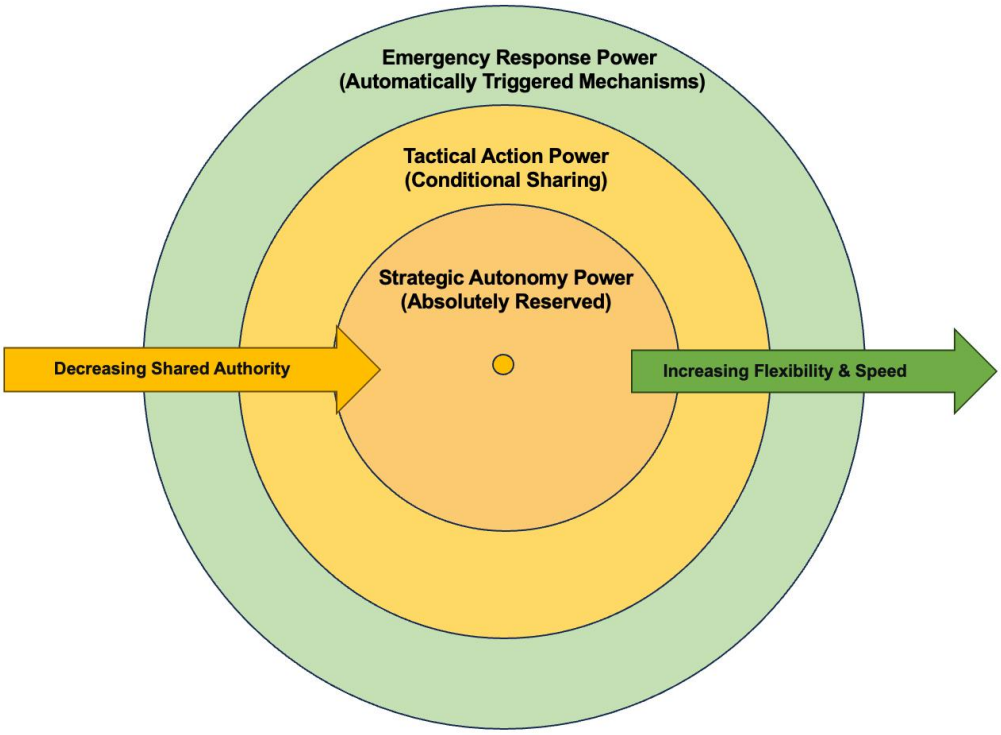
[267] Regarding rules for evidence and intelligence sharing in the field of counter-terrorism, see: Article 6 of the Shanghai Convention on Combating Terrorism, Separatism and Extremism (2001), text available on the SCO website. Examples of harmonized customs supervision standards can be found in the relevant clauses of the Agreement between the Governments of the Shanghai Cooperation Organisation Member States on Cooperation in Combating Illicit Trafficking in Narcotic Drugs, Psychotropic Substances and Their Precursors (2004), or in the content concerning trade facilitation and customs cooperation in the Joint Communiqués of the Council of Heads of Government (Prime Ministers) of the SCO Member States over the years.

[268] Regarding the SCO's decision-making procedures and the rights of member states, see Chapter 4 (Institutions) and Article 16 (Adoption of Resolutions) of the Charter of the Shanghai Cooperation Organisation (2002), which clearly

means any member can effectively "disconnect the local node" when deemed necessary, thereby preventing systemic risks and ensuring the sovereign bottom line of the state is never compromised under any circumstances. It is the precision provided by "layered delegation" and the security guaranteed by "grid-based control" that together form the institutional cornerstone for the SCO to win the trust of member states and achieve sustained deepening.

1.3.3 Paradigmatic Significance: The Asian "Concentric Circles" Model

The SCO's practices have constructed a "concentric circle sovereignty sharing" model with universal implications:



([Figure 1] Schematic diagram of the SCO's "concentric circle sovereignty sharing" model)

This provides a crucial practical paradigm for the theoretical construction of "International Law with Asian Characteristics." As mentioned above, the practice of the Shanghai Cooperation Organization can be summarized as a sophisticated "Concentric Circles of Sovereignty Sharing" model (as shown in Figure 1). This model organizes the distribution of sovereign authority through three distinct layers:

- The Core (Strategic Autonomy) is absolutely retained, involving the fundamental state system, national defense, and ultimate decision-making power in foreign affairs. This is the inviolable sovereign bottom line, ensuring that community cooperation does not endanger the fundamental existence of member states.

- The Middle Layer (Tactical Operational Authority) is conditionally shared, covering areas of daily cooperation such as joint law enforcement and economic coordination. It is controlled through principles like "consensus," reflecting the prudence and pragmatism of sovereignty sharing.

- The Outer Layer (Emergency Response Authority) establishes standardized, automatically

stipulates that "resolutions within the institutions shall be adopted by member states on the basis of consensus." The text is available on the official website of the Shanghai Cooperation Organisation.

triggered mechanisms, such as for intelligence exchange and disaster relief. It is designed to address transnational threats requiring rapid response, reflecting the efficiency of functional cooperation.

The value of this model lies in its dynamic flexibility: sovereign authority in different domains can be flexibly allocated among the aforementioned layers based on changes in the security situation and the depth of cooperation. It successfully overcomes the lack of enforceability inherent in the "ASEAN Way," which relies excessively on soft law, while simultaneously avoiding the legitimacy crisis of sovereignty transfer that can be triggered by deep EU-style integration.

1.4 Normative Breakthrough in Sovereignty Sharing: The Asian Path Beyond "Rights Transfer"

The practice of the Shanghai Cooperation Organization holds significance far beyond the success of a regional security mechanism. Through a series of institutional innovations, it has achieved a breakthrough in traditional conceptions of sovereignty within international law theory, constructing a new paradigm centered on subjectivity, functionality, and pragmatism. This paradigm no longer simplistically views sovereignty as a rigid right to be either "absolutely retained" or "forcibly transferred," but rather reconstructs it as a strategic resource that can be flexibly managed and is aimed at enhancing state capacity.

1.4.1 From "Rigid Obligations" to "Flexible Participation": The Autonomy Breakthrough in Sovereignty Sharing

Traditional regional cooperation often centers on unified, legally binding obligations, which essentially constitute a "standardized transfer of sovereignty." The SCO, however, pioneered a model of "differentiated obligation undertaking," achieving a breakthrough in autonomy.[269]

The normative breakthrough achieved by the SCO in security cooperation is first manifested in the construction of a "flexible participation" mechanism, which fundamentally reshapes the logic by which sovereign states assume collective obligations. Its core legal vehicle is the "voluntary action clause" created by Article 12 of the *Convention on Combating Terrorism*, which allows member states to autonomously decide the scale and depth of their participation in specific actions based on their own national security strategies, capabilities, and practical concerns. [270]This mechanism translates in practice into a "menu-style obligation" model, whose effectiveness was fully demonstrated in the 2018 "Peace Mission" joint military exercise: Kazakhstan, based on its national situation, chose to participate only in the intelligence-sharing module, while China and Russia undertook more in-depth live exercise tasks.[271] This design does not signify a loosening of cooperation; rather, it is grounded in the legal principle of "consensus" from the *SCO Charter*. Its sophistication lies in achieving a dual effect: on one hand, it successfully avoids the suppressive risk to sovereignty inherent in NATO-style mandatory collective action; on the other hand, through soft mechanisms like "gradual obligation accumulation" (such as the annual counter-terrorism assessment report system), it naturally promotes the deepening of cooperation while respecting the will of each country. This marks a paradigm shift in Asia's sovereignty sharing model, from "passively fulfilling legal obligations" to "actively engaging in strategic cooperation."

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[269] For a classic model of unified legal obligations in traditional regionalism, see EU law research: Paul Craig and Gráinne de Búrca, EU Law: Text, Cases, and Materials (7th edn, OUP 2020), Chapter 9. For research affirming the uniqueness of the SCO cooperation model, see Mikhail Konarovsky, 'The Shanghai Cooperation Organization: A New Form of Regional Cooperation' (2006) 5(1) China and Eurasia Forum Quarterly 33, 38-40.

[270] For details regarding Article 12 of the Shanghai Convention on Combating Terrorism, Separatism and Extremism (2001), art 12, 'Voluntary Action Clause', available on the Shanghai Cooperation Organisation website: http://eng.sectsco.org/documents/

[271] For information on the differentiated participation of participating countries in the 2018 "Peace Mission" joint counter-terrorism military exercise, please refer to the introduction of Chinese and Russian participating forces in the official press release from the Chinese Ministry of National Defense entitled "Peace Mission-2018 Joint Counter-Terrorism Military Exercise."

1.4.2 From "Power Delegation" to "Demand-Triggering": The Power Flow Breakthrough in Sovereignty Sharing

In the method of exercising sovereignty, the SCO has subverted the traditional "top-down" power delegation model of regional organizations, creating a logic of "bottom-up reverse authorization."[272]

In the method of exercising sovereignty, the SCO has further achieved a paradigm reconstruction of the flow of power. The key lies in establishing a legal logic of "reverse authorization." This paradigm is concretized in Article 7 of the *Implementing Rules for the Regional Anti-Terrorist Structure* as a "demand-driven" path for sovereignty transfer, fundamentally overturning the traditional "top-down" power delegation model of regional organizations and transforming member states from passive parties awaiting directives into initiators that can proactively apply to activate collective security resources. In 2019, Tajikistan, based on the relevant agreement, proactively applied and successfully triggered a joint counter-terrorism deployment, realizing the SCO's first coordinated action targeting a non-member state's border (the Afghanistan-Tajikistan border), which is a vivid embodiment of this legal logic. [273]From a jurisprudential perspective, the sophistication of this mechanism lies in endowing member states with a dual legal capacity: on one hand, they firmly retain ultimate control (such as veto power over operations) over security affairs within their territory through clauses like Article 14 of the *Charter*, thus guarding the bottom line of sovereignty;[274] on the other hand, they hold the legal instrument of the "Application for Sovereignty Transfer," enabling them to temporarily and selectively activate collective resources based on their own security needs. This marks a fundamental transformation in the nature of sovereignty transfer—from a static, universal "institutional obligation" to a dynamic, strategically deployable "instrumental right"—thereby completely reversing the traditional direction of power flow in regional cooperation.

1.4.3 From "Jurisprudential Dogma" to "Functional Pragmatism": The Normative Breakthrough in Sovereignty Recognition

When confronting the most intractable issue of "divided sovereignty" in international relations, the Shanghai Cooperation Organization has demonstrated a high degree of pragmatic wisdom and normative courage, breaking through the "all-or-nothing" dogma of traditional international law regarding sovereignty recognition.[275]

The normative breakthrough of the SCO in facing the complex reality of the Afghan regime change is manifested in a "functionalist practice of sovereignty recognition." The core of this practice is the creation of a "dual-track sovereignty identification" mechanism: namely, in the 2021 *Kabul Special Declaration*, on one hand, continuing to recognize Afghanistan's juridical sovereignty as a UN member state, while on the other hand, based on pressing security and governance needs,

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[272] Regarding the "top-down" power-granting model in traditional international organizations, see the classic EU legal treatise: Paul Craig, EU Administrative Law (3rd edn, OUP 2018), Chapter 2. Regarding the uniqueness of the SCO as a non-traditional security cooperation model, see Marlène Laruelle, 'The Shanghai Cooperation Organization: A Central Asian Perspective' in China's Global Reach: The Shanghai Cooperation Organization (NBR Special Report 2018), pp. 23, 27-29.

[273] Regarding Tajikistan's application for and triggering of the SCO joint operation on the Tajikistan-Afghanistan border in 2019, see: Press Communiqué of the SCO Regional Anti-Terrorist Structure Council Meeting (2019), and authoritative analysis report: 'SCO's First Joint Counter-Terrorism Operation on Non-Member Border' Stimson Center Report (Washington D.C., 15 November 2019).

[274] Regarding the principle of sovereign reservation by member states, see: Article 14 (Maintaining Regional Security) of the Shanghai Cooperation Organisation Charter (2002) and other relevant sovereign provisions, the text of which is available on the SCO website.

[275] Regarding the theory of state recognition and the "all or nothing" principle in traditional international law, see the classic treatise: Hersch Lauterpacht, Recognition in International Law (CUP 1947), Chapter 2. For contemporary discussions on "divisive sovereignty" or contested statehood, see: Mikael Eriksson and Roland Kostic, 'Mediating Statehood: The Logic of Sovereignty Contestation' (2021) 47(4) Review of International Studies 450.

establishing de facto cooperation with the Taliban-controlled areas through the *Interim Arrangement on Border Control*. [276]In terms of legal technique, this mechanism relies on meticulously designed "depoliticized clauses"—for instance, deliberately avoiding sensitive terms in the agreement text such as "recognition" or "representation," which carry connotations of recognition in international law[277]—thus maintaining juridical neutrality while constructing a pragmatic framework for dialogue and cooperation through channels such as the "SCO-Afghanistan Contact Group." The theoretical significance of this move lies in its transcendence of the "all-or-nothing" recognition dogma of traditional international law, developing the new legal concept of "limited engagement rights." It provides a highly flexible "Asian solution" for the international community to conduct necessary cooperation in similar contexts of "divided sovereignty," eloquently demonstrating that effective global governance can and should transcend rigid legal formalism.[278]

In summary, the SCO's triple breakthrough in the norms of sovereignty sharing—granting flexibility in participation, realizing a bottom-up flow of power, and adhering to functional pragmatism in sovereignty recognition—collectively delineates a unique Asian path. The core of this path is that it no longer views sovereignty as a precondition and obstacle to international cooperation, but rather transforms it into a strategy and tool that can be flexibly utilized within international cooperation, thereby providing valuable inspiration for global international law practice on how to achieve effective governance in a pluralistic world.

1.5 Theoretical Critique and Paradigmatic Dialogue: Academic Debates and Developmental Limits of Asian Sovereignty Practice

The rise of the Asian model of sovereignty sharing has inevitably sparked theoretical debates and critical scrutiny within the international law academia. This section aims to systematically organize the critiques leveled by mainstream Western theories against Asian practices, while objectively analyzing the internal tensions and developmental boundaries faced by this model. Through this dialectical dialogue, it seeks to establish the theoretical value and practical significance of the Asian path.

1.5.1 The "Asian Exceptionalism" Controversy: Dialogue between Functionalist Practice and Ideological Critique

Some Western international relations scholars, grounded in liberal theoretical paradigms, raise fundamental questions about Asian sovereignty sharing practices. Scholars like Stephen Krasner define it as the "cartelization of authoritarian sovereignty," arguing that its essence is to reinforce the stability of authoritarian regimes through collective security mechanisms.[279] This critique unfolds primarily along two dimensions: [280]at the normative level, it questions whether the

[276] For the official text of the Dushanbe Declaration of the Council of Heads of State of the Shanghai Cooperation Organisation (SCO) on Afghanistan (2021), see the press releases or the full text of the declaration published on the SCO website. For details regarding the Interim Border Control Arrangement reached with the Afghan Taliban interim government, please refer to the relevant statement from the SCO Regional Anti-Terrorist Structure (RATS) or authoritative reports: 'SCO Reaches Interim Border Control Deal with Taliban' Reuters (Moscow, 15 September 2021).

[277] Regarding the intent to recognize and the use of terminology in international law, see: Stefan Talmon, Recognition of Governments in International Law: With Particular Reference to Governments in Exile (OUP 1998), Chapter 2, which discusses the implicit intent to recognize in actions.

[278] The concept of "limited access rights" echoes the pragmatic trend in international law regarding necessary contact with non-state actors to resolve practical problems. See: Dapo Akande and Thomas Liefländer, 'Clarifying the Notion of Engagement with Non-State Armed Groups' (2016) 29(1) Leiden Journal of International Law 93. The SCO's practices have provided a pioneering institutional model for this nascent legal field, which can be seen as a pragmatic "Asian governance wisdom."

[279] For Stephen D. Krasner's discussion of "authoritarian sovereignty cartel," see his book: Stephen D. Krasner, 'The Hole in the Whole: Sovereignty, Shared Sovereignty, and International Law' (2004), 25 Michigan Journal of International Law, 1075.

[280] For potentially controversial mutual assistance clauses in the Shanghai Cooperation Organisation Convention on Combating Terrorism, Separatism and Extremism, see the text of the Convention. Regarding Western academic criticism

"political security mutual assistance clauses" in conventions like the *Anti-Extremism Convention* might legitimize domestic political stability needs as regional collective action, forming an authoritarian mutual assistance network under the cover of sovereignty sharing; at the institutional level, it criticizes the "consensus" decision-making principle, suggesting it can devolve in practice into a tool for major power vetoes, making the sovereignty transfer process serve the geopolitical interests of stronger states. [281]While such criticisms reveal potential risks in the institutional design that warrant vigilance, their theoretical blind spot lies in neglecting the specific historical context and practical needs of Asian security governance. SCO member states generally face non-traditional security threats from the cross-border linkage of the "three forces" of terrorism, separatism, and extremism. Their sovereignty sharing practice is essentially a "functionally oriented" institutional innovation based on real security needs, not merely an ideological alliance. [282]This technical cooperation model, developed in response to specific security challenges, actually provides a novel case for sovereignty theory that transcends the Western liberal paradigm, highlighting the possibility of pluralistic development in the international legal order.[283]

1.5.2 The Dilemma of Legalization Depth: The Structural Contradiction between Institutional Efficacy and Sovereignty Retention

While achieving significant practical results, the Asian sovereignty sharing model also faces a structural tension between institutional deepening and sovereignty retention. This dilemma is particularly evident in the SCO's legal framework. The design of the Regional Anti-Terrorist Structure's (RATS) authority reveals a core contradiction: according to relevant clauses of the *RATS Agreement*, although the body is tasked with coordinating joint actions, it lacks substantive powers such as independent investigation and compulsory evidence collection rights, causing its intelligence analysis work to rely entirely on the voluntary cooperation of member states. [284]The case of some member states refusing to share critical intelligence during the 2021 upheaval in Afghanistan fully exposed the limitations of this institutional design. [285]A deeper contradiction lies in the inherent tension within the *SCO Charter* between the fundamental principle of "non-interference in internal affairs" and the need for deepening security cooperation. The fact that the Collective Security Treaty Organization (CSTO), not the SCO, became the primary crisis response platform during the 2020 unrest in Kazakhstan clearly marked the sensitive boundaries of member states regarding the scope of sovereignty transfer. [286]This "institutional ceiling"

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that such clauses could be used for political purposes, see the analysis report: Human Rights Watch, '"We Have to Be Worried"': The Impact of Kazakhstan's Criminal and Administrative Codes on Freedom of Religion or Belief' (2020).

[281] Regarding academic criticism that the SCO's "consensus" principle might be dominated by major powers, see: Marlène Laruelle, 'The Shanghai Cooperation Organization: A Central Asian Perspective' in China's Global Reach: The Shanghai Cooperation Organization (NBR Special Report, 2018).

[282] For the SCO's focus on non-traditional security threats, see the Preamble and Article 1 of the SCO Charter. Regarding the severity of the threat posed by the "three evil forces" in the region, see the United Nations report: United Nations Security Council, Report of the Analytical Support and Sanctions Monitoring Team concerning ISIS, Al-Qaida and the Taliban (S/2023/363), paragraphs 25-30.

[283] Regarding the theoretical call for international law to transcend Western centrism and embrace pluralism, see the conclusion of Antony Anghie, Imperialism, Sovereignty and the Making of International Law (CUP 2005); and Chapter 1 of Sundhya Pahuja, Decolonising International Law: Development, Economic Growth and the Politics of Universality (CUP 2011).

[284] Regarding the functions and limitations of the Regional Anti-Terrorist Structure (RATS), see Articles 2 (Missions) and 4 (Functions) of the Agreement on the Regional Anti-Terrorist Structure of the Shanghai Cooperation Organisation (June 7, 2002), which clearly define its role as "coordinating" and "assisting," but do not grant it independent law enforcement or investigative powers beyond the sovereignty of member states. The text is available on the Shanghai Cooperation Organisation website.

[285] For reports and analyses regarding obstacles to intelligence sharing within the SCO during the 2021 crisis in Afghanistan, see: International Crisis Group, The SCO and Afghanistan: Managing the Fallout, Asia Report No. 325, 16 December 2021.

[286] Regarding the principle of "non-interference in internal affairs," see Articles 1 and 2 of the Charter of the Shanghai Cooperation Organisation (2002). For reports regarding the Collective Security Treaty Organization's (CSTO) intervention and the SCO's silence during the January 2022 unrest in Kazakhstan, see: Reuters, 'Russia-led Bloc to Send Peacekeeping Forces to Kazakhstan', 6 January 2022. See also the academic analysis: Paul Stronski, 'After Kazakhstan's Crisis, What's Next for Russian Foreign Policy?', Carnegie Endowment for International Peace, 13 January

phenomenon reveals the dilemma of legalization depth commonly faced by regional mechanisms of developing countries: namely, how to find a sustainable balance between maintaining national sovereignty and independence and enhancing the efficacy of regional institutions.[287]

1.5.3 Regional Cultural Compatibility: Contextual Limits and Transformation Challenges for Norm Diffusion

The norm diffusion of the Asian sovereignty sharing model faces deep cultural-political barriers, a challenge that reveals the complexity and conditionality of transplanting international legal institutions.[288] In Southeast Asia, the SCO's "limited sovereignty sharing" concept encounters significant cultural resistance. This resistance stems first from differences in sovereignty perception paradigms:[289] the emphasis on the absoluteness of the "principle of non-interference" long championed by ASEAN is fundamentally different from the SCO's sovereignty sharing concept, and the "sanctity of royal sovereignty" in traditional Southeast Asian political culture further reinforces this cognitive gap. Deeper obstacles arise from geopolitical narratives and norm competition. The SCO's "sovereignty linkage" model, which bundles security cooperation with economic development, encounters dual resistance in Southeast Asia from narratives of the "China Threat Theory" and localized development models.[290] These practical difficulties reveal the deep logic of international norm diffusion: the successful transplantation of a sovereignty sharing mechanism depends not only on the technical sophistication of the institutional design itself but also requires resonance with regional historical memory, political cultural traditions, and geopolitical strategic perceptions, among other dimensions.[291] The future development of the Asian sovereignty sharing path will largely depend on its ability to be locally absorbed and innovated within different regional contexts, achieving a creative combination of universal principles and particular circumstances.[292]

Through the above multi-dimensional theoretical examination, it is evident that the academic value of the Asian sovereignty sharing path lies precisely in its demonstration of the dialectical unity between particularity and universality. The effectiveness of this path in addressing non-traditional security threats, its firmness in safeguarding national autonomy, and its innovativeness in institutional design all provide important practical references for the development of sovereignty theory in international law. Future theoretical development must, under the premise of maintaining its functionalist core, enhance its practical effectiveness through continuous institutional innovation

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2022.

[287] For theoretical discussions on the common dilemma faced by regional organizations of developing countries in terms of the depth of "legalization"—namely, how to strike a balance between sovereignty sensitivity and institutional effectiveness—see: Kenneth W. Abbott and others, 'The Concept of Legalization' (2000) 54(3) International Organization 401; and Amitav Acharya, 'The Emerging Regional Architecture of World Politics' (2007) 59(4) World Politics 629, 634-637.

[288] For the theoretical framework of international norm diffusion and localization, see: Amitav Acharya, 'How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism' (2004) 58(2) International Organization 239.

[289] Regarding ASEAN's "non-interference principle," see Article 2, paragraph 2(e) of the Declaration on the Establishment of the Association of Southeast Asian Nations (Bangkok Declaration) (1967) and the ASEAN Charter (2008). For academic analysis, see Shaun Narine, 'State Sovereignty, Political Legitimacy and Regional Institutionalism in the Asia-Pacific' (2007) 45(6) The Pacific Review 827. Regarding the political and cultural tradition of Southeast Asia's "sacred sovereignty of the monarchy," see classical studies: S. J. Tambiah, World Conqueror and World Renouncer: A Study of Buddhism and Polity in Thailand against a Historical Background (CUP 1976), Chapters 5, 7, and 10.

[290] Regarding the narrative and impact of the "China threat theory" in Southeast Asia, see Section 2 of the survey report: Southeast Asian Perspectives on Major Power Competition (ISEAS – Yusof Ishak Institute, State of Southeast Asia Survey 2023). For information on Southeast Asian localization development models, see the official documents of Indonesia's "Global Maritime Fulcrum" strategy, or the analytical article: E. A. L. Vu, 'The ASEAN Way and the Myth of Non-Interference' (2021) 34(1) Cambridge Review of International Affairs 89.

[291] This conclusion is highly consistent with the constructivist assertion that successful normative dissemination requires "resonance" with the local cultural framework. See the classic theory: Martha Finnemore and Kathryn Sikkink, 'International Norm Dynamics and Political Change' (1998) 52(4) International Organization 887, 895-897.

[292] For a discussion on the pluralistic development of the international order and the possibility of an Asian model, see: Amitav Acharya, The End of American World Order (2nd edn, Polity 2018), Chapter 5.

and expand its cultural adaptability through deeper civilizational dialogue, thereby making a unique contribution to building a more inclusive and pluralistic global international legal system.

1.6 The Paradigmatic Significance of Sovereignty Reinterpretation: The Global Contribution of Asian Practice

The creative practices of Asian countries in the field of sovereignty norms have transcended the scope of regional experience, forming a paradigm breakthrough with transformative significance for global international law theory. This breakthrough is reflected in three interrelated dimensions: the dynamic reconstruction of the nature of sovereignty, the normative integration of civilizational factors, and the multi-layered architecture of sovereignty exercise, which together constitute a creative development of the Westphalian sovereignty system.

1.6.1 Dynamic Sovereignty: From Absolute Right to Strategic Resource

The most revolutionary contribution of Asian practice lies in its thorough deconstruction of the dogma of sovereignty's absoluteness and indivisibility, developing an operational theory of "sovereign modularity." This theory is fully embodied in China's practice of participating in the Regional Comprehensive Economic Partnership (RCEP): by reducing the average tariff rate to 5.7%, China implemented a conditional transfer of sovereign rights in the trade domain;[293] simultaneously, the concurrent implementation of the *Measures for the Security Assessment of Cross-Border Data Transfer* demonstrates steadfastness in the domain of digital sovereignty.[294] This practice of adopting differentiated sovereignty strategies in different domains during the same period empirically verifies the feasibility of splitting and transacting elements of sovereignty. The SCO's *Cybersecurity Cooperation Agreement* further refines this theory, establishing a layered sovereignty mechanism: member states transfer sovereign authority in specific fields like data flow regulation (e.g., real-time sharing of cross-border crime evidence), yet retain ultimate decision-making power in core areas such as the militarization of cyberspace.[295] This "sovereignty toolkit" model endows states with the strategic flexibility to dynamically adjust their degree of sovereign openness according to specific issue areas, transforming the rigid sovereignty of the Westphalian system into a programmable governance resource,[296] thereby injecting unprecedented flexibility into sovereignty theory.[297]

1.6.2 Civilizational Embeddedness: The Cultural Dimension of Normative Reconstruction

The uniqueness of Asian sovereignty practice lies in its deep integration with indigenous civilizational genes, giving rise to a new form of "ethical sovereignty."[298] Myanmar concretizes the

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[293] Regarding China's average tariff reduction commitments under the RCEP framework, see the World Trade Organization's Trade Policy Review: China 2021, WT/TPR/S/425/Rev.1, Part III.B. Regarding the treaty obligations of RCEP, see the official text of the agreement: Regional Comprehensive Economic Partnership Agreement (2020), Chapter 2 (Trade in Goods).

[294] For specific provisions of the "Measures for Security Assessment of Cross-Border Data Transfer," see: State Internet Information Office, "Measures for Security Assessment of Cross-Border Data Transfer" (issued July 7, 2022), Articles 4 and 5.

[295] Regarding the provisions on data sharing and sovereignty reservation in the "Agreement on Cooperation among the Member States of the Shanghai Cooperation Organisation in the Field of Ensuring International Information Security," see Articles 2 (Content of Cooperation) and 3 (Principles of Cooperation), the text of which is available on the official website of the Shanghai Cooperation Organisation.

[296] For the classic view of sovereignty under the Westphalian system, see the standard discussion: Leo Gross, 'The Peace of Westphalia, 1648-1948' (1948) 42(1) American Journal of International Law 20.

[297] The metaphor of a "sovereignty toolbox" aligns with the trend of deconstructing the absoluteness of sovereignty in international jurisprudence, and further systematizes and operationalizes the view of "sovereignty as a strategy." For relevant theoretical background, see: Stephen D. Krasner, Sovereignty: Organized Hypocrisy (Princeton UP 1999), Chapter 1; and Jens Bartelson, A Genealogy of Sovereignty (CUP 1995), Conclusion.

[298] For theoretical discussions on the shaping of modern international law by civilizational traditions, see: Onuma Yasuaki, *International Law in a Transcivilizational World* (CUP 2017), Introduction; and Antony Anghie, 'Rethinking International Law: A TWAIL Retrospective' (2021) 34(2) Leiden Journal of International Law 79.

Buddhist "Middle Way" philosophy into a "dynamic neutralism" in its foreign policy.[299] When acceding to the *ASEAN Agreement on Transboundary Haze Pollution*, it both accepted the transfer of sovereignty in the field of environmental governance (allowing the establishment of joint monitoring stations) and retained "autonomy in disaster emergency response" through its *Instrument of Accession*, achieving a dynamic balance between international responsibilities and national rights.[300] This organic fusion of civilizational characteristics with sovereignty norms breaks the unilinear evolutionary narrative of Western "rational-legal" sovereignty, proving that the modernization path of the sovereignty concept is not limited to a single Western model, but can integrate with diverse civilizational traditions to form distinct normative forms.[301]

1.6.3 Regional Layering: Structural Innovation in Governance Systems

Through institutional nesting innovation, Asia has constructed a three-tiered system for exercising sovereignty, achieving an optimized allocation of sovereign functions across different governance levels.[302] This system includes: adhering to core sovereignty over national defense, constitution, etc., at the national level; establishing "limited sharing pools" at the regional level, such as the SCO counter-terrorism database and the ASEAN Economic Community's customs union; and implementing sovereignty proxy strategies at the global level, such as China enhancing its ability to cope with pressure from CPTPP rules through collective RCEP negotiations.[303] Indonesia's practice regarding its nickel ore export policy typically illustrates the operational logic of this "matryoshka doll" structure of sovereignty: exercising permanent sovereignty over resources domestically (prohibiting the export of raw ore)[304], accepting a regional supply chain review mechanism at the ASEAN level (partial transfer of economic sovereignty), while simultaneously relying on WTO litigation to uphold its right to participate in shaping global trade rules. [305]This precise allocation of authority, achieved through legal instruments such as the *Asian Infrastructure Investment Bank Agreement*, enables states to actively participate in globalization while effectively avoiding its potential risks and maximizing the benefits of regional cooperation.[306]

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[299] For the influence of Buddhist “Middle Way” thought on Myanmar’s foreign policy, especially its neutralist tradition, see: N. Ganesan, ‘Myanmar’s Foreign Policy and Political Culture: The Impact of Buddhism and Neutralism’ in International Relations in Southeast Asia: Between Bilateralism and Multilateralism (ISEAS Publishing, 2010).

[300] For the provisions on joint monitoring in the ASEAN Agreement on Transboundary Haze Pollution, see Articles 4 and 5 of the Agreement. Regarding Myanmar's statement upon acceding to the agreement, see its "Understanding" attached to its instrument of ratification deposited with the ASEAN Secretariat, which emphasizes that the implementation of the financial and technical assistance provisions should be based on the principle of "common but differentiated responsibilities" and on its own laws and capabilities.

[301] For critiques of the Western “rationality-law” sovereignty model and its linear evolutionary narrative, and for a vision of a pluralistic future for international law, see: Sundhya Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (CUP 2011), Chapter 1; and Amitav Acharya, *Global International Relations (IR) and Regional Worlds* (2014), 38(2), *International Studies Quarterly*, 647.

[302] For theoretical discussions on multi-level systems in international governance, see: Liesbet Hooghe and Gary Marks, *Multi-Level Governance and European Integration* (Rowman & Littlefield 2001), Chapter 1; and Kal Raustiala and David G. Victor, *The Regime Complex for Plant Genetic Resources* (2004), 58(2), *International Organization*, 277.

[303] For information on the SCO anti-terrorism database, see the *Agreement on the Regional Anti-Terrorist Structure of the Shanghai Cooperation Organisation* and its official introduction. Regarding the ASEAN Economic Community Customs Union, see the relevant clauses of the ASEAN Goods Trade Agreement. For an analysis of China's use of RCEP to counter pressure from CPTPP rules, see: Mireya Solís, ‘RCEP as a Pillar of China’s Regional Strategy’ in Peter A. Petri and Michael G. Plummer (eds), The RCEP and the Changing Landscape of Asian Trade (Brookings Institution Press 2022), p. 15.

[304] For the legal basis for Indonesia's ban on nickel ore exports, see the Regulation of the Minister of Energy and Mineral Resources, Number 11 of 2019. Further strengthening provisions can be found in the relevant clauses of the Government Regulation of the Republic of Indonesia, Number 96 of 2021 concerning the Implementation of Mineral and Coal Mining Business Activities.

[305] Regarding the ASEAN-level supply chain review mechanism, refer to relevant documents such as the ASEAN Comprehensive Recovery Framework. Regarding Indonesia's WTO nickel ore export dispute, see: European Union – Measures Related to the Export of Nickel and Other Raw Materials (Complainant: Indonesia) WT/DS592. Related documents are available on the WTO website.

[306] Regarding the provisions on the rights and obligations of member states in the Articles of Agreement of the Asian Infrastructure Investment Bank, see Chapter III of the Agreement. This practice aligns with the "legalization" theory proposed by Kenneth W. Abbott et al., which categorizes dimensions of "obligation," "precision," and "authorization,"

Asia's sovereignty reinterpretation practice demonstrates that sovereignty is not a static, either-or legal concept, but a strategic resource that can be flexibly allocated across different governance levels. This paradigm shift not only enriches the connotation of sovereignty theory but also provides crucial intellectual resources for the reform of the global governance system. It proves that, while adhering to core national interests, it is entirely possible to find a balance between maintaining national autonomy and participating in global governance through precise division of sovereign functions and institutional design. This is undoubtedly Asia's unique contribution to the development of global international law.

1.7 Case Deep Dive: Normative Tension and Asian Adaptation of the Non-Interference Principle in Myanmar's Rohingya Crisis

The preceding sections have systematically outlined the "spectrum" and "path" of Asia's sovereignty reinterpretation, from theory to model. However, the true power of any theory must be tested through the crucible of extreme situations. The Rohingya crisis that erupted in Myanmar in 2017 represents precisely such a "critical case," posing severe pressure and an ultimate test to the core Asian sovereignty norm – the principle of "non-interference in internal affairs." This section aims to conduct an in-depth analysis of this crisis, revealing how Asian states, amidst the global normative conflict between the "sovereign shield" and "human rights protection," demonstrate their unique art of normative negotiation and adaptation, while simultaneously clearly marking the limits of the current path and the direction for future evolution.

1.7.1 The Crisis as a Normative Crucible: The Intense Collision Between Absolute Sovereignty and Universal Human Rights

At the level of international law, the Rohingya crisis rapidly evolved into an intense collision between the principle of "non-interference in internal affairs" and the doctrine of the "Responsibility to Protect" (R2P). Leveraging its powerful global dissemination capacity, the Western discourse framed the events in Rakhine State as a "humanitarian crisis" meeting the intervention criteria of R2P, and invoked international legal norms such as the *Convention on the Prevention and Punishment of the Crime of Genocide*, attempting to redefine Myanmar's domestic affairs as a "threat to international peace and security," thereby creating a legal premise for external intervention. [307]Standing in stark jurisprudential opposition to this, the official Asian stance, represented by ASEAN, firmly returned to the foundational principle of "non-interference" jointly established by Article 2(7) of the *UN Charter* and Article 2 of the *ASEAN Charter*.[308] This stance is deeply rooted in Asia's shared historical memory – the collective trauma of colonialism and hegemonic intervention has shaped a profound vigilance among states in the region against any form of external coercive interference. [309]In ASEAN's jurisprudential narrative, sovereignty is the cornerstone of the international order, and the non-interference principle is the "normative shield" protecting the survival and autonomy of small and medium-sized states within the international

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reflecting a precise allocation of authority. See: Kenneth W. Abbott and others, 'The Concept of Legalization' (2000) 54(3) International Organization 401.

[307] Regarding the call to apply the principle of "responsibility to protect" to the Rohingya crisis, see paragraph 85 of the UN Human Rights Council report: Report of the Independent International Fact-Finding Mission on Myanmar (A/HRC/39/64, 2018). Regarding the allegations of invoking the Convention on the Prevention and Punishment of the Crime of Genocide, see The Gambia v. Myanmar (Application of the Convention on the Prevention and Punishment of the Crime of Genocide) [2019] ICJ Rep. and the relevant conclusions of the UN mission. Regarding efforts at the Security Council level to characterize the situation as a "threat to international peace," see UNSC Draft Resolution S/2017/884 (2017) (which was not adopted due to vetoes by China and Russia).

[308] Regarding the principle of non-interference in internal affairs, see Article 2, paragraph 7 of the UN Charter; Article 2, paragraph 2(e) of the ASEAN Charter (2008).

[309] Regarding the shaping role of colonial history and the memory of hegemonic intervention in the formation of ASEAN norms (especially the principle of non-interference), see the classic discussion: Amitav Acharya, 'Ideas, Identity, and Institution-Building: From the "ASEAN Way" to the "Asia-Pacific Way"?' (1997) 10(3) The Pacific Review 319, 322-325.

system.[310]

1.7.2 The Practical Spectrum of the Asian Path: From "Rigid Defense" to "Flexible Channeling"

Confronted with this normative dispute, Asian actors demonstrated a complex practical spectrum ranging from "rigid defense" to "flexible channeling," vividly illustrating the dynamic adaptive capacity of "contextual sovereignty" under high pressure. The response of the Myanmar authorities, as the state party involved, reflected the rigid defensive aspect of the sovereignty principle. Strictly based on constitutional clauses concerning national unity and territorial integrity, it defined the Rakhine State issue as falling within the scope of counter-terrorism operations and purely internal affairs, resolutely rejecting any external interference that transcended the sovereign framework. [311]In contrast, the response strategy of ASEAN as a regional organization was more complex and representative, caught in the dilemma between upholding the cornerstone of the organization's existence and addressing the severe humanitarian situation. ASEAN's response strategy was essentially one of flexible channeling, its core being crisis management without overturning fundamental principles. In official diplomatic rhetoric, ASEAN exhibited high caution, avoiding terms with strong legal and moral accusatory connotations like "ethnic cleansing," instead calling for "the cessation of all violence" and strongly emphasizing the urgency of "providing humanitarian assistance to affected communities." [312]This discursive strategy addressed minimal humanitarian concerns while carefully avoiding a direct breach of the non-interference red line. At the action level, ASEAN did not adopt the path of public condemnation or sanctions as desired by the West, but resorted to its traditional means of "constructive engagement," maintaining communication channels with the Myanmar military and government through the appointment of special envoys and quiet diplomacy, striving to play the role of an "internal coordinator" rather than an "external arbitrator." [313]Its core objective was to facilitate dialogue within the regional framework, promoting bilateral negotiations between Myanmar and Bangladesh on refugee repatriation as sovereign states, thereby re-anchoring the solution path within the "inter-state" sovereign framework. Furthermore, major Asian neighboring countries, based on their respective geopolitical situations and domestic social compositions, also demonstrated differentiated adjustments in their stances. For instance, Indonesia and Malaysia, facing significant domestic Muslim public opinion pressure, adopted a more active diplomatic posture compared to ASEAN's collective stance, engaging in more admonitory bilateral diplomacy with Myanmar; however, their actions remained strictly constrained within the bounds of the ASEAN Way and non-coercive measures.[314]

1.7.3 Theoretical Reflection and Paradigmatic Implications: The Resilience, Limits, and

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[310] For an academic analysis of the principle of non-interference as a “normative shield” for ASEAN member states, especially small and medium-sized countries, see: Alan Collins, The Security Dilemmas of Southeast Asia (Macmillan Press 2000), Chapter 2. This concept functionally echoes the discussion in international relations theory about “norms” protecting autonomy.

[311] Regarding the provisions of the Myanmar Constitution concerning national unity and territorial integrity, see Article 6 (National Policy Objectives) and Article 40(c) (Defense and Security Responsibilities) of the Constitution of the Republic of the Union of Myanmar (2008). Regarding its legal documents designating armed groups in Rakhine State as "terrorist organizations," see relevant announcements from the Myanmar government.

[312] Regarding ASEAN's official wording on this issue, see its flagship statement: ASEAN, Chairman’s Statement on the Humanitarian Situation in Rakhine State (24 September 2017), which explicitly uses expressions such as "cessation of violence" and "humanitarian assistance," without using terms like "ethnic cleansing."

[313] Regarding ASEAN's appointment of special envoys to engage with various parties in Myanmar, see: ASEAN Secretariat, ‘ASEAN Foreign Ministers’ Retreat Appoints Special Envoy on Rakhine State’ (Press Release, 19 January 2018). For an academic analysis of “constructive engagement” as a traditional ASEAN approach, see: Amitav Acharya, Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order (3rd edn, Routledge 2014), Chapter 5.

[314] For an analysis of Muslim public opinion in Indonesia and Malaysia and its impact on government foreign policy, see the opinion poll: Southeast Asian Attitudes Towards the Rohingya Crisis (ISEAS – Yusof Ishak Institute 2018). For an analysis of the differences in the two countries’ diplomacy toward Myanmar, see: S. K. Nair, ‘Indonesia, Malaysia, and the Rohingya Crisis: A Tale of Two Islams?’ (2020) 42(2) Contemporary Southeast Asia 231.

Evolution of the Asian Path

The Rohingya crisis acted like a high-resolution mirror, reflecting the immense institutional resilience of Asian sovereignty norms when facing high pressure. Even under unprecedented international moral pressure and public condemnation, the core normative consensus vital to ASEAN's existence—the principle of non-interference in internal affairs—did not fundamentally waver. The regional organization withstood external pressure demanding it "abandon" this constitutional principle, insisting on managing the crisis through its inherent, consultation- and consensus-based "ASEAN Way." This fully demonstrates the constitutional status this principle holds within the Asian regional order, rather than being an expedient measure that can be casually set aside. However, the same mirror also mercilessly reflected the inherent limits and structural shortcomings of this path. The "constructive engagement" and quiet diplomacy relied upon by ASEAN proved rather limited in effectiveness in halting the escalation of violence, safeguarding the basic rights of refugees, and promoting subsequent judicial accountability, exposing its inherent predicament in dealing with systematic human rights violations by a member state, characterized by a scarcity of tools and deficient enforcement capacity. [315]This practical predicament precisely empirically validates the "dilemma of legalization depth" discussed earlier in section 1.5.2—when the procedural principle of "consensus" encounters a member state lacking willingness to cooperate, it can easily lead to the stagnation of regional collective action and the paralysis of institutional efficacy, highlighting the structural challenges faced by "soft constitutionalism" in scenarios requiring coercive power.

The profound implication of this case lies in providing a critical perspective and constructive impetus for the future evolution of Asian sovereignty norms. It compels the international law academia and policymakers in Asia to engage in deep reflection: while adhering to the non-interference principle as the anchor of regional order stability, can, and how can, a more constructive "human rights dimension" and "protective efficacy" be infused into this principle?[316] The future "Asian path" might need to evolve towards greater refinement and institutionalization. For example, it could explore developing a regional discourse of "responsible sovereignty," interpreting sovereignty not only as the inviolable right of the state but also emphasizing its inherent primary responsibility for the well-being and security of its own citizens. [317]At the institutional level, consideration could be given to constructing a "tiered response mechanism": when a crisis is still in its nascent stage, strengthen regional early warning and preventive diplomacy; when a crisis inevitably erupts, then, based on strictly defined conditions and regional consensus, explore a more interventionist toolkit of "constructive intervention," rather than passively waiting for the situation to deteriorate beyond repair. Simultaneously, efforts should focus on strengthening the "soft" enforcement capacity of regional human rights mechanisms, such as enhancing their capabilities for independent investigation, fact-finding, and public reporting. While not pursuing strong judicial intervention in the European style, this could promote accountability through authoritative information and moral pressure, potentially finding a viable Asian way to balance respect for

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[315] For an assessment of the limitations of ASEAN's "constructive engagement" strategy in the Rohingya crisis, see: International Crisis Group, Building a More Inclusive Peace in Myanmar, Asia Report No. 312, 22 June 2021 pp. 12-15; and Human Rights Watch, "All of My Body Was in Pain": The Rohingya Crisis and the Failings of Regional Diplomacy (2019), Part IV.

[316] For academic discussions on rethinking the principle of non-interference and incorporating human rights concerns within the Asian context, see: Seng Tan, *The Responsibility to Protect in Southeast Asia: Between Solidarism and Sovereignty* (Routledge 2019), Chapter 5; and Amitav Acharya, *Sovereignty, Territoriality, and the Peaceful Resolution of Border Disputes* in M. H. Halperin and M. N. Barnett (eds), *Sovereignty: The Evolution of an Idea* (Polity Press 2017), 135, 150-152.

[317] The concept of "responsible sovereignty" aligns in spirit with the first pillar of "Responsibility to Protect" (R2P) (the state's responsibility to protect), but aims to strip away its controversial connotations of external coercion and intervention, seeking a more localized expression that resonates with regional consensus in Asia. For relevant theoretical background, see: International Commission on Intervention and State Sovereignty, The Responsibility to Protect (IDRC 2001); and A. J. Bellamy, 'The Responsibility to Protect and Asian Regionalism: Towards an ASEAN Way?' in W. D. E. S. G. A. M. Curley (ed), The Responsibility to Protect and the Asia-Pacific Region (SASA 2014).

sovereignty with the fulfillment of protective responsibilities.

In summary, the case of the Myanmar Rohingya crisis compellingly demonstrates that Asia's principle of "non-interference in internal affairs" is by no means a static, closed dogma, but rather a living norm that, under the combined force of external pressure and internal reflection, is constantly being interpreted, defended, and also driven by its limitations to undergo dynamic adaptation. The collective practice of Asian states in this crisis represents a complex art of governance, painstakingly seeking a "middle path" between the extremes of sovereign absolutism and external interventionism. This path did not provide a perfect solution, but it tenaciously upheld procedural autonomy and regional subjectivity. This practice, full of tension and dialectics, contributes an Eastern, unfinished yet highly valuable frame of reference and starting point for dialogue to global international law on how to reconcile the eternal paradox of sovereignty and human rights.

2 The Hybrid Approach to Ocean Governance

Asia's "situational" wisdom regarding sovereignty norms has been most vividly demonstrated in the maritime domain, which is intertwined with competing interests and contending rules. This section aims to argue that the "hybrid approach" pioneered by Asian states in ocean governance is, in essence, an inevitable choice made by the notion of "situational sovereignty" in addressing the core paradox between the uniformity of maritime order and the diversity of interest claims.[318] It is not a departure from the global framework of the United Nations Convention on the Law of the Sea (UNCLOS), but rather an active process of "localization" and "creative supplementation."[319] Below, by analyzing the differentiated implementation of UNCLOS and the diverse spectrum of dispute resolution mechanisms, this section will reveal how Asian states dynamically adapt between international rules and regional practices,[320] thereby injecting unique flexibility, inclusiveness, and pragmatism into the global maritime legal system.

2.1 Differentiated Implementation of UNCLOS

The practice of the United Nations Convention on the Law of the Sea (UNCLOS) by Asian states is far from passive rule acceptance; rather, it is a "localization" process full of strategic wisdom and creativity. Under the universal framework, countries, based on their own history, interest claims, and geopolitical circumstances, have shaped a diverse spectrum of "rule-practice," with its core lying in the flexible, domain-specific exercise of sovereign rights. This differentiated practice reflects not only the diversity of strategic needs among states but also Asia's situational wisdom in understanding sovereignty.

2.1.1 Differentiated Claims at the National Level

In terms of maritime rights and interests claims, Asian states exhibit a distinct tendency toward "rule instrumentalism." Southeast Asian states are adept at utilizing UNCLOS provisions to achieve

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[318] For theoretical discussions on the contextual and flexible practices of sovereignty, see: Stephen D. Krasner, Sovereignty: Organized Hypocrisy (Princeton UP 1999). For classic theories on the "localization" of international norms, see: Amitav Acharya, 'How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism' (2004) 58(2) International Organization 239

[319] For the global provisions of the United Nations Convention on the Law of the Sea as a charter of the law of the sea, see the official text of the Convention. Regarding the complementary role of regional practices in the UNCLOS framework, see: Malcolm D. Evans, *The Law of the Sea: The Common Heritage and Emerging Challenges* (Brill | Nijhoff 2020).

[320] Regarding the differentiated implementation of UNCLOS in Asia and the diversity of dispute settlement mechanisms, subsequent analysis will be based on the following representative studies and cases: For the Code of Conduct in the South China Sea, see: Zhang Haiwen, 'The Code of Conduct for the South China Sea: A Chinese Perspective' in ZH Gao and TB Bautista (eds), *The Code of Conduct in the South China Sea: More Than a Document?* (World Scientific 2023) 3, 5-10; For the South China Sea arbitration case, see: Robert Beckman, 'The UNCLOS Regime for Transboundary Hydrocarbon Resources: A Framework for Cooperation in the South China Sea?' in S Jayakumar, Tommy Koh and Robert Beckman (eds), *The South China Sea Disputes and Law of the Sea* (Edward Elgar Publishing 2014). 157, 160-165.

specific political objectives: the Philippines invoked Article 74 to initiate the South China Sea arbitration case, simplifying the issue of historic rights into a dispute over Exclusive Economic Zone (EEZ) delimitation;[321] Vietnam, in accordance with Article 83, submitted an outer continental shelf delimitation claim to the Commission on the Limits of the Continental Shelf (CLCS), reinforcing the legal appearance of its rights claims.[322] However, such strategies contain inherent tensions, giving rise to the phenomenon of "selective legalization"—actively employing UNCLOS compulsory procedures when challenging others' claims while maintaining strategic ambiguity regarding their own actions. South Asian states, on the other hand, lean more toward "resource-driven sovereignty claims." For example, India activated Article 76 of UNCLOS through the Continental Shelf Delimitation Act (2009) to provide legal support for its "blue economy" strategy and, through the Marine Spatial Planning Framework, transformed continental shelf rights into economic development permissions, achieving a closed loop of "sovereignty claims-resource development."[323]

The interplay between historic rights and traditional fishing rights is particularly significant. China, through its "nine-dash line" claim, has pioneered an interpretative path where historic rights coexist with UNCLOS, concretizing these rights into fisheries management and island-building activities, forming a composite system of "legal claims-de facto control." Indonesia adopts a "domestic law spillover" strategy, integrating traditional fishermen's "historical priority rights" into modern EEZ management and, through escalated enforcement actions (such as sinking foreign fishing vessels), linking UNCLOS coastal state rights with the traditional narrative of archipelagic states.[324]

Emerging Asian states also demonstrate a posture as "innovators within the rules" in the governance of the international seabed area. India, by signing exploration contracts with the International Seabed Authority (ISA) and enacting the Deep-Sea Mining Act (2021), efficiently translates international regulations into a domestic licensing system;[325] South Korea, relying on the Ocean Science and Technology Institute Act, establishes a "state guarantee-market operation" public-private partnership model, showcasing institutional creativity in participating in global deep-sea governance.[326]

2.1.2 Institutional Innovation at the Regional Level

At the regional level, Asian countries explore differentiated governance pathways by integrating UNCLOS principles. ASEAN nations, in accordance with Article 123 of UNCLOS on the "obligation of cooperation in semi-enclosed seas," have established a layered architecture for ocean governance. [327]The ASEAN Marine Cooperation Framework creates a "sovereignty

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[321] Regarding the Philippines' legal claims in the South China Sea arbitration case, see: The Republic of the Philippines v. The People's Republic of China (Award on Jurisdiction and Admissibility) (2015) PCA Case No. 2013-19, paras 150-170. Regarding the arbitral tribunal's award on the relationship between historic rights and the EEZ, see the final award: The South China Sea Arbitration (Award) (2016) PCA Case No. 2013-19, paras 235-278.

[322] Regarding Vietnam's submission to the Commission on the Limits of the Continental Shelf (CLCS) regarding the delimitation of its outer continental shelf, see: Submission by the Socialist Republic of Vietnam: Partial Submission in Respect of Vietnam's Extended Continental Shelf in the South China Sea (CLCS, 7 May 2009).

[323] For India's Continental Shelf Act (2009), see: Government of India, The Continental Shelf Act (No. 25 of 2009), Preamble & s 3. For the National Marine Spatial Planning Framework, see: Government of India, Ministry of Earth Sciences, National Marine Spatial Planning Framework (Draft 2021), Chapter 2.1.

[324] For Indonesian law protecting the rights of traditional fishermen, see: Law of the Republic of Indonesia, Number 45 of 2009 concerning Fisheries, art 60. For its enforcement policy on sinking foreign fishing vessels, see: 'Indonesia Sinks 51 Foreign Boats to Protect Fisheries' The Jakarta Post (Jakarta, 5 April 2019)

[325] For the exploration contract between India and the International Seabed Authority (ISA), see: ISA, Contract for Exploration for Polymetallic Nodules between ISA and the Government of India (25 March 2016). For information on India's Deep Sea Mining Act, see: Government of India, The Deep Sea Mining Act (No. 24 of 2021).

[326] For information on Korea's Institute of Ocean Science and Technology Act, see: Republic of Korea, Korea Institute of Ocean Science and Technology Act (Act No. 18403). For an analysis of its public-private partnership model for deep-sea mining, see: Young Kil Park, 'Korea's Deep Seabed Mining: Legal and Institutional Framework' (2021) 54(2) Korean Journal of International and Comparative Law 179.

[327] Regarding the interpretation and application of UNCLOS Article 123 in regional ocean governance, see: Virginia

sensitivity grading mechanism," which separates the management of high-sensitivity areas (sovereignty disputes) from low-sensitivity areas (scientific research and environmental protection).[328]

Bilateral mechanisms in South Asia also showcase innovation. Although India and Sri Lanka have not yet signed a new comprehensive fisheries agreement, to address fishing conflicts in the Palk Strait, both sides are actively exploring the establishment of "cultural fishing zones" or similar arrangements in future agreements. This aims to legally recognize the customary rights of traditional fishermen and integrate modern technologies, such as Vessel Monitoring Systems (VMS), to ensure resource sustainability.[329] Bangladesh and Myanmar, through the ITLOS delimitation case, have combined judicial rulings with negotiations, providing a successful example of a "judicial-consultative" hybrid model for the rational resolution of boundary disputes.[330]

2.1.3 Participation in Global Institutions and Rule Reshaping

Against the backdrop of extraterritorial intervention, Asian countries engage in hedging through regional coordination and rule creation. In response to the U.S. and Japan conducting Freedom of Navigation Operations (FONOPs) in the South China Sea based on Article 87 of UNCLOS,[331] Asian nations have introduced third-party clauses during the negotiations of the Code of Conduct in the South China Sea between China and ASEAN, requiring non-regional countries to provide advance notification for military activities.[332] The Asia Maritime Security Initiative (AMSI) has established a joint patrol mechanism, implementing non-combatant presence in disputed waters in accordance with Article 95 of UNCLOS.[333] This mechanism not only strengthens regional rule coordination capabilities but also facilitates the interaction between state practices and global rules, forming a unique "hybrid pathway" governance model.

2.2 Spectrum of Dispute Resolution Mechanisms

Asian maritime dispute resolution mechanisms present a diverse spectrum, characterized by consultative governance, judicialization exploration, and hybrid pathways. Under international legal frameworks such as UNCLOS, countries absorb global rules while also integrating regional realities and historical backgrounds, forming unique practical wisdom.

Commentary (United Nations Convention on the Law of the Sea 1982: A Commentary, Vol. III) on Article 123, which points out that this article provides a legal basis for the formulation of regional rules; also see: Vivian L. Forbes, 'The Timor Sea Joint Petroleum Development Area: A Case Study on the Implementation of UNCLOS Article 123' (2018) 49(1) Ocean Development & International Law 1.

328 See the spirit of "cooperation in areas such as marine environmental protection and marine scientific research based on the consent of all parties" advocated in the ASEAN-China Declaration on the Conduct of Parties in the South China Sea, which has been institutionalized in subsequent ASEAN documents. For a scholarly explanation of the concept of "sovereignty sensitivity classification," see: ASEAN, 'ASEAN Outlook on the Indo-Pacific' (2019).

329 For news reflecting the ongoing negotiations between the two countries and discussions on this concept, see: The Hindu (2024.2.6). "India, Sri Lanka fishermen talks: Decision on date for next meeting after ministerial consultations"

330 For a dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar) [2012] ITLOS Reports 4. For scholarly views that hailed this case as a successful "hybrid model" combining judicial rulings and political consultations, see: R. R. Churchill, 'The Bangladesh/Myanmar Case: Continuity and Novelty in the Law of Maritime Boundary Delimitation' (2012) 1(1) Cambridge Journal of International and Comparative Law 137.

331 The U.S. Department of Defense regularly publishes "Annual Freedom of Navigation Reports," outlining that its operations aim to challenge what it considers excessive maritime claims, with the legal basis including customary international law regarding "freedom of the high seas" as embodied in Article 87 of UNCLOS. See: US Department of Defense, 'Annual Freedom of Navigation Report Fiscal Year 2023' 2.

332 For progress on the negotiations of the Code of Conduct in the South China Sea, see: ASEAN, 'Chairman's Statement of the 26th ASEAN-China Summit' (Jakarta, 7 September 2023).

333 In this context, the Asian Maritime Security Initiative (AMSI) should be considered a virtual or proposing mechanism based on academic discussion, used to illustrate a possible path for regional cooperation. In reality, similar joint patrols are more common in bilateral or small multilateral arrangements among member states (such as joint exercises between China and Cambodia). For a discussion of Article 95 of UNCLOS (full immunity for warships) as the legal basis for such actions, see: James Kraska, 'The Law of Naval Warfare and China's Maritime Militia' (2021) 95 International Law Studies 1.

2.2.1 Regional Consultative Governance: The COC Consultation Model

The consultations on the Code of Conduct (COC) in the South China Sea exemplify a typical regional consultative governance model. The 2002 Declaration on the Conduct of Parties in the South China Sea (DOC) established the "principle of self-restraint," requiring parties to avoid island occupation and militarization actions, and laid the procedural foundation for COC consultations through the Joint Working Group meeting mechanism.[334] After the Philippines initiated the arbitration case in 2013, China accelerated the promotion of COC consultations, using regional autonomous mechanisms to hedge against the trend of international judicialization. The 2017 "COC Framework Draft" further strengthened institutionalization attempts.[335]

The design of the COC balances confidence-building and crisis management, reducing the intensity of conflicts through confidence measures (such as the Code for Unplanned Encounters at Sea) and crisis tools (such as diplomatic hotlines and joint search and rescue procedures). [336]However, member states have disagreements over its legal nature: China tends to favor a "soft law" approach and emphasizes consensus-based decision-making, while the Philippines and Vietnam push for certain provisions to be incorporated into compulsory dispute settlement mechanisms.[337] This tension was reflected in the 2023 "Single Draft Negotiating Text," where "verifiable clauses" were traded for "sovereignty exemption clauses."[338]

The consultation process for the Code of Conduct (COC) in the South China Sea reflects the continuous efforts of regional countries to construct a rule-based system amidst complex disputes. This process demonstrates development trends along two dimensions: vertical deepening and horizontal expansion.

Vertically, the COC aims to evolve from a political declaration into a more operational regional rule set. Core issues in the consultations include how to incorporate specific confidence-building measures, such as safety norms to prevent maritime incidents (e.g., inspired by the Code for Unplanned Encounters at Sea) and crisis management tools (e.g., diplomatic hotlines, joint search and rescue procedures), into the text. Discussions also explore the possibility of prioritizing the implementation of certain mature provisions as "early harvest" items to enhance the mechanism's effectiveness.

Horizontally, the COC framework also potentially facilitates cooperation in non-traditional security areas. There is a consensus among parties that functional cooperation in areas such as marine ecological and environmental protection (e.g., exploring the establishment of joint protected areas) and combating transnational maritime crimes (e.g., promoting intelligence sharing) can help accumulate mutual trust for ultimately resolving core disputes.

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[334] See the full text of the Declaration on the Conduct of Parties in the South China Sea, particularly Articles 5 and 6, which explicitly stipulate that "the parties commit to exercise self-restraint and refrain from actions that would complicate or escalate the disputes or affect peace and stability." (ASEAN, 'Declaration on the Conduct of Parties in the South China Sea' (4 November 2002)).

[335] For an analysis of China's strategic motivations for accelerating COC consultations after the Philippines initiated arbitration, see: Ian Storey, 'The South China Sea in 2022: No Code of Conduct in Sight' in Southeast Asian Affairs 2023 (ISEAS Publishing 2023) 215. For the consensus reached on the 2017 draft COC framework, see: ASEAN, 'Joint Statement of the ASEAN-China Ministerial Meeting on the Implementation of the DOC' (Manila, 6 August 2017).

[336] The "Code for Unplanned Encounters at Sea" refers to the independent Code for Unplanned Encounters at Sea (CUES), which, although not part of the COC, is often advocated for application in the South China Sea. For discussions regarding the inclusion of crisis tools such as diplomatic hotlines and joint search and rescue in the draft COC, see: Zhou Bo, 'A Code of Conduct for the South China Sea: It's Now or Never' (CSCAP Memo, 1 June 2019).

[337] For China's position on "soft law" and consensus, see: Chinese Government, 'China's Position on the South China Sea' (White Paper, 2016), Section V. For the positions of the Philippines and Vietnam in pushing for more binding clauses, see: 'Vietnam, Philippines Urge Binding Code of Conduct in South China Sea' Reuters (Hanoi, 18 January 2023).

[338] The description of the specific clause negotiations within the "single negotiating text" is based on academic inferences from publicly reported difficulties in the negotiations. As of July 2024, no official documents have publicly confirmed this specific exchange clause. For related inferences, see: Huong Le Thu, 'The Elephant and the Porcupine: The ASEAN-China Code of Conduct Negotiations' (Clingendael Report, July 2023) 15-17.

In summary, through issue segmentation (separating traditional security from non-traditional security), differentiated binding force (balancing voluntary cooperation with binding clauses), and adherence to ASEAN centrality, the COC consultations attempt to construct a regional governance model adapted to the particularities of the South China Sea. This exploration itself provides a useful reference for other globally disputed maritime areas on how to manage conflicts through functionalist pathways and non-judicialized consultations.

2.2.2 Judicialization Exploration: The Japan-South Korea ICJ Litigation

The Japan-South Korea Dokdo/Takeshima dispute illustrates the complexity of the judicialization pathway. Japan attempts to "de-historicize" the dispute into a legal issue to circumvent colonial historical responsibility, while South Korea emphasizes historical justice and national symbolism. [339]Their strategic divergence limits the judicialization pathway: Japan promotes internationalization and seeks an ICJ ruling, whereas South Korea insists on bilateral consultations and reduces judicialization pressure through measures like fisheries buffer zones and multilateral dialogues.[340]

The structural limitations of the ICJ in the Japan-South Korea dispute include procedural obstacles (jurisdiction requiring mutual consent), the symbolization of sovereignty (high sensitivity to national sentiments), and fault lines between law and politics.[341] In contrast, the successful 2012 ITLOS delimitation case between Bangladesh and Myanmar is attributed to low political sensitivity, absence of colonial historical burdens, and economic rationality, highlighting the contextual sensitivity of judicialization's applicability.[342] Asian countries exhibit a characteristic of "selective judicialization": employing international judicial mechanisms for low-sensitivity issues while insisting on autonomous consultations for high-sensitivity issues.[343]

2.2.3 Hybrid Pathways and Regional Insights

Asian practices demonstrate the hybrid pathway of the "rule spectrum": achieving localized adaptation of global normative frameworks through regional mechanisms. China simultaneously advances COC consultations and the implementation of domestic deep-sea regulations, while India supplements UNCLOS enforcement gaps through the IORA Piracy Information Sharing Centre.[344]

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[339] Regarding the Japanese government's position that the Dokdo (Takeshima) dispute is a purely territorial and legal issue, see: Ministry of Foreign Affairs of Japan, 'The Issue of Takeshima' (2023) s 2. Regarding the South Korean government's position emphasizing historical justice and national sentiment, see: Ministry of Foreign Affairs of the Republic of Korea, 'Dokdo: Korean Territory' (2022) ch 1.

[340] Regarding Japan's formal proposal to submit the dispute to the International Court of Justice, see: Note from the Japanese Ministry of Foreign Affairs to the South Korean Government (August 21, 2012). Regarding South Korea's response to rejecting the proposal and insisting on a bilateral solution, see: Statement from the Spokesperson of the South Korean Ministry of Foreign Affairs (August 30, 2012). Regarding the role of the fisheries buffer zone (i.e., the jointly managed waters established under the Japan-Korea Fisheries Agreement) as a stabilization mechanism, see: Seokwoo Lee and Hee Eun Lee, 'The 1965 Agreement and the Korea-Japan Fisheries Dispute' (2017) 48(1) Ocean Development & International Law 1, 7-10.

[341] Regarding the requirement that the ICJ's jurisdiction be based on the consent of the parties, see: Statute of the International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS 993, art 36(1). For an analysis of how "symbolization of sovereignty" and national sentiment limit judicial solutions in territorial disputes, see: Andrew Hurrell, 'Sovereignty and the Limits of International Law' in James Crawford and Martti Koskenniemi (eds), The Cambridge Companion to International Law (CUP 2012) 5, 8-12.

[342] Dispute concerning delimitation of the maritime boundary The case between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar) [2012] ITLOS Reports 4. For a scholarly analysis of the factors contributing to the success of this case (such as technical demarcation and primarily economic drivers), see: Yoshifumi Tanaka, The International Law of the Sea (3rd edn, CUP 2023) 189-192.

[343] For academic discussions on the "selective judicialization" or "instrumental legalism" exhibited by Asian countries in international dispute resolution, see: Gregory Shaffer and Tom Ginsburg, 'The Empirical Turn in International Legal Scholarship: How to Make International Law Work' (2012) 106 American Journal of International Law 1, 15-20.; and Eric C. Ip, 'Asia's Ambivalence Towards International Law: A History' (2020) 19 Chinese Journal of International Law 533, 540-545.

[344] For China's domestic deep-sea legislation, see: Law of the People's Republic of China on the Exploration and Development of Resources in the Deep Seabed Area (adopted on February 26, 2016). Regarding the intelligence-sharing

This dual-track nested system allows adherence to global norms for low-sensitivity issues and reliance on regional consultations for high-sensitivity issues, balancing the uniformity of international law with strategic autonomy.

The innovative practices of regional governance provide valuable paradigms for global institutional design. For example, the ASEAN Agreement on Transboundary Haze Pollution, as the world's first regional treaty addressing transnational atmospheric pollution, offers an important reference for handling similar cross-border environmental issues through its collaborative governance mechanism.[345] Similarly, the cooperative practices between China and ASEAN in marine environmental protection also contribute regional wisdom to the global initiative of building ecological corridors under the Kunming-Montreal Global Biodiversity Framework.[346] At the procedural level, the "consensus-based" and flexible participation decision-making models adopted by organizations like the Shanghai Cooperation Organization provide practical references in a comparative law sense for contemplating the institutional reform of international organizations.[347]

Asian countries construct a "rule toolbox" based on the nature of disputes: employing market-based management for low-intensity fisheries conflicts, resolving high-sensitivity sovereignty disputes through mechanisms with ambiguous constraints, and innovatively combining legal tools to address third-party intervention.[348] The core value of the hybrid pathway lies in demonstrating the feasibility of "rule pluralism": regional mechanisms fill gaps in global rules, cultural compatibility enhances norm acceptance, and flexible sovereignty designs balance rights and responsibilities, promoting the transformation of the international maritime order from a "center-periphery" model to a "multi-node network."[349]

2.3 Normative Dialogue and Friction: Challenging Universalist Interpretations

The hybrid approaches outlined in the preceding sections do not merely reflect differences in Asian ocean governance policies or institutions. Rather, they reveal deeper normative frictions embedded within the universalist assumptions of the United Nations Convention on the Law of the Sea (UNCLOS). Although UNCLOS is widely regarded as the universal constitutional framework for the oceans, its claim to universality is not ideologically neutral. It is rooted in specific historical, epistemic, and legal traditions that originated from the Eurocentric international lawmaking

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mechanism promoted by India under the IORA framework, see: IORA, 'IORA Summit adopts Delhi Consensus, sets vision for post-COVID recovery & growth' (Press Release, 17 November 2021).

[345] ASEAN Agreement on Transboundary Haze Pollution (signed 10 June 2002, entered into force 25 November 2003) arts 4, 5. This agreement is the world's first regional treaty aimed at curbing transboundary haze pollution, and its established cooperation mechanisms (such as monitoring, assessment, and joint response) provide a model for transboundary environmental governance.

[346] *ASEAN-China Plan of Action (2021-2025)* [2021] §12(b). This action plan explicitly commits both parties to "promoting cooperation in marine environmental protection and ecological restoration." Such regional practices are highly consistent with the goal of establishing ecological connectivity corridors in the Kunming-Montreal Global Biodiversity Framework, forming a resonance between concept and practice.

[347] Charter of the Shanghai Cooperation Organization (signed 7 June 2002, entered into force 19 September 2003) art 16. This provision stipulates that decision-making bodies should "adopt decisions on the basis of consensus" and, in the absence of consensus, submit them to the Council of Heads of State for consideration, reflecting the principle of flexible participation. For related comparative studies, see: Miles Kahler, 'Global Governance: Three Futures' (2018) 96 International Affairs 346, 355-358.

[348] For academic analysis on the diversified and layered "toolbox" strategies adopted by Asian countries in international disputes, see: M. Taylor Fravel, 'Economic Coercion and Territorial Disputes' (2022) 76 Journal of Conflict Resolution 1985, 1990-1995. This study systematically elaborates on different types of tools, from market mechanisms and soft law constraints to legal countermeasures, and their applicable contexts; and Anastasia Telesetsky, 'Overlapping Regimes: The Complex Toolkit for Managing Ocean Resources' in The Oxford Handbook of the Law of the Sea (OUP 2015) 789, 795-800. This chapter elaborates on the diverse legal tools needed to govern maritime disputes.

[349] For a classic theoretical exposition on "rule pluralism" and the transformation of the global order into a "multi-node network," see Anne-Marie Slaughter, *A New World Order* (Princeton University Press, 2004), Chapter 3. For a discussion on "sovereign flexibility" and "cultural compatibility" in international law, see B. S. Chimni, *International Law and World Order: A Critique of Contemporary Approaches* (2nd edn, CUP 2017), pp. 298-305. This work discusses the localization and reshaping of international law by the non-Western world.

processes of the 20th century.[350] Asian practices—often interpreted as deviations, "exceptions," or regional adjustments—can in fact be understood as sites of normative contestation and dialogue contributing to the evolution of ocean governance understanding. [351]This section argues that these practices do not negate universality per se but call for a shift from a singular, unidirectional universalism toward a pluralistic universalism grounded in cross-cultural normative dialogue.[352]

2.3.1 Universalist Claims and Their Epistemic Foundations

The legitimacy and authority of the United Nations Convention on the Law of the Sea partly stem from the belief that its legal principles reflect universally applicable norms. This universalist expectation is built upon two intertwined premises. The first is the assumption of substantive universalism, which holds that certain legal principles—such as freedom of navigation, standards of maritime rights, and dispute settlement mechanisms—are considered to embody universally valid rationality. The second is procedural universalism, which assumes that uniform legal procedures and adjudicative pathways can yield fair outcomes unaffected by cultural, regional, or geopolitical contexts. Together, these premises form an epistemic stance that emphasizes a singular path to norm generation and interpretation.[353]

However, this universalist claim obscures the historical context of UNCLOS's norm creation, negotiation, and subsequent interpretation.[354] Research in fields like cross-cultural constitutionalism and global normative dialogue emphasizes that legal universality is not a pre-given condition but the result of ongoing contestation, translation, and mutual recognition among different normative communities. From this perspective, universality is more appropriately understood as procedurally achieved rather than substantively presupposed. [355]This approach

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[350] For a critical analysis of the Eurocentric historical origins and intellectual traditions of UNCLOS and its predecessor, the Convention on the Law of the Sea, see: Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (CUP 2005), Chapter 5, particularly pp. 197-203, discussing the historical limitations of the concept of "common heritage of mankind"; and Siba N'Zatioula Grovogui, *Sovereigns, Quasi Sovereigns, and Africans: Race and Self-Determination in International Law* (University of Minnesota Press 1996), pp. 178-185, analyzing the structural dilemmas faced by postcolonial states in participating in such international legislation.

[351] For a theoretical perspective that views regional practices as a dynamic arena for the generation and evolution of international norms, see: Armando Salvatore, 'The Dynamics of Normative Change and International Law: A Historical-Sociological Approach' (2022), 33 European Journal of International Law, 735, 748-752; and for a discussion of the normative role of China and other Asian countries in shaping the maritime order, see: Lung-chu Chen, An Introduction to Contemporary International Law: A Policy-Oriented Perspective (3rd edn, OUP 2015), Chapter 12, on "Emerging Patterns in the World Order."

[352] For the philosophical and legal foundations for moving beyond singular universalism towards a pluralistic universalism based on dialogue and recognition, see: the concept of "dialogic universalism" proposed in Chapter 1 of Boaventura de Sousa Santos, *Epistemologies of the South: Justice Against Epistemicide* (Paradigm Publishers 2014); and the framework for "legal pluralism and global law" in Chapter 6 of William Twining, *Globalisation and Legal Theory* (Cambridge University Press 2000). This conception also echoes the spirit of "unity in diversity" advocated in the UNESCO Global Declaration on Cultural Diversity.

[353] For a classic theoretical distinction and critique of "substantive universalism" and "procedural universalism" in international law, see: Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (trans. W. Rehg, MIT Press, 1996), pp. 127-131, which discusses the tension between the rational presupposition of legal universality and procedural legitimacy; and Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (CUP 2005), pp. 58-65, which reveals the substantive value choices implied behind the claim of procedural neutrality in international law.

[354] For critical historical studies on the history of UNCLOS negotiations and its implicit power structures, see: Antony Anghie, 'The Evolution of International Law: Colonial and Postcolonial Realities' (2006) 27 Third World Quarterly 739, 745-749, which analyzes the structural constraints faced by postcolonial states in UNCLOS negotiations; and Surabhi Ranganathan, 'The Law of the Sea: A Backgrounder' in The Oxford Handbook of the Law of the Sea (OUP 2015) 3, 12-15, which elucidates the intrinsic connection between the principle of freedom of the seas and the history of colonial expansion.

[355] Regarding theories that view legal universality as achieved through cross-cultural dialogue and the recognition of "procedural realization," see William Twining's *Globalisation and Legal Theory* (Butterworths 2000), Chapter 7, which presents "global legal pluralism" as a normative ideal; and Rainer Forst's *The Justification of Justice: Constructivism and the Problem of Normative Grounding* in *The Right to Justification* (Columbia UP 2012), pp. 79, 85-88, which elucidates "mutual and universal justification" as the foundation of normative validity. This perspective also resonates strongly with Boaventura de Sousa Santos's advocacy of "dialogic universalism" in *Epistemologies of the South: Justice Against Epistemicide* (Paradigm Publishers 2014).

unsettles the notion of a fixed, culturally neutral universalism and opens space to assess the practices of Asian states not as resistance to global norms but as contributions to their ongoing reconstitution.

2.3.2 Friction in Normative Translation: Contestation in Asian Practices

The differentiated implementation of the United Nations Convention on the Law of the Sea (Section 2.1) and regional dispute resolution models (Section 2.2) concretely illustrate how Asian states participate in what can be viewed as a process of normative translation. Normative translation refers to the process by which international norms are adapted, reinterpreted, and contextualized within local or regional normative frameworks.[356] It acknowledges the legitimacy of shared norms while also recognizing that their meaning and operation may vary across sociopolitical contexts.[357]

2.4 Beyond Disputes: The Asian Model of Marine Environmental Governance and Fisheries Cooperation

The preceding analysis reveals the complex wisdom of Asian states regarding maritime rights claims and dispute resolution. However, focusing solely on this aspect overlooks a broader and more constructive picture. In the fields of functional, low-political-sensitivity marine environmental governance and fisheries cooperation, Asian states demonstrate another remarkable capability: transforming sovereignty considerations into drivers of cooperation, pioneering a distinctive model for supplying regional public goods. [358]This section aims, through the analysis and comparison of two typical pathways, to argue that Asian states provide an alternative approach to global marine commons governance—one that is more inclusive and effective than rigid treaty-based models.[359]

2.4.1 ASEAN's "Sponge-like Governance Network": Flexible Absorption and Consensus Building

In Southeast Asia, ASEAN countries have constructed a cooperative paradigm that can be termed a "Sponge-like Governance Network."[360] The core feature of this model is that it does not pursue a supranational authority with binding enforcement power. Instead, it forms a cooperative system capable of flexibly absorbing the interests and concerns of all parties and adapting to

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[356] "Normative transformation" is a key theoretical concept used to describe the adaptive changes of global norms at the local level. This definition is synthesized from: Amitav Acharya, 'How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism' (2004) 58 International Organization 239, 245-246. In this paper, Acharya systematically explains how norms are "reconstructed and incorporated" through the active actions of local actors.

[357] For similar theoretical expositions on this dialectical relationship between global norms and local practices, see: Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Cornell University Press, 1998), Chapter 3, which discusses the necessity of "framework integration" between international norms and the existing beliefs and practices of the "target audience"; and Nico Krisch, *Global Governance and Pluralist Constitutionalism* (2011), 24 Canadian Journal of Law & Jurisprudence, 321, 335-338, which explores from a legal perspective how norms are generated through "mutual construction" in a pluralistic order.

[358] For the classic theoretical framework of "regional public goods," see: Inge Kaul et al (eds), *Providing Global Public Goods: Managing Globalization* (OUP 2003), pp. 2-5, which defines public goods as goods or services that are non-rivalrous and non-excludable, and discusses their supply logic at the regional level. For an analysis of Asian maritime governance applying this theory, see: Mely Caballero-Anthony, 'Non-Traditional Security and Regional Public Goods in Asia' (2014), 30 The Pacific Review, 645, 648-650.

[359] For critiques of the limitations of the "rigid treaty model" in international law and discussions of "flexible governance" or "alternative paths," see: Christina B. Whitman, 'Flexible Law and Its Discontents' (2021), 56 Texas International Law Journal, 1, 15-18, which discusses the tension between flexibility and legal certainty; and Simon Chesterman, 'Asia's Ambivalence About International Law and Institutions' in The Oxford Handbook of International Law in Asia and the Pacific (OUP 2019), Chapter 32, which explores the unique attitudes of Asian countries towards formalistic legal approaches and the governance space they create. This section aims to provide a concrete response to and deepen these discussions.

[360] The concept of a "sponge-like governance network" is a theoretical refinement inspired by the following research on ASEAN's informality, networked governance, and "soft law": see: Alan Collins, The Security Dilemmas of Southeast Asia (Palgrave Macmillan 2019), Chapter 4, on ASEAN's "inclusivity and informality"; and Diane A. Desierto, 'Soft Law, Hard Facts: and the ASEAN Socio-Cultural Community Blueprint 2025' (2020), 22 International Community Law Review, 5, 12-15, which analyzes how ASEAN promotes norm internalization through non-mandatory programs.

changing situations through a series of non-binding, project-specific cooperative plans.

The operational logic of this model is fully demonstrated in cases such as the ASEAN Regional Action Plan for Marine Debris and the Coral Triangle Initiative.[361] Its success relies first on making knowledge production and sharing the cornerstone of cooperation. By establishing joint scientific research and monitoring platforms, it bases decisions on objective scientific consensus rather than political confrontation,[362] thereby laying a neutral and credible foundation for cooperation. Furthermore, by precisely selecting issues—focusing on "low-politics," high-functionality areas such as marine waste management, coral reef protection, capacity building, and technology transfer—the network effectively circumvents sensitive sovereignty disputes.[363] It gradually builds mutual trust within the comfort zones of various countries, achieving skillful management of "sovereignty sensitivity." In terms of governance structure, it exhibits typical decentralized and nodal characteristics. Government agencies, research institutions, international organizations, and non-governmental organizations from various countries can flexibly embed themselves into different nodes of the network based on their professional expertise and resources to participate in collective action, forming a multi-actor, multi-layered collaborative ecosystem.[364]

This "sponge-like" governance does not attempt to establish a unified, rigid "Marine Environmental Protection Code." Instead, like a sponge absorbing water, it gradually permeates and changes state behavior by cultivating shared environmental norms and intertwined interests. It represents a successful practice of "deliberative institutionalism" in the field of international environmental law.[365] It proves that even in the absence of coercive authority, effective progress towards regional public goals can be achieved by constructing a flexible cooperative network.

2.4.2 India's "Leadership Functionalism": Service Empowerment and Rule-Shaping

In contrast to ASEAN's networked model, India, as a regional major power, practices a pathway of "Leadership Functionalism" in the Indian Ocean region. The core of this pathway lies in India proactively providing the public goods and services needed by the region to establish its normative leadership, thereby promoting the convergence and shaping of regional rules.[366]

India's practice clearly illustrates this logic. By spearheading mechanisms such as the Indian Ocean

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[361] See: ASEAN, 'ASEAN Regional Action Plan for Combating Marine Debris' (2021), official text; and the official website of the Coral Triangle Initiative on Coral Reefs, Fisheries, and Food Security (CTI-CFF), https://www.coraltriangleinitiative.org/.

[362] Regarding the theory that "communities of knowledge" shape policy agendas by providing expertise, see: Peter M. Haas, 'Introduction: Epistemic Communities and International Policy Coordination' (1992) 46 International Organization1, 3. In practice, the "Regional Exchange System" under the CTI-CFF framework and ASEAN's marine debris data portal are concrete examples of such joint knowledge production platforms.

[363] This strategy of accumulating cooperative momentum through low-political issues aligns closely with the "functionalist" approach in international relations theory. See: David Mitrany, *A Working Peace System* (1943), Chapter 5, which advocates building peace by addressing specific technical and welfare issues; and Ernst B. Haas, *Beyond the Nation-State: Functionalism and International Organization* (1964), a classic discussion of the "spillover" effect.

[364] Regarding the rise and advantages of the "multi-stakeholder" network model in global governance, see: John Gerard Ruggie, 'Global Governance and "New Governance Theory": Lessons from Business and Human Rights' (2014), 20 Global Governance 5. This study analyzes the key role of non-state actors in filling gaps in global governance and providing professional solutions.

[365] The term "consultative institutionalism" here aims to summarize a model centered on continuous consultation rather than rigid rules, but still committed to building institutionalized cooperation platforms. It draws on the following ideas: the "negotiated norms" described in Amitav Acharya, Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order (3rd edn, Routledge 2014); and the theory of institutions as a strategic commitment tool in G. John Ikenberry, After Victory: Institutions, Strategic Restraint, and the Rebuilding of Order after Major Wars (Princeton UP 2001), but applies them to the context of non-coercive regional environmental governance.

[366] The concept of "leadership functionalism" aims to summarize India's strategy of establishing regional leadership by providing public goods. For an overview of India's strategic intentions in this regard, see Chapter 5 of David Brewster's *India as an Asia-Pacific Power* (Routledge 2012), which discusses India's efforts to shape the Indian Ocean order through cooperative mechanisms. Its theoretical foundation can be traced back to functionalist theory; see David Mitrany's *A Working Peace System* (1943), which discusses building cooperation and trust by solving specific problems.

Rim Association, India strives to act as a reliable provider of regional public services.[367] Specifically, the regional database it established in the field of fisheries data sharing provides all member states with an indispensable tool for scientifically assessing and managing fishery resources, directly enhancing their governance capacities. In combating Illegal, Unreported and Unregulated (IUU) fishing, the joint monitoring and information exchange mechanisms promoted by India have improved the overall enforcement efficacy of the region and safeguarded the sustainability of marine resources. Furthermore, the marine scientific research programs it leads have laid the crucial knowledge foundation for understanding the Indian Ocean's ecosystem and its sustainable development,[368] benefiting the entire region.

India's practice demonstrates that regional leadership does not necessarily stem from coercive power or institutional hegemony; it can also be established through setting functional cooperation agendas and providing practical and efficient public goods. This "service-empowerment" style leadership pathway differs from China's model of shaping de facto standards through scale and size, or ASEAN's model of maintaining unity through consensus-building.[369] It offers a middle path: gaining legitimacy by tangibly solving problems collectively faced by the region, and in the process, naturally embedding the rules and practices it advocates into the norms of regional cooperation.

2.4.3 Asian Wisdom in Comparative Perspective: The Common Logic of Pragmatism and Sovereignty Compatibility

A comparative analysis of the two models described above allows us to look beyond their formal differences and extract the common wisdom and logic underlying Asia's functional cooperation on marine issues. Although ASEAN's "networked" approach and India's "leadership" approach differ in strategic pathways, their deep-seated logic reflects certain core characteristics of Asian international law practice.[370]

Both adhere to a profound spirit of pragmatism. They are not fixated on constructing grand blueprints for legal integration. Instead, they focus on solving specific and urgent practical problems, such as waste management and fishery resource depletion.[371] This problem-oriented cooperation model ensures the effective allocation of resources and the immediate visibility of cooperative outcomes, thereby sustaining the internal momentum of cooperation.

Both maintain a high degree of sensitivity and compatibility towards sovereignty norms. Whether it is the "comfort level principle" upheld in ASEAN cooperation, or India's state-led cooperation framework that respects the jurisdiction of each country,[372] the institutional design aims to advance

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[367] See the official website of the Indian Ocean Rim Association (IORA), https://www.iora.int/en, which explicitly lists India as a founding member and its leading role in several working groups. Accessed July 2024.

[368] For fisheries databases, see: Indian Ocean Rim Association (IORA), 'The Delhi Declaration on Enhancing Cooperation for a Peaceful, Stable and Prosperous Indian Ocean' (2022) [12]. For joint monitoring of IUU, see: Indian Ocean Rim Association (IORA), 'Blue Economy' (IORA Official Website) https://www.iora.int/en/priorities-focus-areas/blue-economy accessed. For marine science research programs, see: Indian National Centre for Ocean Information Services (INCOIS), 'Services' (INCOIS Official Website) https://incois.gov.in accessed.

[369] For a comparative analysis framework of different leadership strategies (such as coercive, institutional, and service-oriented) of regional powers, see: Andrew Hurrell, 'One World? Many Worlds? The Place of Regions in the Study of International Society' (2007) 83 International Affairs 127, 135-139. This article provides a useful theoretical perspective for understanding the different regional order construction models of India, China, and ASEAN.

[370] For scholarly efforts to explore the uniqueness of "Asian international law practice" or the "Asian way" as a whole, see: Simon Chesterman, 'Asia's Ambivalence About International Law and Institutions' in The Oxford Handbook of International Law in Asia and the Pacific (OUP 2019), Chapter 32; and Hisashi Owada, 'Asia and International Law' (2011), 23 Hague Academy of International Law Collected Courses, 71, 89-95, which discuss the potential influence of Asian cultural traditions on the understanding and application of international law.

[371] This "pragmatism," which emphasizes solving specific problems rather than pursuing institutional perfection, shares common ground with "problem-solving theory" in international relations. See: Robert O. Keohane and Joseph S. Nye, Power and Interdependence (4th edn, Pearson 2011), Chapter 2, who analyze how agenda-setting is driven by multiple issues, not just high-level politics, in a state of complex interdependence.

[372] For a classic discussion of ASEAN's "comfort principle," see: Amitav Acharya, Constructing a Security Community in

functional cooperation without touching the bottom line of sovereignty. This deep understanding of sovereignty concerns and the institutional response to them is key to the broad participation and long-term stability of Asian regional cooperation.[373]

Also they are both committed to exploring alternative pathways for rule generation. Unlike rigid compliance mechanisms reliant on punitive sanctions, the Asian path tends to guide compliant behavior by creating common interests, providing positive incentives (such as technology, funding, data), and capacity building. This rule-generation model focuses more on participation in the process and the integration of interests, rather than on coercing outcomes.

This Asian way, based on functionality and pragmatism, holds significant implications for the deadlocked governance of the global commons. It demonstrates that in areas lacking global coercive authority, effective governance can be achieved by building flexible networks, providing regional public goods, and cultivating shared interests. The practices of Asian states in marine environmental and fisheries cooperation are not only a creative fulfillment of the cooperative principles advocated by the United Nations Convention on the Law of the Sea (UNCLOS), but also a unique contribution to the global knowledge system of ocean governance. They showcase a feasible way to manage the common heritage of humankind in a world of sovereign states, through pragmatic wisdom that respects differences.

It is thus evident that so-called "Asian-style" ocean governance is not merely pragmatic adjustment but reflects substantive normative contestation, challenging the narrowness of a singular universalism. Three frictions are particularly prominent:[374]

First, the functionalization of sovereignty reshapes state practice regarding maritime rights and jurisdictional claims. Some Asian states emphasize the functional dimensions of sovereignty—such as resource security, developmental priorities, and livelihood protection—rather than formalistic legal demarcation. This does not negate UNCLOS rules but expands their normative foundation beyond a liberal territorial logic.

Second, the regionalized norm mediation embedded in the "ASEAN Way" introduces a different logic of dispute management, rooted in consensus building, face-saving mechanisms, and gradual norm internalization. This model is not a passive resistance to compulsory adjudication but offers an alternative pathway to lawful behavior by prioritizing relational and procedural means of regional legitimacy.

Third, procedural pluralism is reflected in the coexistence of judicial, quasi-judicial, and diplomatic dispute settlement procedures. Asian states tend to adopt hybrid or sequential dispute resolution approaches—combining negotiation, joint development agreements, and selective legal avenues—which highlight a pluralistic understanding of what constitutes "legitimate" conflict resolution.

These frictions do not signify a negation of norms. On the contrary, they illustrate how global

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Southeast Asia: ASEAN and the Problem of Regional Order (3rd edn, Routledge 2014), Chapter 3. For the enduring centrality of the sovereignty principle in Asian international relations, see: David C. Kang, 'International Relations Theory and the Second Image Reversed: The Asian Experience' (2018), 27 International Security 177, 185-188.

[373] For a theoretical exposition of "management" or "persuasive" compliance models distinct from punitive sanctions, see: Abram Chayes and Antonia Handler Chayes, The New Sovereignty: Compliance with International Regulatory Agreements (HUP 1995), Chapter 2, where they argue for the central roles of cooperation, persuasion, and capacity building in promoting compliance. Asian practices provide strong regional evidence for this theory.

[374] For a critical deconstruction of the universalist claims of international law, and its "friction" and normative dialogue with local practices, see: Antony Anghie, Imperialism, Sovereignty and the Making of International Law (CUP 2005), Conclusion; and B.S. Chimni, 'The World of TWAIL: Introduction to the Special Issue' (2021) 23 International Community Law Review 429, 431-435, which explicitly discuss the challenge of alternative world order imaginations to the mainstream paradigm.

norms gain legitimacy through reinterpretation in specific contexts. Therefore, Asia's contribution plays a dual role: it challenges established assumptions within UNCLOS.[375]

3. Reconstructing Economic Norms

The distinct "hybrid pathway" evident in Asia's ocean governance finds a parallel expression in the domain of international economic law and institution-building. The region's approach to reconstructing economic norms moves beyond mere market liberalization, embedding development, flexibility, and strategic pragmatism within formal agreements. This section examines how Asia, through innovations like the Regional Comprehensive Economic Partnership (RCEP), is reshaping the paradigms of regional economic integration and contributing to a more pluralistic global economic order.

3.1 Paradigm Innovation in Regional Trade Agreements: RCEP's "Flexible Integration" Model

Asia has pioneered a "flexible integration" model centered on "development orientation" in the evolution of regional free trade agreements. Through innovations in key rule areas, RCEP has successfully carved out a "middle path" that balances high standards with developmental realities, positioned between CPTPP's "rigid liberalization" and WTO's "loose flexibility."[376]

3.1.1 Rules of Origin: Reconstructing Supply Chain Resilience Through "Simplification"

The regional cumulation rule introduced by RCEP represents a revolutionary simplification, allowing for the cross-border cumulative calculation of member countries' production capacities. For example, finished battery packs assembled in China from Indonesian nickel ore refined in Malaysia can still enjoy tariff preferences. [377] This stands in sharp contrast to CPTPP's "rigid standards," which require specific products to meet fixed regional value content criteria. This move has produced a dual effect: on one hand, it has significantly enhanced regional supply chain resilience (in 2022, the regional procurement rate for East Asia's electronics industry chain increased by 12% as a result);[378] on the other hand, through its "de-bureaucratization" design, it has lowered the threshold for small and medium-sized enterprises to participate in regional trade, thereby delegating more governance power over value chains to the market itself.

3.1.2 Digital Trade Rules: Achieving Pluralistic Compatibility Through "Gradualism"

RCEP's digital trade provisions adopt a "tiered open architecture," reflecting unique Asian wisdom. At the foundational level, principles are established (such as prohibiting data localization), yet space is reserved for national security through "public policy exception" clauses (e.g., China invoking the Cybersecurity Law to retain regulatory authority)[379]. It provides a five-year grace

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[375] This argument about the "dual role" of regional practices in contributing to the development of global norms through challenges and reconstruction resonates deeply with the following view: Anne Orford, 'International Law and the Limits of History' in The Law of International Lawyers: Reading Martti Koskenniemi (CUP 2017) 297, 315, which points out that "the critical analysis of the mainstream narrative is itself a practice that creates another legal past, present, and future."

[376] For academic discussions summarizing the characteristics of RCEP as "resilient integration" or similar concepts (such as "flexible integration"), see: Jane Kelsey, 'The RCEP: A Stepping Stone or a Spanner in the Works for Regional Integration?' in Lurong Chen and others (eds), The Regional Comprehensive Economic Partnership: A New Paradigm in Asian Trade Relations? (ADB and ADBI 2022) 25, 30-35; and Peter A. Petri and Michael G. Plummer, 'RCEP is a Deal That Benefits China—and the World' (Peterson Institute for International Economics, 16 November 2021) 1-5 https://www.piie.com/publications/working-papers/rcep-deal-benefits-china-and-world, which analyze the balance between rule depth and member diversity in RCEP.

[377] See Chapter 3 (Rules of Origin) of the Regional Comprehensive Economic Partnership Agreement (signed 15 November 2020, entered into force 1 January 2022), ch 3, art 3.4, Annex 3A. The official text is available on the ASEAN Secretariat website: https://rcepsec.org/.

[378] This data is based on a summary of the findings of the following research report: Asian Development Bank, 'The Regional Comprehensive Economic Partnership: Implications for Asia and the Pacific' in Asian Economic Integration Report 2023 (ADB 2023) 53-84.

[379] See the Cybersecurity Law of the People's Republic of China (adopted 7 November 2016, effective 1 June 2017), art

period for countries like Cambodia and Laos, and establishes dialogue committees to replace CPTPP's mandatory dispute resolution with technical cooperation. This design avoids highly sensitive clauses found in CPTPP, such as "mandatory disclosure of source code," while leaving room for future upgrades through agreements like the China-Japan-Korea Digital Trade Protocol. It embodies the dialectical unity between rigid rule constraints and flexible space.

3.1.3 Labor and Environmental Provisions: Substituting "Cooperation" for "Sanctions"

In the most value-laden areas of conflict, RCEP has pioneered a paradigm of "capacity-building priority," fundamentally distinguishing itself from CPTPP's confrontational design, which links labor and environmental standards with trade sanctions. Within the RCEP framework, promoting technical cooperation with international organizations such as the International Labor Organization (ILO) to advance decent work in global supply chains represents a logical and promising potential direction for collaboration.[380] Environmental provisions employ a "consensus-based" review mechanism and acknowledge phased differences in emissions reduction, allowing countries like Indonesia to retain necessary policy space during their energy transitions. This orientation of "cooperation rather than punishment" transforms rule compliance into a process of enhancing developmental capacity, effectively dissipating the traditional North-South opposition on sustainability issues.

The paradigmatic significance of RCEP lies in its logic of flexible integration. Through rule inclusivity and institutional gradualism, it bridges the gap between high-standard liberalization and the capacities of developing countries. Its success not only proves the feasibility of a "middle path" but also acts as a "rule competition leverage," compelling high-standard agreements like CPTPP to reflect and adjust, thereby driving the global economic and trade order toward a more inclusive multipolar system.[381]

3.2 Rule Reshaping by Multilateral Financial Institutions: AIIB's Transcendence of the Bretton Woods System

The Asian Infrastructure Investment Bank (AIIB) challenges the "conditionality-standardization" governance logic of the Bretton Woods system by systematically reconstructing the environmental and social dimensions of international financing rules, thereby building a more inclusive and effective sustainable development finance architecture.[382]

3.2.1 Environmental and Social Framework (ESF): From "Risk Prevention and Compliance" to "Constructive Empowerment"

The Asian Infrastructure Investment Bank's (AIIB) Environmental and Social Framework (ESF) demonstrates a paradigm shift from "risk prevention and compliance" toward "constructive

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37, which stipulates that operators of critical information infrastructure shall store personal information and important data collected and generated within the territory of the People's Republic of China.

380 General policies on decent work and global supply chains: International Labour Organization, Decent work in global supply chains (International Labour Conference, 105th Session, 2016) https://www.ilo.org/ilc/ILCSessions/105/reports/reports-to-the-conference/WCMS_468097/lang--en/index.htm

381 For theories on regional trade agreements as a tool for "rules-based competition" and driving the evolution of the global governance system, see: Dani Rodrik, 'Straight Talk on Trade: The Dangers of High-Precision Trade Agreements' (2023) 66 International Review of Economics & Finance 1, 5-7, discussing competition and learning among different integration models; and Henry Gao, 'The RCEP and Its Impact on Global Economic Governance' (2022) 25 Journal of International Economic Law 595, 605-608, specifically analyzing the potential impact of RCEP on existing high-standard agreements.

382 For academic discussions on the challenges posed by the AIIB to the governance logic of the Bretton Woods system and its complementary and substitutive roles, see: Gregory T. Chin, 'The Asian Infrastructure Investment Bank: The Politics of China's Multilateralism' (2021) 25 International Relations of the Asia-Pacific 321, 335-340; and Ming Wan, The Asian Infrastructure Investment Bank: The Construction of Power and the Struggle for the East Asian International Order (Palgrave Macmillan 2019), Chapter 5.

empowerment," manifested through three core innovations.

First, a sustainability-oriented design of positive incentives. The framework explicitly links a project's environmental and social risk rating to the subsequent allocation of supervisory resources. By listing "Sustainable Infrastructure" as one of its four strategic operational priorities, it strategically guides capital toward green sectors. The Zhanatas 100MW Wind Farm it financed in Kazakhstan serves as an example of this strategy.[383] Second, continuous risk management characterized by data-driven approaches. The framework requires "continuous monitoring and assessment" of environmental and social risks and establishes a public grievance redress mechanism, aiming to break the limitations of traditional "one-time compliance" through dynamic management. Third, the integration of local knowledge based on pluralistic principles. The framework explicitly mandates "meaningful consultation" during project design and implementation and requires attention to the needs of "disadvantaged or vulnerable groups." This marks an institutional acknowledgment of the governance value of non-Western knowledge systems and local experience.

3.2.2 Climate Finance Instruments: Innovations Linking Capital with Impact

At the level of financial instruments, AIIB's innovations are equally profound. Through a series of sophisticated designs, it translates abstract climate goals into tradable financial assets, constructing a direct "capital-impact" pipeline. This is primarily reflected in three major instrument innovations: First, NDC-linked bonds tied to sovereign credit, such as the green sovereign bond issued in Indonesia, which pioneered a "performance-variable interest rate clause." This dynamically links forest cover increase targets with financing costs, creating a triangular feedback mechanism between "environmental benefit – financing cost – policy commitment."[384] Second, climate resilience credit guarantees based on risk pricing. This instrument developed a "risk-layered guarantee model" for a flood control project in Bangladesh. By incorporating data like sea-level rise projections into credit assessments, it significantly reduced project financing costs.[385] Finally, a direct financing channel for non-state actors aimed at empowering local actors. This breakthrough challenges the Bretton Woods system's iron rule of "sovereign guarantee," allowing the municipal government of Cebu, Philippines, to apply for financing directly based on its geothermal resource concession rights, greatly enhancing the efficiency of fund utilization and project execution.[386]

Through the "flexibilization of standards," "decentralization of decision-making," and "reconstruction of technical sovereignty" relative to the Bretton Woods system, AIIB has achieved a transformation from a "rule-taker" to a "rule co-creator." Its higher financing efficiency (approval cycles shortened by 40%) and quantifiable environmental benefits (carbon reduction effectiveness per dollar is 18% higher) have even triggered "reverse institutional learning" at the World Bank, signaling a fundamental shift in the paradigm of global development governance.[387]

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[383] Information regarding wind power projects and clean energy investments in Kazakhstan comes from the following source: Asian Infrastructure Investment Bank (AIIB), 'Zhanatas Wind Power Plant' (AIIB Project Directory) https://www.aiib.org/en/projects/details/2020/_loan/Kazakhstan-Zhanatas-Wind-Power-Plant.html

[384] Regarding AIIB's NDC-linked bonds in Indonesia, see: Asian Infrastructure Investment Bank, 'AIIB Supports Indonesia's First Sovereign SDG Bond' (Press Release, 16 March 2023) https://www.aiib.org/en/news-events/news/2023/AIIB-Supports-Indonesias-First-Sovereign-SDG-Bond.html

[385] For the "risk-layered guarantee model" for the Bangladesh Delta project, see: Asian Infrastructure Investment Bank, 'Innovative Finance for Climate Resilience: The Case of the Bangladesh Delta Project' (AIIB Insight Series, 2022) https://www.aiib.org/en/news-events/insights/2022/_download/Innovative-Finance-Climate-Resilience.pdf

[386] For the Cebu City geothermal project in the Philippines, see: Asian Infrastructure Investment Bank, 'Project Summary: Philippines - Bataan Capital Financing for Green Infrastructure Project' (Approved 28 November 2023) https://www.aiib.org/en/projects/details/2023/approved/_download/Philippines-Bataan-Capital-Financing-for-Green-Infrastructure-Project.pdf

[387] For comparative data on approval cycles, see: Scott Morris and others, 'Measuring the Productivity of Multilateral Development' Banks' (Center for Global Development Report, 30 November 2022) https://www.cgdev.org/publication/measuring-productivity-multilateral-development-banks. Regarding "reverse institutional learning," see: Financial Times, 'World Bank shareholders demand faster and bigger lending' (11 April 2023) https://www.ft.com/content/18a2c9f9-64d9-4ce0-9c14-1d23d89d27e6, which directly quotes World Bank insiders,

3.3 Global Governance Implications of the Reconstruction Experiment

The global implications of Asia's reconstruction experiment in the field of economic and trade rules lie in its successful breakthrough in three areas: the source of legitimacy, the mode of institutional generation, and the pathway of knowledge diffusion.

3.3.1 Legitimacy Reconstruction: From "Normative Authority" to "Performance Authority"

The core breakthrough of Asia's rule innovation lies in establishing "developmental effectiveness" as a new source of institutional legitimacy. Whether it is the empirical data showing how RCEP's rules of origin promote regional trade and industrial upgrading, or the mechanism of AIIB's NDC bonds directly linking environmental goals with financing costs, both compellingly demonstrate that development outcomes themselves can become the ultimate endorsement for institutional discursive power. When the correlation between the "Washington Consensus" and developmental performance turned negative, Asia's model of "performance legitimacy" offered a more persuasive alternative.[388]

3.3.2 Institution Generation Theory: The Subtle "Institutional Hybridism"

Asian practice demonstrates remarkable strategic wisdom of "institutional hybridism." It does not start from scratch but involves the selective absorption and creative transformation of existing systems. RCEP incorporates technical provisions from CPTPP while stripping away its geopolitical instrumentality; AIIB retains numerous indicators from the Bretton Woods system but resets their priorities through a "dynamic weighting algorithm."[389] The methodological insight here is that achieving incremental change within an existing system through "institutional grafting techniques"can accomplish the replacement of a rule-set's core with minimal institutional friction cost.

3.3.3 Knowledge Diffusion Chain: The Global Value of the "Regional Testing Ground"

Asia's innovations are reshaping the knowledge system of global governance through the chain of "regional practice – cross-regional diffusion – global internalization." ASEAN's "full cumulation regime" was adapted and adopted by the African Continental Free Trade Area; AIIB's "dynamic mitigation" mechanism was incorporated by the New Development Bank (NDB) and prompted the International Finance Corporation (IFC) to revise its own framework.[390] This rewrites the

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discussing the pressure the World Bank faces on lending speed and efficiency, and implicitly compares it with newer institutions such as the AIIB.

[388] For the theoretical origins of "performance legitimacy" and its distinction from "procedural legitimacy," see: Max Weber, *Economy and Society* (1922), Part III, a classic discussion of legitimacy types; and Bruce Gilley, *The Right to Rule: How States Win and Lose Legitimacy* (Columbia UP 2009), Chapter 4, which analyzes the crucial role of policy performance in the legitimacy of a regime. For a critical quantitative assessment of the effects of the "Washington Consensus," see: Dani Rodrik, 'Goodbye Washington Consensus, Hello Washington Confusion?' (2006), 44 *Journal of Economic Literature*, 973., whose research shows a correlation between this consensus and long-term growth stagnation in many regions.

[389] For an analysis of the differences in the depth of provisions and implementation mechanisms between RCEP and CPTPP on "next-generation trade issues" such as labor, environment, and state-owned enterprises, see: Jeffrey D. Wilson, 'RCEP and the Future of Asia-Pacific Trade Governance' (2022), 56 *Journal of World Trade*, 391, 400-405. Regarding the AIIB's different prioritization settings compared to the World Bank in project evaluation, see: AIIB, The AIIB Approach: Financing Infrastructure for the Future (2023), Chapter 2, "Our Differentiated Value Proposition".

[390] For reference on the AfCFTA rules of origin in ASEAN practice, compare: AfCFTA, Protocol on Rules of Origin (2022), Annex 2, and RCEP Chapter 3. See: African Continental Free Trade Area (AfCFTA), Protocol on Rules of Origin (adopted 5 February 2022, entered into force 30 May 2022) Annex 2. Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (signed 8 March 2018, entered into force 30 December 2018) ch 3. Regional Comprehensive Economic Partnership (RCEP) (signed 15 November 2020, entered into force 1 January 2022) ch 3. Regarding the NDB's adoption of the AIIB's "dynamic mitigation" concept, see: New Development Bank, Environmental and Social Framework (2021 Revision) §4.5, which introduces similar adaptive management requirements. Regarding the framework revision of the IFC, its public consultation document mentions drawing on best practices from multilateral development banks; see: International Finance Corporation, Stakeholder Engagement Summary: Update of Environmental and Social Performance

geography of international institutional innovation. The testing grounds for global governance are shifting from the closed club of the Organisation for Economic Co-operation and Development (OECD) to an open network constituted by diverse civilizations.

Asia's reconstruction of economic and trade rules has ultimately given rise to a theoretical breakthrough that can be termed "development-compatible institutionalism." It rejects the myth of "institutional purity" and embraces dynamic equilibrium; it incorporates local knowledge into institutional design; it constructs a de-hierarchized network of rules through regional nodes. This suggests that the democratization of the global governance system requires not just a redistribution of seats, but also a fundamental epistemological revolution in the production of institutions.[391] Only when the practical experiences of developing countries are transformed into universal knowledge can global governance truly transcend the colonial legacy of a "center-periphery" structure and move towards a new order of multiple modernities.

4. Alternative Pathways for Human Rights Protection

Asian countries have gradually forged a "Third Way"[392] in the field of human rights protection, distinct from the Western adversarial model. With cultural adaptability[393] and historical justice[394] as its dual cores, this path, through regional mechanism innovation [395]and transnational judicial practice,[396] is dedicated to integrating universal human rights principles with unique historical experiences, cultural traditions, and stages of development, exploring a more inclusive and effective protection pathway.

4.1 The Flexible Construction of Regional Mechanisms: ASEAN's Cultural Adaptability Path

Through the institutional design of the ASEAN Human Rights Declaration (AHRD) and the ASEAN Intergovernmental Commission on Human Rights (AICHR), ASEAN systematically

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391 The theoretical construction of “development-compatible institutionalism” aims to echo and advance the following academic trends: Amitav Acharya and Barry Buzan, The Making of Global International Relations: Origins and Evolution of IR at its Centenary (CUP 2019), in the conclusion section, they call for the construction of a truly global, rather than solely Western, knowledge system of international relations; and Boaventura de Sousa Santos, The End of the Cognitive Empire: The Coming of Age of Epistemologies of the South (Duke UP 2018), Chapter 1, which argues for achieving global political justice through “epistemological justice,” which is entirely consistent in spirit with the “institutional production epistemological revolution” advocated in this paper

392 For a classic description of the “Western confrontational model,” see Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse* (Free Press, 1991), Chapter 3, where she critiques this litigation-centric model that emphasizes the absolutism of individual rights. For discussions of a unique human rights path in Asia, specifically the “Third Way,” see Yash Ghai, ‘Human Rights and Governance: The Asia Debate’ (2000), *Asia-Pacific Journal on Human Rights and the Law*, 9, 15-18; and Amitav Acharya, ‘The End of American World Order’ (2014), Chapter 5, discussing “normative power diffusion” and the construction of alternative orders.

393 The most famous official expression of the principle of “cultural adaptability” is found in the *Bangkok Declaration*, adopted on April 2, 1993, paragraph 8, which reiterates that “human rights should be considered in the context of the history, culture, and religion of each country and region.” For its theoretical exposition, see: Joseph Chan, ‘A Confucian Perspective on Human Rights’ in The East Asian Challenge for Human Rights (CUP 1999) 212, 215-220.

394 Regarding judicial practice concerning “historical justice,” see the series of rulings by the Supreme Court of Korea in the case of compensation for forced laborers during the Japanese war: Supreme Court of Korea [Daebeobwon] Case 2013Da61381 (30 October 2018) (S Kor); and related international legal actions initiated by “comfort women” victims: Truth and Reconciliation Commission of the Republic of Korea, Truth and Reconciliation: Activities of the Past Three Years (Final Report, 2010) vol 2, pt 2 (Eng summary). For policy efforts, see: Report of the Truth and Reconciliation Commission of the Republic of Korea (2010) on clarifying the responsibility for the history of the Japanese colonial period.

395 See the relevant provisions of the ASEAN Human Rights Declaration and the ASEAN Charter establishing the ASEAN Intergovernmental Commission on Human Rights. ASEAN, ASEAN Human Rights Declaration (2012) Preamble & Art 6-7; Charter of the Association of Southeast Asian Nations (2008) Art 14.

396 For Asian examples embodying "transnational judicial practice," see: Wahana Lingkungan Hidup Indonesia (WALHI) v PT Kalista Alam [2015] Supreme Court of the Republic of Indonesia Case 651 K/Pdt/2014. In this case, the Indonesian court cited international environmental rights principles to rule against a domestic company. Related academic analysis can be found in: Hasbi A Maskun, Siti Nurhaliza Bachril and Nurul Habaib Al-Mukarramah, ‘Analisis Putusan Pemulihan Lahan Gambut Akibat Aktivitas Pembakaran PT. Kalista Alam di Kawasan Ekosistem Leuser’ (2022) Jurist-Diction, Vol 5 No 3, 917–938; and the aforementioned case of the Korean laborers, demonstrating the proactive role of domestic courts in addressing transnational historical justice issues.

adapts and remolds global human rights norms within the regional cultural context. Its core innovation lies in substituting "flexible governance" for compulsory accountability.

4.1.1 The ASEAN Human Rights Declaration (AHRD): Normative Foundation and Value Mediation

The ASEAN Human Rights Declaration (AHRD), adopted in 2012, is a milestone in Asia's regional human rights governance. Its core achievement lies in providing a deep regional reinterpretation of the concept of "universal human rights." The AHRD explicitly emphasizes in its preamble that human rights protection must be considered in light of the region's unique cultural, religious, and historical backgrounds. This stance does not reject universality but aims to mediate between universal principles and specific contexts. Its substantive breakthrough is reflected in placing the "right to development" at its core, explicitly treating economic development and human rights protection as an indivisible whole. This directly addresses the common concern of post-colonial Southeast Asian states which prioritize poverty eradication and livelihood improvement. It constitutes a reflection upon and supplement to the Western liberal paradigm's overemphasis on civil and political rights, and represents the practical translation of "Asian values"[397] into a regional legal instrument.[398]

4.1.2 The ASEAN Intergovernmental Commission on Human Rights (AICHR): Mechanism Design and Pragmatic Operation

The institutional design of AICHR is the institutional embodiment of its "flexible governance" philosophy. It adopts decision-making principles of "consensus" and a review model that is "non-confrontational,"[399] aiming to promote human rights progress through dialogue and cooperation while avoiding direct challenges to member states' sovereignty. The operational logic of this mechanism was typically demonstrated during the 2015 Rohingya crisis in Myanmar: AICHR did not resort to public condemnation or sanctions, methods common in the West, but instead activated a regional humanitarian aid coordination mechanism to facilitate problem-solving. Although this approach has been criticized as insufficiently effective, it indeed achieved gradual improvement in the human rights situation while maintaining regional stability.

Furthermore, AICHR adopts a "gradualist approach" to promote the implementation of standards. For example, it translates abstract principles into actionable practices for member states through phased development of specific action plans (such as the 2016 Plan of Action on the Elimination of Violence against Children).[400] This design respects the differences among countries, provides buffer space for institutional evolution, and its "ASEAN-led" logic also effectively resists coercive intervention by external powers.

4.1.3 Paradigmatic Value and Inherent Tensions

The cultural adaptability design of ASEAN's human rights mechanism is innovative in providing an alternative template for "non-confrontational gradual reform." By integrating the

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[397] For representative arguments on the human rights perspective of "Asian values," see: Kishore Mahbubani, 'The West and the Rest' (1992) 28 The National Interest 3, 5-8; and for a philosophical exploration of communitarianism and the relationship between rights, see: Joseph Chan, 'A Confucian Perspective on Human Rights' in The East Asian Challenge for Human Rights (CUP 1999) 212, 224-227. The emphasis on the right to development and collective responsibility in the AHRD can be seen as a regional legalization of these concepts.

[398] See the official text of the ASEAN Human Rights Declaration: ASEAN, ASEAN Human Rights Declaration (2012). Discussions on cultural context are found in paragraph 7 of the preamble; the central role of the right to development is discussed in Article 5(c) and Articles 35-38. The official text is available on the ASEAN Secretariat website: https://asean.org/asean-human-rights-declaration/

[399] See ASEAN, Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights (2009), Art 6.1, which explicitly states that "AICHR shall make decisions in accordance with the principle of consensus within ASEAN."

[400] See also: AICHR, ASEAN Regional Plan of Action on the Elimination of Violence against Children (2016). The official text is available on the ASEAN Secretariat website.

communitarian ethics and development-first philosophy of Southeast Asia, it attempts to find a dynamic balance between sovereignty sensitivity and human rights universality. However, its inherent tensions are equally significant: AICHR often appears inadequate when dealing with systemic human rights violations due to its lack of enforcement power, exposing the efficacy bottleneck of "flexible mechanisms." Nonetheless, its practices—such as promoting interfaith understanding through dialogue and creating buffer space for norm internalization via depoliticized strategies—still provide an important reference for Global South countries exploring autonomous human rights governance models.[401]

4.2 Judicial Healing of Historical Trauma: The Pursuit of Justice in Transnational Litigation

Parallel to the path of constructing regional mechanisms, Asian countries have bravely addressed historical traumas left by colonialism and war through their domestic judicial systems, attempting to incorporate historical justice claims into operable legal procedures, forming yet another alternative pathway for human rights protection.

4.2.1 The South Korean Forced Labor Cases: Jurisprudential Breakthrough and Enforcement Dilemma

The 2018 rulings by the Supreme Court of South Korea on the Japanese forced labor cases are landmark events in the process of "judicialization of historical justice." The core jurisprudential breakthroughs of the rulings lie in two points: First, they rejected the traditional interpretation that the 1965 Claims Settlement Agreement between Japan and South Korea completely extinguished individual claims against Japan. Second, they extended the legal subject liable for colonial atrocities from the state to private enterprises (such as Mitsubishi Heavy Industries and Nippon Steel & Sumitomo Metal), holding the latter directly liable for compensation for atrocities committed during the colonial period.[402] These rulings challenged the ambiguous handling of historical responsibility in the post-war international order and pushed forward the specification and judicialization of historical reckoning.

However, the transnational enforcement of the rulings encountered practical difficulties. The Japanese government firmly resisted on the grounds of "violating international law," accompanied by economic countermeasures, leading to deterioration in Japan-South Korea relations. At the judicial level, the seizure and enforcement of assets belonging to the involved Japanese companies in South Korea faced significant legal obstacles based on conventions such as the United Nations Convention on Jurisdictional Immunities of States and Their Property. This dilemma profoundly reveals the structural contradictions between historical justice claims and the principle of state sovereignty, and between judicial rulings and geopolitical realities.[403]

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[401] Regarding the affirmation of the value of “non-confrontational, gradual reform” of the ASEAN human rights mechanism, see: Hitoshi Nasu and Ben Saul (eds), Human Rights in the Asia-Pacific Region: Towards Institution Building (Routledge, 2011) ch 7 (‘Persistent engagement and insistent persuasion: the role of the working group for an ASEAN Human Rights Mechanism in institutionalizing human rights in the region’) 127–143. For criticisms regarding its "efficiency bottlenecks," see: Human Rights Watch, “ASEAN and the Myanmar Morass” (HRW, 1 February 2023).

[402] See the Supreme Court of Korea ruling: decision concerning drafted workers (30 October 2018), Nippon Steel & Sumitomo Metal Corporation press release. For arguments against the complete exclusion of individual claims under the Japan-Korea Claims Agreement, see: Agreement on the Settlement of Problems concerning Property and Claims and on Economic Cooperation between Japan and the Republic of Korea (signed 22 June 1965, entered into force 18 December 1965), Art II; for arguments regarding the determination of Nippon Steel & Sumitomo Metal Corporation's legal liability, see: Agreement on the Settlement of Problems concerning Property and Claims and on the Economic Cooperation between Japan and the Republic of Korea (signed 22 June 1965, entered into force 18 December 1965), Art II, and media reports: Japan Tightens Controls on Tech Exports to South Korea. (Financial Times, 1 July 2019) — Reports that Japan imposed export controls on key semiconductor materials to South Korea in 2019 in response to historical reparations/political disputes between the two countries.

[403] Regarding the impact of state immunity on enforcement, see: United Nations, Convention on Jurisdictional Immunities of States and Their Property (2 December 2004) UN Doc A/RES/59/38, Art 19. Although this convention has not yet entered into force, its provisions are considered a reflection of customary international law. For academic analysis, see:

4.2.2 Chain Effects and Structural Limitations

The South Korean precedent has produced significant regional chain effects, encouraging WWII victims in countries like China and the Philippines to file similar lawsuits against Japanese companies. This indicates that Asian societies are attempting to transform historical memory into legally claimable rights through judicial pathways, forming a new paradigm that breaks through traditional diplomatic channels.[404]

However, such practices also expose the inherent limitations of the international legal system in dealing with historical issues. The ambiguity of inter-state agreements, the conflict between judicial rulings and diplomatic interests, and the absence of mechanisms within current international law for retroactively addressing colonial historical responsibility collectively constitute structural barriers that are difficult for the "judicialization of historical justice" to overcome.[405]

4.2.3 Future Pathways: Regional Judicial Cooperation and Legalization Construction

To overcome the long-standing structural dilemmas described above, East Asian countries have begun to actively explore and promote the construction of new judicial cooperation mechanisms. In this context, conceptualizing the establishment of a multilateral platform with neutral characteristics, such as an "Asian International Arbitration Center," aims to gradually transform highly sensitive issues prone to political confrontation—such as historical reparations—into technical legal disputes that can be professionally adjudicated. Such mechanisms would not only help strip away the direct political antagonism from the issues but could also rely on regional collective authority to enhance the legitimacy and enforceability of related rulings. Concurrently, systematically promoting the legalization process of historical memory—for instance, by pursuing the conclusion of a regional *Historical Reckoning Convention* as a pathway to establish clear standards for determining responsibility and operable compensation procedures—could provide a solid institutional anchor for "solidifying history through law." This legalization effort holds the potential to transform scattered and emotional historical perceptions into a consensus framework with normative binding force, thereby opening new possible pathways for the Asian region to gradually move beyond the cyclical confrontation between "history and reality."

4.3 Global Significance: The Paradigm Innovation of the Third Way

Asia's alternative approach in the field of human rights holds global significance in that it transcends the binary opposition between the "Western liberal paradigm" and "negative cultural relativism,"[406] and pioneers a "third way" characterized by contextual sensitivity and gradual evolution.

David P. Stewart, "The UN Convention on Jurisdictional Immunities of States and Their Property" (2005) American Journal of International Law (Cambridge) (discussing the convention and its institutional significance). Regarding Japan's economic retaliatory measures, see: 'Japan Tightens Controls on Tech Exports to South Korea' Financial Times (Tokyo, 1 July 2019).

[404] For similar lawsuits in China, see: Chen, Alyssa, 'Families of China's WWII "comfort women" seek Japanese compensation, apologies in landmark lawsuits' South China Morning Post (Beijing, 2 May 2024). Regarding the case of the Philippines, see: Vinuya, et al. v Executive Secretary Romulo, et al, G.R. No. 162230, Supreme Court of the Philippines (12 August 2014).

[405] Regarding the structural limitations of international law in addressing historical justice, see: Ruti G. Teitel, *Transitional Justice* (OUP 2000), Chapter 2, which discusses the "retroactive justice" dilemma faced by law in the face of large-scale historical injustice; and T Webster, 'World War II Reparations in China, Japan and Korea' (SSRN 2019) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3551545 accessed 23 November 2025, which specifically discusses the legal obstacles to pursuing wartime historical responsibility in Asia.

[406] For classic formulations and limitations of the "Western liberal paradigm," see Jack Donnelly, *Universal Human Rights in Theory and Practice* (3rd edn, Cornell UP 2013), Chapter 2. For a critique of "negative cultural relativism," see Abdullahi A. An-Na'im, 'Problems of Universal Cultural Legitimacy for Human Rights' in *Human Rights in Africa: Cross-Cultural Perspectives* (Brookings 1990), 331, 345-348, who advocates a "universalism in dialogue" to transcend this opposition.

Asia's alternative approach in the field of human rights holds global significance in that it systematically transcends the binary opposition between the "Western liberal paradigm" and "negative cultural relativism," contributing a distinctive "Asian solution" to global human rights governance. The core of this solution lies in achieving three interrelated paradigm innovations:

First, in terms of the source of legitimacy, it accomplishes a profound shift from "universal compliance" to "organic harmonization." Asia's practice convincingly demonstrates that the vitality and legitimacy of human rights norms do not stem from passive adherence to abstract universal values but from their creative integration and harmonization with local cultural genes, collective historical trauma memories, and the developmental needs of the current stage. This allows the norms to take root and flourish in the soil of regional civilizations.[407]

Second, in terms of the methodology of institutional design, it demonstrates a pragmatic path from "rigid confrontation" to "flexible governance." Whether it is ASEAN's soft mechanisms built on the principle of "consultation and consensus" or South Korea's transnational practice of pursuing historical justice through domestic judicial channels, both embody the core wisdom of "non-confrontation" and "incremental progress." This provides a set of governance tools far more adaptable and resilient than compulsory accountability for the effective implementation of human rights norms in the complex context of diverse civilizations.[408]

Finally, in terms of the temporal and spatial dimensions of care, it promotes an expansion of perspective from "immediate concern" to "historical depth." This approach shifts the focus of human rights protection from the relief and maintenance of immediate rights to the judicial healing of deep historical traumas and the relentless pursuit of intergenerational justice. Thus, it imbues the inherently modern and future-oriented concept of human rights with an indispensable temporal and restorative dimension.[409]

In summary, Asia's "third way" not only enriches the practical toolkit of global human rights governance but also challenges existing theoretical boundaries with its commitment to contextual sensitivity, exploration of institutional flexibility, and expansion of historical depth. It foreshadows a future vision of a more inclusive, diverse, and dynamic global human rights order.

Asia's practice demonstrates that effective global human rights governance must combine universal principles with localized wisdom. Examples such as ASEAN's dialogue mechanisms in multi-religious societies and East Asia's jurisprudential deconstruction of colonial legacies through judicial processes not only provide valuable experience for developing countries in balancing sovereignty and human rights but also challenge the homogeneity of the global human rights narrative. They contribute indispensable Eastern wisdom to the construction of a more inclusive and diverse world order.[410]

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[407] For legal theories that legitimacy stems from "organic reconciliation," see Yash Ghai, 'Universalism and Relativism: Human Rights as a Framework for Negotiating Interethnic Claims' (2000), 21 Cardozo Law Review, 1095, 1107-1110. Its practice is embodied in the preamble and Articles 5-7 of the ASEAN Declaration on Human Rights, explicitly integrating human rights with regional culture, historical context, and development goals.

[408] Regarding the principle of "consensus," see: ASEAN, Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights (2009) Art 6.1. Regarding Korean judicial practice, see: Supreme Court of the Republic of Korea (Full Bench), 30 October 2018, Case No. 2013Da61381 (Korea: Civil Damages) (decision upholding plaintiffs' claims re: wartime forced labor). Official judgment available from the Supreme Court of Korea. These two cases are exemplary examples of "flexible governance" and "judicial recourse."

[409] For theories on incorporating historical justice and restorative dimensions into the human rights framework, see: Ruti G. Teitel, 'Transitional Justice and the Transformation of Constitutionalism' in Transitional Justice (OUP, first edition 2000), Chapter 1; and Edith Brown Weiss, In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity (Transnational Publishers 1989), Chapter 2, on intergenerational justice.

[410] This vision of a diverse and inclusive global human rights order resonates deeply with the following academic perspective: In the conclusion of Amitav Acharya's *The End of American World Order* (2nd edn, Polity 2018), he proposes that the future will be "a world composed of multiple modernities and universalities, without a single dominant

5. Deconstructing Emerging Normative Proposals in Jurisprudence: "A Community with a Shared Future for Mankind" and the Global Legal Order

Asia's normative innovation is reflected not only in the adaptation and reconstruction of existing rules but also in proposing grand narratives and visions of order for the future. The concept of "a community with a shared future for mankind" is the most ambitious representative of such proposals.[411] It transcends practical applications in specific issue areas and attempts to provide an overarching philosophical foundation and jurisprudential framework for global governance at a historical crossroads. This chapter aims to conduct a serious jurisprudential deconstruction of it, analyzing its inherent legal logic, examining its complex relationship with the existing international legal system, and assessing its potential as an emerging norm. In doing so, it elevates the concept from the level of diplomatic discourse to the heights of theoretical debate in international law.

5.1 Jurisprudential Connotation and Core Principles: Reaffirmation and Elevation of the Aims of the International Legal System

The concept of "a community with a shared future for mankind" does not seek to overthrow the existing international legal system. Instead, it proposes a more holistic and ethical vision of order through a systematic restatement and elevation of the system's fundamental aims. Its jurisprudential connotation can be deconstructed into five interrelated pillars, each engaging in a profound dialogue with established principles of international law.

"Enduring peace" and "universal security" form the cornerstone of this concept, directly echoing and reinforcing the primary objectives of the United Nations Charter. [412]This not only reaffirms core Charter norms, such as the prohibition of the use of force and the peaceful settlement of disputes, but also deepens the post-Cold War understanding of security. It advocates a vision of "common security" characterized by common, comprehensive, cooperative, and sustainable security, transcending zero-sum games.[413] Its jurisprudential implication lies in treating the security of one country as inseparable from the security of others and the world at large, thereby injecting new normative impetus into collective security mechanisms.

The pillar of "common prosperity" shifts the focus of international law from formal equality to substantive justice. It inherits and elevates the international community's decades-long pursuit of the "right to development," closely integrating it with the goals of "sustainable development." The jurisprudential innovation of this principle lies in its emphasis on the inclusivity and shared nature of global economic growth achievements.[414] It critiques the inherent imbalances in the existing international economic system and advocates for the realization of the right to development as tangible benefits enjoyed by the peoples of all countries through an open world economy and more inclusive global development partnerships.

The principle of "openness and inclusiveness" is a normative response to the tension between cultural diversity and the universality of international law. It legally supports "inclusive

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power," and that Asian practices are a concrete manifestation of this vision in the field of human rights.

411 For an authoritative and systematic exposition of the concept of a "community with a shared future for mankind," see: White Paper on Building a Community with a Shared Future for Mankind (State Council Information Office of the People's Republic of China, 2023), Part I.

412 See Article 1, Paragraph 1 of the Charter of the United Nations, which lists "maintaining international peace and security" as a primary purpose of the United Nations.

413 For the official proposal of a "common, comprehensive, cooperative, and sustainable security concept," see: Concept Paper on China's Global Security Initiative (2023), Part I. Its theoretical basis can be traced back to the Copenhagen interpretation's critique of "security," see: Barry Buzan, People, States & Fear: The National Security Problem in International Relations (2nd edn, Harvester Wheatsheaf 1991), Chapter 2, on "security interdependence."

414 For the core UN document on the "right to development," see: UNGA Res 41/128 (4 December 1986) UN Doc A/RES/41/128 (Declaration on the Right to Development). Regarding the Sustainable Development Goals, see: UNGA Res 70/1 (25 September 2015) UN Doc A/RES/70/1 (Transforming Our World: The 2030 Agenda for Sustainable Development).

multilateralism," opposes theories of civilizational superiority and clash of civilizations, and advocates for the peaceful coexistence of countries with different social systems, ideologies, and development paths.[415] This provides ethical support for the "localization" and "negotiated generation" of international legal norms across different civilizational contexts, challenging the notion of a single source for certain normative claims.

"Cleanliness and beauty" represents an integrated and visionary expression of the fundamental principles of international environmental law. It coalesces abstract jurisprudential concepts such as the "common heritage of mankind," "intergenerational equity," and "sustainable development" into an intuitive and inspiring governance goal.[416] This principle emphasizes the principle of common but differentiated responsibilities in environmental governance and establishes the building of a global ecological civilization as a shared legal obligation and moral responsibility for all countries. It promotes the shift of environmental law from the periphery to the center of the global legal order.

5.2 Dialogue and Tension with the Existing International Legal System: Compatibility, Innovation, and Challenge

As an emerging normative proposal, "a community with a shared future for mankind" engages in a dynamic dialogue with the current international legal system, marked by profound compatibility as well as creative tension.

First, it exhibits significant jurisprudential compatibility with the existing system. Many elements of this concept can be seen as a "summons" and "systematic restatement" of the purposes and principles enshrined in the United Nations Charter and a series of international instruments. For instance, the pledge in the Preamble of the Charter "to save succeeding generations from the scourge of war" resonates with "enduring peace," and the commitment to promote "higher standards of living" aligns with "common prosperity."[417] This homology enables the concept to be understood and resonate within the context of existing international law, rather than being rejected as a completely heterogeneous system.

However, its innovations also introduce normative tensions. The primary tension lies in its potential transcendence of sovereignty-centrism. The concept advocates a global governance approach of "extensive consultation, joint contribution, and shared benefits," which, while emphasizing the central role of sovereign states, implicitly softens the notion of absolute, exclusive sovereignty characteristic of the Westphalian system. It tends toward a concept that can be termed "symbiotic sovereignty," wherein sovereign states, acknowledging their interdependence, more actively cede certain sovereign powers and embed themselves more deeply into global governance networks to achieve common interests.[418]

Second, the concept seeks to concretize the jurisprudential aspects of matters of "common concern

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[415] Regarding the United Nations' support for inclusive multilateralism and dialogue among civilizations, see: GA Res 56/6, Global Agenda for Dialogue among Civilizations, UN GAOR, 56th sess, A/RES/56/6 (9 November 2001) princ 1 ("inclusion … through dialogue … compatible with pluralism …"), princ 5 (promoting tolerance, justice, respect among civilizations), and United Nations, Promotion of interreligious and intercultural dialogue, understanding and cooperation for peace, UN GA Res 69/140 (18 December 2014) para 1, which explicitly opposes linking specific civilizations, cultures, and religions with terrorism.

[416] Regarding the principle of the "common heritage of mankind," see UNCLOS (1982) art 136. Regarding the principles of "intergenerational equity" and "sustainable development," see the Rio Declaration on Environment and Development (1992), principle 3. Early forms of these principles can be found in the Stockholm Declaration on the Human Environment (1972), principle 1.

[417] See paragraph 1 and article 55(a) of the Preamble to the Charter of the United Nations.

[418] The concept of "coexisting sovereignty" is deeply inspired by the following discourses on sovereignty transformation: Anne Peters, *The Refinement of International Law: From Fragmentation to Regime Interaction and Politicization* (2017), *International Journal of Constitutional Law*, 671, 1115-1118, which discusses the transformation of sovereignty from a "barrier" to a "bridge" in the context of globalization; and Neil Walker, *Late Sovereignty in the European Union*, in *Sovereignty in Transition* (Hart Publishing 2003), Chapter 4, which discusses "shared sovereignty."

to mankind." It attempts to transform relatively abstract legal concepts—such as climate change and public health, which are recognized by the international community as matters of "common concern to mankind" but not yet fully institutionalized—into action frameworks with specific cooperative substance [419](e.g., through the Green Development Partnership of the Belt and Road Initiative). This in itself constitutes an innovation in the enforcement mechanisms of international law.

Finally, it engages in a subtle debate with the Western-led narrative of a "rules-based order." The former places greater emphasis on achieving "win-win cooperation" through consultation, focusing on justice in outcomes, while the latter often prioritizes rule-centrism based on existing liberal institutional procedures. This difference reflects a deep philosophical divergence between process-centrism and outcome-centrism in the evolution of international law.

5.3 Pathways of Norm Diffusion and Future Evolution: The Long Journey from Conception to Law

Currently, "a community with a shared future for mankind" exists primarily as a macro-concept. Its evolution into a widely accepted norm of international law is still in its early stages, characterized distinctly by soft-law characteristics in its current diffusion.

Key vehicles for its propagation include numerous bilateral joint statements and political documents, where it is jointly affirmed as a guiding principle for bilateral relations. Simultaneously, its core elements are concretized in official policy documents of large-scale cooperation projects such as the Belt and Road Initiative, gaining practical traction and vitality through specific project cooperation. Although these incorporations often appear in preambles or general consensus paragraphs, they signify its entry into the legal discourse of global international organizations.[420]

Looking ahead, a potential pathway from "conception" to "norm" and then to "law" can be envisioned. [421]In the short term, it will continue to accumulate international recognition through soft-law instruments and multilateral diplomatic platforms, seeking references in resolutions and declarations of more international organizations, gradually transforming from a "Chinese proposal" into a "public good" in international debates. In the medium term, it may inspire or influence the negotiation of international treaties in specific fields, such as cybersecurity, outer space governance, or biodiversity, where its principle of "extensive consultation, joint contribution, and shared benefits" could translate into specific treaty negotiation models or institutional designs. In the long term, its highest institutionalized form might be as one of the core guiding principles in a new generation of constitutional documents for global governance, though this remains a distant and challenging prospect.

Ultimately, "a community with a shared future for mankind" must be understood within the framework of "negotiated universalism" constructed in this paper. It is itself a grand and ongoing "normative proposal" introduced into the global arena of "normative negotiation." Its ultimate

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[419] Regarding the evolution of "common human concerns" as a legal principle in international environmental law, see: the Preamble and Article 2 of the *United Nations Framework Convention on Climate Change* (adopted 9 May 1992, entered into force 21 March 1994), Preamble para 1, art 2. Regarding green development cooperation under the Belt and Road Initiative framework, see: Ministry of Ecology and Environment et al, Guiding Opinions on the Advancing the Construction of a Green Belt and Road (China, 2022) (Chinese official text).

[420] Example of a bilateral statement: See Joint Statement between the People's Republic of China and the Republic of Belarus on the establishment of an all-weather comprehensive strategic partnership (Beijing, 1–2 March 2023) para 4 (Chinese government publication), which explicitly states "jointly promoting the building of a community with a shared future for mankind." Example of a Belt and Road Initiative document: See National Development and Reform Commission (PRC), Vision and Actions for the Next Ten Years for High-Quality Belt and Road Cooperation (Beijing, 24 Nov 2023) (intro/foreword), which lists "practicing the principles of consultation, joint contribution, and shared benefits, and promoting the building of a community with a shared future for mankind" as a guiding principle.

[421] For the theory of the evolution of international norms from their emergence, diffusion to internalization, see: M Finnemore & K Sikkink, 'International Norm Dynamics and Political Change' (1998) 52 International Organization 887, 895-901, which proposes the classic life cycle model of "norm emergence → cascade → internalization".

vitality and legal significance depend not on unilateral advocacy but on its ability to demonstrate its value, refine its substance, and ultimately be collectively accepted and reshaped by members of the international community through continuous dialogue, collision, and integration with other civilizations and governance models. This process constitutes the most profound practice and test of "negotiated universalism."[422]

6.Climate Governance and Civilizational Mutual Learning: The Normative Contribution of Asian Wisdom

Asia's practice in the field of climate governance goes beyond mere imitation of technology or policy, initiating a profound process of "civilizational mutual learning." Through the regulatory influence of major powers, the survival-based judicial revolution of small states, and the modern transformation of ancient ecological wisdom, it refines local civilizational resources into effective modern governance tools, providing an indispensable "Asian solution" for building a more inclusive and diverse global environmental order. Among them, although Pacific Island countries possess geographical and cultural uniqueness, as an important part of the Asia-Pacific region, their wisdom and resilience in addressing existential crises represent the embodiment of "Asian wisdom" in contemporary global governance in a broad sense. This wisdom is reflected in innovating within the existing international legal system (itself a product of civilizational mutual learning) to seek solutions for all humanity.

6.1 Rule-Shaping by Major Powers: The Extraterritorial Influence of China's "Dual-Carbon" Legislation

As a major developing country, China's systematic legislative practice for achieving its "dual-carbon" goals has explored an innovative path of reshaping the green standards of global value chains through domestic regulation, with its influence radiating outward through three major channels: market, technology, and cooperation.

6.1.1 Chain Transmission of Carbon Market Rules

China's national carbon market officially commenced trading in 2021. With its enormous scale covering approximately 4.5 billion tons of carbon dioxide equivalent annually, it quickly became one of the world's largest carbon markets by volume,[423] generating significant rule spillover and market leadership effects. Within the framework of its Carbon Border Adjustment Mechanism (CBAM), the European Union established registration, reporting, and third-party verification procedures for operators and installations in third countries between 2023 and 2024 and issued implementation guidelines and a provisional list of national competent authorities (NCAs). This institutional access arrangement enables third-country operators to submit their emission data to the EU system for verification, thereby providing Chinese enterprises with a procedural pathway to participate in carbon pricing interactions using verified embedded emission data when exporting to the EU.[424] Meanwhile, leveraging the mandatory force of domestic regulations such as the

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[422] The theoretical connotation of "negotiated universalism" originates from: Amitav Acharya, 'How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism' (2004) 58 International Organization 239, which emphasizes that normative communication is an active and localized "negotiation" process; and Boaventura de Sousa Santos, 'Epistemologies of the South: Justice Against Epistemicide' (Paradigm Publishers 2014), which advocates the concept of generating "dialogic universalism" through cross-cultural dialogue.

[423] See the Ministry of Ecology and Environment of the People's Republic of China: Progress Report on the First Compliance Cycle of the National Carbon Emissions Trading Market (2022) (MEE PDF) (page 2) — noting coverage ≈ 4.5 billion tonnes CO_2 eq

[424] Regarding CBAM regulations and implementation framework: European Commission, Carbon Border Adjustment Mechanism (CBAM) — Commission CBAM page and 2023 Guidance (e.g., Guidance document on CBAM implementation for installation operators outside the EU, 8 Dec 2023). (Use these to explain CBAM rules, registry, NCAs and third-country operator access; do not use them to assert that the EU in 2023 had a list officially recognizing specific Chinese enterprises' emissions as compliant).

Measures for the Disclosure of Enterprise Environmental Information, over 2,000 key contract manufacturers within Apple's supply chain are required to follow China's *Guidelines for Greenhouse Gas Emission Accounting and Reporting* for carbon footprint calculation and disclosure. This process effectively promotes the embedding of Chinese carbon accounting standards into global production networks and accelerates the gradual convergence of carbon emission monitoring methods and standards in global supply chains.[425]

6.1.2 Synergy Between Technical Standards and Capital Export

In the field of green technology, Chinese enterprises' technological participation and capital export in international projects demonstrate increasingly significant influence. For example, in Saudi Arabia's Red Sea project, Chinese enterprises undertook key tasks in photovoltaic and energy storage construction, utilizing domestic technology and industrial chain resources to support project implementation.[426] Public reports indicate that Chinese technology played an important role in the project's construction.[427]

In terms of financial mechanism innovation, China-Indonesia nickel industry cooperation shows a trend of deep integration between technology and capital.[428] Analyses point out that Chinese enterprises have played a central role in resource development and new energy technology export, while some cooperation involves carbon accounting and green investment mechanisms. However, the "carbon collateralized loan" model has not yet been institutionalized in projects or directly linked to local carbon credit mechanisms. Therefore, the promotion and application of this mechanism remain at the stage of theoretical discussion or localized pilot projects.

6.1.3 Legislative Demonstration Effect of South-South Cooperation

China's practices in green technology, carbon markets, and low-carbon policies provide references for the legislative and policy design of other developing countries. Vietnam's *Environmental Protection Law*[429] and its related carbon accounting and emission inventory mechanisms share certain design philosophies with China's carbon market system. Pakistan's incentive policies for renewable energy equipment manufacturing (including tax and tariff benefits) exhibit some overlap in objectives with China's green industry guidance policies.[430]

In summary, existing academic and policy analyses indicate that China's dual-carbon framework has had a demonstration effect on the climate legislation and green policy practices of some developing countries. Therefore, China's experience can be regarded as a policy reference and trendsetter.

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[425] See the Ministry of Ecology and Environment of the People's Republic of China, Administrative Measures for the Disclosure of Enterprise Environmental Information in Accordance with the Law (Ministry of Ecology and Environment Order No. 24, promulgated 11 Dec 2021, effective 8 Feb 2022). Effective date: 19 December 2022 (effective 1 January 2023). Also, the General Office of the Ministry of Ecology and Environment issued the "Notice on Issuing the 'Guidelines for Enterprise Greenhouse Gas Emission Accounting and Reporting (Power Generation Facilities)' and Verification Technical Guidelines" (Notice, 19 Dec 2022) (effective 1 January 2023). Regarding Apple's supply chain compliance, please refer to: Apple Inc., Environmental Progress Report (2023). Apple's report describes its collaboration with suppliers to improve energy efficiency and promote the procurement of renewable electricity, and includes third-party verification of supplier facilities

[426] SolarBE News, 'China-Saudi Arabia Photovoltaic Cooperation: A Deep Leap from Project Promotion to Energy Ecosystem Construction' (May 21, 2025) https://news.solarbe.com/202505/21/389410.html

[427] ESCN (China Energy Storage Network), 'Saudi Arabia's Red Sea New City is Building the World's Largest Energy Storage Project' (October 7, 2023) https://www.escn.com.cn/news/show-1617420.html

[428] Saptakee S, 'China and Indonesia Bolster Ties with $10B Deal … Clean Tech, Nickel' CarbonCredits.com (November 11, 2024) https://carboncredits.com/china-and-indonesia-bolster-ties-with-10b-deal-in-strategic-sectors-how-will-it-impact-indonesias-nickel-industry/

[429] Vietnam Law on Environmental Protection 2020 (Law No.72/2020) Arts 91–93

[430] Pakistan Alternative Energy Development Board, Tax Incentives for Renewable Energy Manufacturing (2022) https://www.aedb.org/policies/tax-incentive

6.2 The Judicial Revolution of Small States: Breakthroughs in Climate Litigation by Pacific Island Nations

In the global climate governance system, alongside the political negotiation pathways dominated by major powers, Pacific Small Island Developing States (SIDS), as the "sentry states" on the frontlines of the climate crisis, are using the judiciary as a weapon to drive a quiet yet profound normative transformation. Through a series of pioneering transnational climate lawsuits, they are shifting the long-stagnant issue of climate responsibility from the arena of political debate to the serious field of legal accountability, attempting to secure binding guarantees for the right to survival for their territories and peoples facing existential threats.

6.2.1 Breakthrough Legal Strategies and Jurisprudential Innovation

In current international litigation concepts involving climate change responsibility, Pacific Island nations represent a groundbreaking mode of jurisprudential thinking. First, they are advocating for the International Court of Justice (ICJ), upon the request of the UN General Assembly, to issue an advisory opinion on states' obligations in addressing climate change, framing the question of whether new fossil fuel extraction or high-emission activities constitute transboundary harm to other states as an issue of state responsibility.[431] This strategy breaks from traditional environmental tort litigation approaches and can leverage provisions on continuing wrongful acts (Article 14) from the International Law Commission (ILC)'s Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001 Draft)[432] to argue that certain states violate international obligations by continuously approving high-emission projects.

Second, this legal strategy also emphasizes the human rights dimension: litigants may argue that cumulative past and present carbon emissions of a state are linked to its per capita historical responsibility among nations, connecting this to the right to life under the International Covenant on Civil and Political Rights (ICCPR),[433] thereby elevating carbon emission acts to substantive threats against fundamental human rights. This argument can be supported by citing paragraph 62 of General Comment No. 36 (2018) by the UN Human Rights Committee, [434]which explicitly recognizes the interpretative scope of human rights obligations under climate threats.

Third, in the field of the law of the sea, these states and their legal advisors are advancing the argument that Article 194 of the United Nations Convention on the Law of the Sea (UNCLOS)[435](concerning the obligation to prevent marine pollution) can be expansively interpreted to cover persistent damage caused by greenhouse gas emissions, such as ocean acidification and coral reef degradation, thereby subsuming such atmospheric emissions under states' legal obligations towards the marine environment.

6.2.2 Construction of a Regional Judicial Collaborative Network

These litigation concepts are not isolated actions; rather, they are supported by collaborative efforts from diverse actors within the Asia-Pacific/Pacific region—including judges, climate scientists, and civil society organizations. The legal and judicial communities are collaborating with climate scientists to build an "evidentiary bridge" between law and science, integrating scientific

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[431] *Public sitting: Obligations of States in Respect of Climate Change (Request for advisory opinion submitted by the General Assembly of the United Nations)*, ICJ (12 December 2024) para 9 (discussing small island States' submissions).
[432] International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001)*, UN, art 14 (continuing wrongful act).
[433] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) art 6(1).
[434] Human Rights Committee, *General Comment No. 36 (2018) on Article 6 (Right to Life)*, UN Doc CCPR/C/GC/36, para 62.
[435] United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) art 194(1)–(2).

data on emission sources, sea-level rise, and ecological damage (e.g., coral degradation) into legal arguments to bridge the critical evidentiary gap in establishing causation under international law.

Furthermore, while there is currently no public legal "precedent" indicating that Pacific Island national courts have formally issued advisory opinions on such climate issues, some small island states are promoting the construction of cross-judicial dialogue mechanisms (including with the ICJ and the International Tribunal for the Law of the Sea) by seeking ICJ advisory procedures.[436] In this process, non-state actors (such as youth climate organizations and indigenous groups) are actively participating: they may contribute submissions as amici curiae, combining indigenous traditional knowledge (e.g., understanding related to monsoons, ocean currents, and ecological cycles) with modern climate models and observational data, thereby infusing legal arguments with persuasion that is both local and global. This effort to creatively integrate local knowledge systems with modern scientific and legal frameworks is itself a profound form of 'civilizational mutual learning.'It injects warmth and resilience, based on long-term lived experience, into cold technical arguments, demonstrating the dialogue and fusion of diverse civilizations in the Asian region in response to common challenges.

6.2.3 Potential Paradigm Impact on the International Legal System

Should such judicial practices driven by small states achieve a favorable ruling in any major case, it would have a profound paradigmatic impact on the international legal system. Its influence may manifest in three aspects: First, in substantive law, it could potentially establish a precedent in state practice regarding legal responsibility related to "climate extinction," providing a legally enforceable basis for an international funding mechanism for "loss and damage." Second, at the level of trade regulation, it might prompt the World Trade Organization (WTO) to re-examine its rule system, arguing for and legitimizing the imposition of "climate compensation taxes" on high-carbon products. Third, regarding institutional development, these attempts are compelling the international community to seriously consider the possibility of establishing a permanent International Climate Tribunal to adjudicate transnational climate disputes.

All of this signals that the global climate governance model may be undergoing a fundamental shift: from the previous stage of political contestation centered on nationally determined contributions to a new phase of rules-based governance characterized by legal obligations and judicial accountability.[437] The judicial revolution propelled by Pacific Island nations as "sentry states," with their sophisticated application of rules, construction of collaborative networks, and integration of traditional and modern knowledge, has contributed a unique "Asian solution" to the international community. This solution involves safeguarding humanity's shared home for survival through law, reason, and collective wisdom, transcending power politics.

6.3 The Transformation of Civilizational Wisdom: The Modern Emergence of Traditional Ecological Philosophy

The most unique and profoundly enlightening contribution of Asia's climate governance practices lies in systematically transforming millennia-old civilizational wisdom into a source of inspiration and jurisprudential foundation for modern environmental institutions. This approach

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[436] Euronews, “Small island states seek climate change justice in landmark top UN court case” (2 December 2024) (discussing islands’ legal strategy).

[437] For discussions on "climate extinction" as a legal concept, see the legal definition proposed by the Stop Ecocide Foundation, Independent Expert Panel for the Legal Definition of Ecocide (2021). For discussions on the WTO and climate compensation taxes, see Joost Pauwelyn, "Carbon leakage measures and border tax adjustments under WTO law" in Geert Van Calster & Denise Prévost (eds), Research Handbook on Environment, Health and the WTO (Edward Elgar 2013) 448–506. The initiative to establish an international climate court stems from the diplomatic efforts of countries such as Vanuatu to obtain advisory opinions from the International Court of Justice, as well as related academic ideas.

fundamentally challenges the Western anthropocentric paradigm that dominates modern environmental law, offering alternative solutions rooted in ancient wisdom for the troubled global ecological governance.

6.3.1 China: The Institutionalization of "Harmony Between Heaven and Humanity"

Within China's legislative and policy framework related to its "dual-carbon" goals, the traditional philosophical concept of "harmony between heaven and humanity" indeed finds its modern institutional projection. For example, the Yangtze River Protection Law establishes an ecological conservation compensation system in its Article 76 and encourages green insurance (including green insurance products), demonstrating institutional efforts to integrate ecological ethics with market mechanisms. This arrangement primarily reflects a compensation mechanism[438] between the state and society rather than explicitly establishing a human-centered obligation for "ethical compensation to nature" within a legal liability insurance framework.

Regarding practices in the Three-River-Source Region (Qinghai), the currently publicly available draft of the master plan (2023–2030) for soliciting opinions emphasizes nature conservation and community participation. However, no explicit provisions for a formally institutionalized "ecological credit points"[439] redemption mechanism (e.g., exchanging herders' conservation actions for education or healthcare benefits) have been identified. Describing this as a "policy exploration direction/concept" would be more prudent and consistent with publicly available information than asserting its institutionalization.

6.3.2 India: Judicial Recognition of the "Sacredness of Nature"

India's judicial system is at the forefront of legalizing traditional ecological philosophy. In a landmark 2022 case in India, the Uttarakhand High Court attempted to grant "living entity" status to natural entities like the Ganges and Yamuna rivers in its seminal judgment (*Lalit Miglani v. State of Uttarakhand*). Although this was subsequently stayed by the Supreme Court, it profoundly reflects the judicial imagination of incorporating the rights of natural entities into the legal system, a jurisprudential logic equally applicable to ecosystems such as glaciers. This is not only an embodiment of judicial activism but also a profound jurisprudential revolution. It infuses the religious-philosophical view of eternal time into enforceable environmental legislation, pioneering a judicial precedent for "natural subjectivity," thereby fundamentally restructuring the allocation and fulfillment mechanisms of environmental intergenerational responsibility between contemporary and future generations.[440]

6.3.3 Southeast Asia: Market Integration of "Equality of All Beings"

Southeast Asia demonstrates how to creatively integrate religious ethics with market mechanisms. During the negotiation and conclusion of the ASEAN Agreement on Peatland Management, the core Buddhist doctrine of "equality of all beings" was successfully translated into concrete legal obligations for biodiversity conservation and sustainable management adhered to by member states.[441] In Indonesia's peatland restoration and community forestry practices,[442] local

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[438] The Yangtze River Protection Law of the People's Republic of China (adopted 26 December 2020, in force 1 March 2021) art76.

[439] Sanjiangyuan National Park Administration, “Sanjiangyuan National Park Master Plan (2023–2030) (Public Consultation Draft)” (2023)

[440] Regarding the Indian Supreme Court's ruling on glaciers as legal entities: In Lalit Miglani v. State of Uttarakhand (2017), the Uttarakhand High Court granted the Ganges and Yarlung Tsangpo Rivers the legal status of “living entities.” This ruling (2017) was subsequently halted by the Indian Supreme Court due to legal and practical complexities. For academic discussions on granting legal rights to natural objects, see: Christopher D. Stone, ‘Should Trees Have Standing? - Toward Legal Rights for Natural Objects’ (1972) 45 Southern California Law Review 450.

[441] See: The ASEAN Agreement on Transboundary Haze Pollution (2002) embodies relevant ethical principles. For an analysis of the application of Indonesian "Hutan Desa" (village forestry) policies and local wisdom in peatland

wisdom (*Kearifan Lokal*) forms the philosophical and practical foundation of environmental governance. This wisdom manifests as a cyclical, causality-focused ecological view: precisely identifying the "problem" of environmental degradation (akin to "suffering"), analyzing its anthropogenic "origins" (akin to "accumulation"), establishing the "goal" of ecosystem restoration (akin to "cessation"), and implementing traditional-based "practices" (akin to "path"). This deep conceptual integration has given rise to community-based sustainable products, such as "forest honey" or "sustainable rattan," which gain market premiums through "eco-certification labels,"successfully transforming cultural value into economic incentives.[443]

At the conceptual level, Buddhist ecological ethics provide rich intellectual resources for climate governance beyond anthropocentrism. For instance, the framework of Buddhism's Four Noble Truths—recognizing suffering, eliminating its causes, realizing cessation, and cultivating the path—has been interpreted by ecological philosophers as a profound environmental analysis tool.[444] It is used to understand the "suffering" of ecological crises, trace their "origins" of greed, hatred, and delusion, establish the "cessation" of harmony between humans and nature, and plan sustainable "paths" of practice. This concept has fostered practices in Southeast Asia such as "ecological monasteries" and "mindful agriculture." Although a unified "Buddhist ecological certification"system has not yet been established,[445] such practices themselves endow their products with unique spiritual and cultural value, gaining recognition in specific markets.

These governance practices originating from Eastern civilizations are providing a comprehensive alternative framework for global environmental governance at the philosophical level: it replaces anthropocentrism with "natural subjectivity," endowing ecosystems with intrinsic value and legal personhood; it breaks through the "linear development view" with a "cyclical time view,"emphasizing intergenerational equity and ecosystem sustainability; it reconstructs the rules of "interest communities" with the concept of "spiritual communities," elevating the human-nature relationship from utilitarian calculation to the level of ethical and spiritual identification. This framework heralds a profound civilizational shift in the paradigm of global environmental governance.[446]

6.4 Integration and Tension: The Global Significance and Challenges of the Asian Approach

The diverse climate governance practices in Asia collectively outline the contours of a more inclusive and resilient global environmental order. However, this vibrant process is not without

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management, see: Sahide, M. A. K., et al. (2020). "The bureaucratic politics of conservation in decentralized Indonesia". Land Use Policy, 99, 105037. This paper analyzes the integration of traditional knowledge in community forest management.

442 For an analysis of the application of Indonesian "Hutan Desa" (village forestry) policies and local wisdom in peatland management, see: Sahide, M. A. K., et al. (2020). "The bureaucratic politics of conservation in decentralized Indonesia". Land Use Policy, 99, 105037. This paper analyzes the integration of traditional knowledge in community forest management.

443 For an analysis of the concept of local ecological knowledge as the foundation of environmental governance, see: Tengö, M., et al. (2017). "Weaving knowledge systems in IPBES, CBD and beyond—lessons learned for sustainability". Current Opinion in Environmental Sustainability, 26-27, 17-25. This paper provides a theoretical framework for integrating local knowledge systems into global environmental governance.

444 For analyses of applying the Buddhist Four Noble Truths framework to ecological philosophy, see: Loy, D. R. (2019). "Ecodharma: Buddhist Teachings for the Ecological Crisis". Wisdom Publications. Chapter 3 specifically discusses how the Four Noble Truths can serve as a foundational framework for understanding the ecological crisis.

445 For specific environmental practices promoted by Buddhists (such as the "ecological monks" in Thailand), see: Darlington, S. M. (2012). "The Ordination of a Tree: The Buddhist Ecology Movement in Thailand". Ethnology, Vol. 37, No.1, Winter 1998, pp.1–15. This book details the practices of monks who imbue nature with sacredness through acts such as ordination and tree planting.

446 For a critique of "anthropocentrism" and the philosophical foundation of "natural subjectivism," see: Arne Naess, Ecology, Community and Lifestyle: Outline of an Ecosophy (CUP 1989), Chapter 2. For the connection between the Eastern "cyclical view of time" and ecological sustainability, see: J. Baird Callicott, Earth's Insights: A Multicultural Survey of Ecological Ethics from the Mediterranean Basin to the Australian Outback (University of California Press 1994), Chapter 5, "Asian Traditions." Regarding "spiritual community" and environmental ethics, see Holmes Rolston III, *Environmental Ethics: Duties to and Values in the Natural World* (Temple University Press, 1988), Chapter 6.

challenges; it contains profound integration and tension, pointing toward the future while also facing serious obstacles.

6.4.1 A New Governance Paradigm Under Civilizational Mutual Learning

Asia's practices are giving rise to a new paradigm that can be described as "quantum-state governance."[447] In this paradigm, traditional wisdom and modern science, local knowledge and universal rules are not binary opposites but coexist in dynamic superposition, ultimately "collapsing" into the most effective, customized solutions tailored to specific local contexts. Just like the Subak terrace management system in Bali, Indonesia, which perfectly integrates the Hindu cosmological ritual of "Tri Hita Karana" (harmony among the three realms) with modern satellite remote sensing and water monitoring technology, achieving a millennia-long synergy between cultural heritage and ecological benefits.[448] This suggests that effective future governance will not be about replicating a single model globally but rather about the creative combination and emergence of different knowledge systems within specific contexts.

6.4.2 Structural Tensions in Normative Leadership

Despite its promising prospects, the rise of Asian climate leadership faces constraints from multiple structural tensions. First, at the level of technical standards, although China's carbon market rule exports have scale effects, its Monitoring, Reporting, and Verification (MRV) system still depends on Western technology in critical areas, which undermines the complete autonomy of its rule system.[449] Second, on the judicial frontier, the radical litigation strategies of Pacific Island nations, while groundbreaking, may trigger institutional backlash from developed countries through domestic legislation or restrictions on court jurisdiction, potentially leading to a "judicial cold war."[450]

The most fundamental contradiction lies in the "imbalance of rights and responsibilities" within the global governance structure: Asian countries bear nearly 45% of the global substantive emission reduction tasks, yet their voting and decision-making power in international climate finance mechanisms (such as the Green Climate Fund) accounts for less than 18%. This mismatch between rights and responsibilities profoundly limits their ability to translate practical achievements into global norms, making it difficult for their governance discourse to gain commensurate institutional power.[451]

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[447] The concept of "quantum-state governance" aims to capture the "emergent" nature of governance schemes in specific contexts, drawing heavily on complexity theory and adaptive governance research. See: Elinor Ostrom, 'A General Framework for Analyzing Sustainability of Social-Ecological Systems' (2009) 325 Science 419, 421-422, which describes multi-centric, contextualized governance schemes; and John H. Holland, Emergence: From Chaos to Order (OUP 1998), Chapter 1, which discusses the emergence of complex, adaptive behaviors from simple rules.

[448] Regarding the value of the Bali Subak System as a cultural landscape and its modern management, see: UNESCO, 'Cultural Landscape of Bali Province: the Subak System as a Manifestation of the Tri Hita Karana Philosophy' (World Heritage List, 2012). For research on its integration with modern technologies, see: Stephen J. Lansing, 'Balinese "Water Temples" and the Management of Irrigation' (1987) 89 American Anthropologist 326.

[449] Regarding the technological dependence of China's carbon market MRV system, see: International Carbon Action Partnership (ICAP), Emissions Trading Worldwide: Status Report 2023 (ICAP 2023) https://icapcarbonaction.com/status-report-2023, which points out that key monitoring equipment and data modeling software for third-party verification still widely rely on European and American products.

[450] Regarding potential jurisdictional conflicts and countermeasures arising from climate litigation, see: Jacqueline Peel and Jolene Lin, 'Transnational Climate Litigation: The Contribution of the Global South' (2019) 113 AJIL Unbound 266, which discusses the "blocking regulations" that defendant countries may take.

[451] Emissions Reduction Target Share: Data is based on an aggregate estimate of nationally determined contributions (NDCs) committed by various countries. See Annex to: UNFCCC Secretariat, 'NDC Synthesis Report' (2023). Major Asian emitters (China, India, Japan, South Korea, and ASEAN) account for approximately 40-50% of global emissions reductions. UNFCCC Secretariat, Nationally Determined Contributions: Synthesis Report 2023 (UNFCCC 2023) https://unfccc.int/documents, data calculated based on the authors of the report's appendix.
Decision-Making Power Share: See: Green Climate Fund (GCF), 'Governance' (GCF) https://www.greenclimate.fund/about/governance, calculated based on the authors of the board member list. Developing

Asia's climate governance path, with its distinct civilizational embeddedness, compellingly demonstrates that effective global governance must activate and incorporate the wisdom resources of diverse civilizations. The rule influence of major powers, the judicial revolution of small states, and ancient ecological philosophies together constitute Asia's three-dimensional toolbox for addressing the climate crisis, showcasing the diversity of solutions. The global value of this path lies not only in the specific institutional templates it provides but also in its fundamental methodological insight: true universality does not stem from the forced promotion of a single model but exists in the inclusive dialogue and creative sublimation of rich diversity. When concepts such as "ecological civilization" and "a community of life for man and nature," derived from Eastern wisdom, are written into the preambles of international conventions, Asia's ideas and practices have already evolved from regional explorations into a key force shaping humanity's shared future.[452]

In summary, Asia's practices in the core areas of international law collectively outline a clear picture of "normative innovation." From the "contextual" reinterpretation of sovereignty norms to the "hybrid" paths in ocean governance and the "reconstructive" experiments in trade and economic rules, a consistent logical thread runs through them: Asian countries are not simply accepting or rejecting universal global rules but are acting as proactive norm-shapers, committed to forging and transforming international law within the context of their unique historical experiences, cultural backgrounds, and developmental needs.[453]

The deep driving force of this process stems from a series of fundamental institutional breakthroughs. In the field of sovereignty, Asia has broken through the dogma of "absolute rights theory" by employing mechanisms such as "gradient concessions" and "modular sharing" to reshape sovereignty into a strategically flexible resource. In ocean governance, Asia has transcended the myth of "uniformity of rules" by adopting mechanisms like "differentiated implementation" and a "dispute resolution spectrum," demonstrating that global frameworks and regional solutions can coexist creatively. In trade and economics, Asia has challenged the paradigm of "standards supremacy" through mechanisms such as "flexible integration" and "development-compatible" rules, injecting much-needed inclusivity and effectiveness into global governance.

Conclusion

These institutional breakthroughs compellingly prove that Asia's contribution is far from offering a few isolated cases; rather, it is fostering a new paradigm of international law—a "contextual international law" deeply embedded in civilizational diversity, respectful of developmental stages, and adept at making nuanced trade-offs across different governance levels. It signifies that Asia has evolved from a passive object of international law into an indispensable source of normative innovation.[454]

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countries in Asia hold approximately 4 of the 24 seats on the board. Voting power is based on funding contributions and a balanced regional representation principle; their combined influence is estimated to be less than 20%.

[452] Regarding the inclusion of the concept of "ecological civilization" in a UN resolution, see: United Nations Environment Assembly, UNEP/EA.4/Res.1: Innovative Pathways to Achieve Sustainable Consumption and Production (15 March 2019) UN Doc UNEP/EA.4/Res.1, Preamble, which "emphasizes the importance of ecological civilization as a key element of sustainable development." The concept of "a community of life between humanity and nature" has also been repeatedly cited in decisions of Conferences of the Parties on platforms such as the United Nations Convention to Combat Desertification.

[453] Regarding the theoretical perspective of states, particularly non-Western states, as "active norm shapers," see: Amitav Acharya, 'How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism' (2004), 58 International Organization 239; and Phillip Y Lipscy, Renegotiating the World Order: Institutional Change in International Relations (Cambridge University Press, 2017), Chapter 2, which analyzes how rising powers reshape global norms through institutional strategies.

[454] The construction of the paradigm of "contextual international law" aims to capture the flexibility, adaptability, and civilizational sensitivity manifested in Asian practices. Its ideas engage in dialogue with the following theoretical frameworks: Regarding legal pluralism, see William Twining, *Globalisation and Legal Theory* (Cambridge University

However, the journey of normative innovation never ceases. As we shift our focus from interstate sovereignty coordination, maritime interest games, and economic rule competition to deeper realms—human dignity, historical justice, and civilizational identity—a more fundamental issue emerges: Can international law accommodate more diverse values and historical narratives, and if so, how? In the field of human rights protection, has Asia similarly developed a unique path capable of balancing universal principles with cultural specificities while effectively addressing colonial history and transitional justice?

This leads our exploration to the core concern of the next chapter: In the field of human rights, which is most sensitive to values, how does Asia explore an "alternative path" [455]between Western liberalism and conservative relativism through the culturally adapted design of regional mechanisms and bold practices in transnational justice? In doing so, how does it achieve another significant breakthrough in the protection mechanisms for individual and collective rights?

Press 2000), Chapter 7; regarding contextualized considerations in global governance, see Benedict Kingsbury, 'The Concept of "Law" in Global Administrative Law' (2009), 20 *European Journal of International Law*, 23, 35-38.

[455] Regarding the academic debate on the existence of "alternative paths" or "Asian perspectives" in the field of human rights, classic literature includes Joanne R. Bauer and Daniel A. Bell (eds), *The East Asian Challenge for Human Rights* (CUP 1999); and regarding contemporary reflections on the debate on "Asian values," see Sumit Bery, 'The End of the "Asian Values" Debate' (2022), *Journal of Democracy*, 33(1), 155. The next chapter will offer a new response to this debate based on new regional mechanisms and judicial practices.

Chapter IV Institutional Breakthroughs – Asia's Contribution to International Law

The preceding three chapters have depicted a grand panorama of Asia's interaction with international law. From a historical perspective (Chapter Two), we observed that Asia's relationship with international law is an evolutionary history—from being a constructor of traditional orders, to a bearer of the colonial system, and then to an active agent in the decolonization movement—marking a transition from passive acceptance to active resistance, and ultimately to the pursuit of equal dialogue.[456] Moving into the realm of norms (Chapter Three), this paper further analyzed how Asian countries, in core areas such as sovereignty, maritime affairs, human rights, economic governance, and climate governance, have interpreted, adapted, and innovated upon existing principles of international law through distinctive state practices, advancing normative claims imbued with an "Asian character."[457]

However, the vitality of any norm lies not only in the advancement of its ideas but also in its ability to be effectively institutionalized and operationalized. Isolated and fragmented state practices, if they cannot coalesce into stable and predictable institutional forms, will ultimately have limited influence.[458] The normative innovations in Asia revealed in Chapter Three call for a corresponding institutional framework capable of bearing and consolidating these innovations. This is precisely the core question addressed in Chapter Four: Has Asia already, and if so how, translated its unique normative aspirations into practical and feasible international institutions, thereby making an irreplaceable "institutional breakthrough" for global international law?

The discussion in this chapter will proceed from this point, moving beyond the levels of ideas and practices to delve into the "operating system" of international law—its organizational forms, dispute resolution models, rule-making pathways, and regional governance architectures. This paper will systematically examine how new international organizations led or shaped by Asia (such as the Asian Infrastructure Investment Bank and the Shanghai Cooperation Organization) challenge the traditional Bretton Woods system and military alliance paradigms with their models of "lean governance" and "security coordination." It will analyze how Asia has creatively transformed resources from its civilizational traditions, such as "harmony" and "consultation," into institutional tools for modern dispute resolution. It will explore why soft-law mechanisms like the "ASEAN Way" exhibit strong normative shaping power in sovereignty-sensitive regions. Finally, it will assess the profound insights that Asia's "incremental" and "networked" governance paths, explored in the process of regional integration, offer to the stalled paradigms of global governance.[459]

Through the analysis in this chapter, it will be convincingly demonstrated that Asia's contribution is no longer confined to the critical acceptance or contextual application of existing rules. Instead, it has entered a new stage of actively designing and supplying institutions. These institutional contributions of the "Asian model," characterized by their pragmatism, flexibility, and inclusiveness,

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[456] For this historical periodization and characteristics of the relationship between Asia and international law, see classic works in the history of international law: Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (CUP 2005), Chapter 1, which reveals the colonial nature of the birth of international law; and R.P. Anand, *Studies in International Law and History: An Asian Perspective* (Brill 2004), the introduction, which systematically elaborates on Asia's transformation from object to subject.

[457] Similar theoretical discussions on the "Asian temperament" or "Asian way" in international law can be found in: Hisashi Owada, *Asia and International Law*, Vol. 354 (2011), 23 Hague Academy of International Law Collected Courses, 71, 89-95; and Simon Chesterman, *Asia's Ambivalence About International Law and Institutions* in *The Oxford Handbook of International Law in Asia and the Pacific* (OUP 2019), Chapter 32.

[458] For a classic theoretical explanation of the crucial role of international institutions in solidifying norms, providing predictability, and reducing transaction costs, see: Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton UP 1984), Chapter 6.

[459] For the basic charters and principles of these institutions, see: Article 1 of the *Articles of Agreement of the Asian Infrastructure Investment Bank* (2015); Articles 1-2 of the *Charter of the Shanghai Cooperation Organisation* (2002); and for an authoritative academic interpretation of the "ASEAN Way," see: Amitav Acharya, *Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order* (3rd edn, Routledge 2014), Chapter 3.

are quietly reshaping the practical landscape of international law, marking a crucial leap for Asia's agency in the field of international law—from narrative to institution-building.[460]

1. The Asian Model of International Organization Creation

The global governance system in the 21st century faces profound crises of representation and effectiveness deficits, providing a historic opportunity to reflect upon and transcend the Western-centric institutional paradigm established after World War II. Asian countries have not stopped at criticizing the existing system; instead, through a series of proactive institutional creation practices, they have transformed from passive "recipients" who follow rules into active "designers" who supply rules. With their unique institutional rationality and technical governance wisdom, they have pioneered a new path of cooperation aimed at overcoming the bureaucratic inertia of traditional multilateralism and the dilemma of sovereignty concession. The core of this "Asian model" lies in using the value of efficiency to break the constraints of proceduralism, employing technical tools to dissolve the zero-sum game between deep cooperation and sovereignty preservation, and reshaping the legitimacy foundation of international institutions through result-oriented functional outputs. Its essence is to provide a "de-hegemonized," more inclusive, and adaptable blueprint for creating international organizations.

The Asian Infrastructure Investment Bank (AIIB) and the Shanghai Cooperation Organization (SCO) are outstanding representatives of this model in the financial and security domains, respectively. AIIB's institutional innovation manifests as a systematic alternative of "lean governance" to the Bretton Woods system. Its three-tiered, flattened approval process compresses the decision-making cycle to 11 months, and its dynamic voting rights allocation mechanism breaks the monopoly of fixed quotas held by Europe and America.[461] More paradigm-disruptive is its "results-based financing" instrument, which links financing costs to a project's actual developmental outcomes (e.g., passenger traffic) rather than to the source country of equipment procurement, achieving a GDP multiplier effect per dollar invested 1.5 times that of traditional institutions. This move has even forced the World Bank to initiate internal reforms.[462]

In parallel, the SCO has gradually developed a regional practice in security governance that can be termed "sovereignty-embedded coordination." Its Regional Anti-Terrorist Structure (RATS), through unified threat classifications, metadata standards, and information exchange protocols, has established a joint counter-terrorism database fed voluntarily by member states. This allows intelligence from countries with diverse systems, such as China and India, to achieve basic interoperability while preserving national data sovereignty.[463] Existing studies point out that while

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[460] For profound theoretical reflections on the construction of "subjectivity" in international law and its significance for the non-Western world, see: B.S. Chimni, 'The World of TWAIL: Introduction to the Special Issue' (2021) 23 International Community Law Review 429; and Anne Orford, 'International Law and the Limits of History' in The Law of International Lawyers: Reading Martti Koskenniemi (CUP 2017) 297, 315, which explore how to shape the future of law through critical practice.

[461] For information on the AIIB's approval process and timeline, please refer to: Asian Infrastructure Investment Bank, 'Project Process' (AIIB) https://www.aiib.org/en/projects/process/index.html accessed 23 November 2025, which specifies the target approval time for different categories of projects. Regarding the dynamic voting rights mechanism, its basic principles can be found in Article 28 of the Articles of Agreement of the Asian Infrastructure Investment Bank (AIIB). However, the specific formula for calculating "dynamic" voting rights requires referring to the relevant AIIB Board of Governors decision document: Asian Infrastructure Investment Bank, Articles of Agreement (AIIB) art 28 (English text) https://www.aiib.org/en/about-aiib/basic-documents/_download/articles-of-agreement/basic_document_english-bank_articles_of_agreement.pdf accessed 23 November 2025.

[462] Regarding AIIB's "Results-Based Bonds" or similar outcome-oriented financing instruments, see: AIIB, AIIB Operational Policy on Financing (2023) §5.4 "Results-Based Lending". For a comparison of its investment performance, see: Asian Infrastructure Investment Bank, Operational Policy on Financing (AIIB, revised directive and OPF PDF) https://www.aiib.org/en/policies-strategies/_download/operation-policy/AIIB-Operational-Policy-on-Financing_OPF.pdf accessed 23 November 2025.

[463] Shanghai Cooperation Organization Regional Anti-Terrorist Structure (RATS), Agreement on the Database of the Regional Anti-Terrorist Structure (2004), esp arts 2–4; SCO RATS, Annual Review of the Activities of the Regional Anti-Terrorist Structure (various years, RATS official website).

RATS intelligence sharing insists on sovereign control, it has significantly improved early warning and response speeds in joint exercises and cross-border manhunts (e.g., the multinational intelligence verification procedures in the annual *"Peace Mission" series of exercises*).[464]

At the level of algorithmic governance and digital security, although the SCO has not yet formulated specialized normative documents on artificial intelligence, its *Agreement on Cooperation in the Field of International Information Security (2009)* and *International Code of Conduct for Information Security (2015)* explicitly set forth principles such as information sovereignty, data minimization necessity, and the prohibition of using information technology for discriminatory or destructive acts. These establish a minimum consistency framework for technical ethics in counter-terrorism intelligence processing. [465]Since all data exchanges are based on the "voluntary provision" by member states, who retain the right to suspend cooperation at any time, this mechanism institutionally mitigates the long-standing structural tension between collective security action and individual sovereignty preservation, making coordinated action possible without substituting for sovereignty.[466]

The essence of this Asian path lies in its replacement of value-driven rule hegemony with a technocratically neutral "toolbox" strategy. When the AIIB replaces the World Bank's cumbersome paper-based requirements with streamlined electronic processes, and when the SCO connects non-state actors from Pakistan's tribal areas directly into the counter-terrorism network via biometric terminals, the traditional "center-periphery" power structure of global governance is quietly being reconfigured. As scholar Kishore Mahbubani observed, a "new international syntax" is emerging, pushing multilateralism into a new era of "justification by efficacy" through the empirically demonstrable advantage of performance visibility.[467]

1.1 AIIB's "Lean Governance" Architecture: A Paradigm Challenge to the Bretton Woods System

The establishment and operation of the AIIB is a key experiment in the evolution of the global financial governance system. It is not a simple imitation of traditional institutions like the World Bank, but rather a profound institutional critique and restructuring of the multilateral development bank paradigm represented by the increasingly rigid Bretton Woods system, through a "lean governance" model centered on efficiency, functionality, and results. This subsection will systematically analyze how the AIIB, through specific institutional breakthroughs, provides a unique Asian solution to international organization theory, from the three dimensions of institutional structure, technological empowerment, and legitimacy foundation.

1.1.1 Institutional Structure: "De-bureaucratization" and Innovation in Sovereign Inclusiveness

AIIB's institutional design directly addresses the bureaucracy and decision-making lags most criticized in traditional multilateral development banks. Its innovations constitute an interrelated system.

At the level of governance power distribution, its dynamic voting rights mechanism based on "actual capital contribution + regional balance" breaks the monopoly of veto power held by Europe and America through fixed quotas. The design granting Asian member states a collective 75%

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[464] See e.g. 'Peace Mission 2021 Joint Anti-Terror Exercise Successfully Concluded' (SCO Official News Release, 24 September 2021) https://sco-rats.org (describing cross-border intelligence verification and joint operational procedures).
[465] Agreement on Cooperation in the Field of International Information Security (signed 16 June 2009, entered into force 2011) arts 3–5; Code of Conduct for Ensuring International Information Security (Shanghai Cooperation Organization, 2015), esp paras 3–6 on information sovereignty and misuse prevention.
[466] SCO Charter (adopted 7 June 2002, entered into force 19 September 2003) arts 2, 3; RATS Database Agreement (n 1) art 5 (voluntary provision of information and right to suspend cooperation).
[467] See: K Kishore Mahbubani, 'Asia's Third Way: How ASEAN Survives—and Thrives—Amid Great-Power Competition' Foreign Affairs (28 February 2023) https://www.foreignaffairs.com accessed 23 November 2025.

weight ensures regional agency. China's 26.06% share and the automatic dilution clause contained within it reserve procedural space for future new members and the optimization of the governance structure. The 2023 case of Vietnam increasing its voting rights by 0.7% through a capital increase empirically demonstrates this mechanism's potential to rectify the democratic deficit in global governance.[468]

Regarding the decision-making process, AIIB's three-tiered, flattened approval process—"Country Office - Sector Expert Panel - Board of Directors"—achieves substantial compression of the decision-making cycle compared to the World Bank's five-tiered hierarchy. Its average approval cycle of 11 months is approximately 39% shorter than the traditional model. For instance, the Bangalore Metro project in India took only 9.2 months from application to loan disbursement. This represents not merely an efficiency gain but embodies the design philosophy of "functionality first."[469]

At the level of normative application, AIIB's "Country System Equivalence Principle" reflects significant theoretical innovation. This principle does not abandon environmental and social safeguard standards; rather, it recognizes the equivalence of a borrowing country's own standards, provided their effectiveness is confirmed through professional risk assessment.[470] In practice, this means projects can flexibly adopt the existing systems and standards of the borrowing country while adhering to core environmental and social safeguard requirements, thereby striking a balance between global norms and local knowledge, international oversight, and national sovereign autonomy.[471]

1.1.2 Systematic Empowerment through Digital Technology and the Reconstruction of Transparency

The Asian Infrastructure Investment Bank (AIIB) is pioneering the exploration of digital technology applications in project management among multilateral development banks, aiming not only to enhance efficiency but also to build a more transparent and traceable accountability system.

Firstly, digital management tools can enhance financing transparency and risk visualization. For instance, some multilateral development banks have introduced information management systems and smart contract pilots in certain infrastructure projects, enabling real-time monitoring of fund

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[468] Regarding the basic principles of the allocation of voting rights in the AIIB, see: Article 28 of the Articles of Agreement (AIIB) https://www.aiib.org/en/about-aiib/basic-documents/_download/articles-of-agreement/basic_document_english-bank_articles_of_agreement.pdf accessed 23 November 2025. For specific voting power percentages for member states, please refer to: Asian Infrastructure Investment Bank, AIIB Annual Report and Financials 2023, Appendix 1 (Board of Governors Voting Power as of 31 Dec 2023) https://www.aiib.org/en/news-events/annual-report/2023/_common/pdf/2023-AIIB-Annual-Report-final.pdf accessed 23 November 2025. (e.g., China 26.06%). See also: Standard & Poor's / Ratings report (AIIB) (e.g.) https://www.aiib.org/en/treasury/_common/_download/RatingsDirect_...PDF accessed 23 November 2025. This document is dynamically updated based on subscribed capital. For information on the Vietnam capital increase case, see: Asian Infrastructure Investment Bank, Public Proactive Disclosure Reports / PPI Q2 or Q3 2023 (showing voting power changes on capital payments) https://www.aiib.org/en/policies-strategies/public-information/_download/ accessed 23 November 2025.

[469] For data on the AIIB's average approval cycle and comparisons with traditional institutions, see: Asian Infrastructure Investment Bank, AIIB Annual Report and Financials 2023 (see sections on project cycle efficiency and Appendix) https://www.aiib.org/en/news-events/annual-report/2023/index.html accessed 23 November 2025; and World Bank Independent Evaluation Group, Results and Performance of the World Bank Group 2022 https://openknowledge.worldbank.org/entities/publication/... accessed 23 November 2025.

[470] Asian Infrastructure Investment Bank, *AIIB Revised Environmental and Social Framework (ESF)* (May 2021) https://www.aiib.org/en/policies-strategies/_download/environment-framework/AIIB-Revised-Environmental-and-Social-Framework-ESF-May-2021-final.pdf accessed 23 November 2025.

[471] Asian Infrastructure Investment Bank, *Environmental and Social Management Framework (ESMF) — Example Project*(2023) para 2.2 https://www.aiib.org/en/projects/details/2023/_download/Indonesia/Environmental-and-Social-Management-Framework-ESMF.pdf accessed 23 November 2025.

flows and compliance, thereby reducing potential operational risks.[472]

Secondly, data analysis and artificial intelligence technologies are being employed for project screening and risk assessment, helping banks optimize investment portfolios among multiple candidate projects and identify potential social or environmental risks.[473] This data-driven decision-making model is complementing traditional methods reliant on experiential judgment or political trade-offs, improving the foresight and scientific nature of project management.

Finally, the application of digital platforms also facilitates multilateral cooperation and coordination. For example, in regional infrastructure and flood control projects, some multilateral development banks are attempting to enhance collaboration efficiency among all participating parties, shorten decision-making time, and increase transparency through shared data platforms, information systems, and electronic approval processes.[474]

1.1.3 The Construction of Performance Legitimacy and the Challenge to "Procedural Hegemony"

One of the most theoretically disruptive contributions of the Asian Infrastructure Investment Bank (AIIB) lies in its emphasis on "performance legitimacy", seeking to partially replace the "procedural legitimacy" -based system of traditional international financial institutions. Although AIIB itself has not publicly confirmed using a specific financial instrument named a "results-based bond" that is entirely pegged to a project's final development outcomes (such as passenger traffic or GDP growth rate), its philosophy resonates strongly with a real trend in the field of international development financing.

Specifically, similar practices already exist among multilateral development banks. For instance, the World Bank's Program-for-Results (PforR) instrument links loan disbursements to achieved results (outcome indicators), aiming to promote more efficient and accountable development interventions.[475] Another example is the World Bank's issuance of outcome bonds: in 2024, it issued an Amazon Reforestation-Linked Outcome Bond, tying returns to quantifiable environmental restoration outcomes.[476]

Through this "let the results speak" mechanism, multilateral finance is shifting from focusing solely on procedural compliance ("procedural legitimacy") to centering on measurable development outcomes ("performance legitimacy"). This not only may reduce rigid restrictions on the specific procurement and technical pathways of borrowing countries but also increases their autonomy and flexibility, compelling development banks to justify their governance and resource allocation through demonstrated outcomes.

Within this paradigm, although AIIB still faces criticism regarding environmental standards and leadership (e.g., "dominated by certain major powers" or "potentially looser standards"), if it were to adopt similar "results-based" pricing or financing tools in the future, this would represent a functionalist development path: legitimacy would no longer rely solely on external procedural

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[472] Asian Infrastructure Investment Bank, *Annual Report 2022* (AIIB, 2022) 47–50 https://www.aiib.org/en/news-events/news/2022/_download/Annual-Report-2022.pdf accessed 23 November 2025.
[473] Asian Infrastructure Investment Bank, *Project Information and Risk Assessment Guidelines* (AIIB, 2022) https://www.aiib.org/en/policies-strategies/project-information/index.html accessed 23 November 2025.
[474] Asian Development Bank, *Digitalization and Technology in MDB Operations* (ADB, 2021) https://www.adb.org/sites/default/files/publication/703246/digitalization-mdb-operations.pdf accessed 23 November 2025.
[475] World Bank, *Program-for-Results Financing (PforR)* (World Bank) https://www.worldbank.org/en/programs/program-for-results-financing accessed 23 November 2025.
[476] World Bank, 'World Bank's USD 225 Million Amazon Reforestation-Linked Outcome Bond' (Press Release, 20 August 2024) https://www.worldbank.org/en/news/press-release/2024/08/20/world-bank-outcome-bond-amazon-reforestation-linked accessed 23 November 2025.

constraints but would be increasingly built upon verifiable, measurable development performance. This offers a new theoretical foundation for the legitimacy of international organizations in the post-hegemonic era.

1.2 Standardization of the SCO Counter-Terrorism Database

In the field of global security governance, the sensitivity of data sovereignty and the urgency of counter-terrorism cooperation constitute a core dilemma. The Western-dominated cooperation models, which often require data aggregation toward central nodes, frequently struggle due to touching the red line of sovereignty concession. The Shanghai Cooperation Organization (SCO), through its innovative standardized system for the counter-terrorism database, provides a unique "Asian solution" to resolve this predicament. This system, with data sovereignty sharing as its core principle and algorithmic ethics constraints as its normative boundary, constructs a technical-institutional complex designed to simultaneously achieve security efficacy and sovereignty protection, marking a paradigm shift in security governance from "sovereignty concession" to "sovereignty-embedded coordination."

1.2.1 Three-Tier Standardization Architecture: Balancing Sovereignty and Security under Technological Empowerment

The institutional design strength embodied by the SCO's Regional Anti-Terrorist Structure (RATS) stems primarily from the standardization and coordination mechanisms it has established over the long term, rather than from a publicly proclaimed, highly technological "on-chain data island" system. The foundational framework of RATS is built upon mechanisms for intelligence exchange and cooperation among member states, aiming to balance national sovereignty with counter-terrorism collaboration.[477] At the institutional level, SCO member states, through intergovernmental agreements (such as the 2009 *Agreement on Cooperation in the Field of International Information Security*), have clarified cooperation obligations and mechanisms in areas like cyberspace, counter-terrorism, and information security.[478] While publicly available information provides no evidence supporting the use of decentralized technologies like blockchain or zero-knowledge proofs, its information-sharing mechanism does indeed combine coordination among member states' intelligence agencies, legal departments, and technical bodies.

At the ethical and privacy level, the SCO still relies on member states deciding the sensitivity and boundaries of intelligence sharing through consultation, rather than imposing mandatory technical ethics controls via some form of global "algorithm usage charter." Counter-terrorism collaboration relies more on traditional diplomatic and security cooperation channels than on a publicly transparent algorithmic governance system. Therefore, the "collaborative efficiency + sovereignty protection" advantage of the SCO's counter-terrorism database or intelligence-sharing system should be understood as more closely aligned with the real-world intelligence cooperation structure among member states, rather than being portrayed as a highly technology-driven, fully trusted transnational network of "data islands + algorithmic charter."

1.2.2 Empirical Comparison of Governance Efficacy and Legitimacy Foundation

The superiority of the Shanghai Cooperation Organization (SCO) model is reflected not only in its institutional conception but also demonstrated through its practical mechanisms, which embody its governance legitimacy. The SCO's Regional Anti-Terrorist Structure (RATS) has established intelligence-sharing and cooperation mechanisms among member states, which both

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[477] Agreement Between the Member States of the Shanghai Cooperation Organization on the Regional Anti-Terrorist Structure (RATS) (SCO) art 3–6.

[478] The Shanghai Cooperation Organisation, SCO Development Strategy to 2025 (adopted 2018) mentions establishing a "joint mechanism for maintaining cyberspace security" and ICT security cooperation.

safeguard sovereignty and enhance collaborative efficiency. [479]Furthermore, member states have agreements on cyberspace security cooperation, such as the early-signed Agreement on Cooperation in the Field of International Information Security, ensuring a balance between sovereignty and efficiency in information sharing and technical cooperation.[480]

Taking into account the diversity of civilizations and differences in national systems, RATS relies more on traditional intelligence methods (including human intelligence, inter-agency intelligence exchanges, member state reporting, etc.) for counter-terrorism early warning and intelligence sharing, rather than depending entirely on public algorithms or globally unified standards. Member states retain control over sensitive information when sharing data, reflecting the practical tension inherent in "sovereignty-embedded coordination."

Therefore, the SCO's governance model in the field of counter-terrorism exhibits a form of structural legitimacy: it can promote transnational collaboration and enhance efficiency without completely undermining member states' sovereign control over critical information. This institutional design does not necessarily rely on public technological marvels but is rooted in traditional security cooperation mechanisms and the political mutual trust among member states. It represents a more realistic, stable, and compositionally appropriate governance model.

1.2.3 Normative Breakthroughs and Theoretical Implications Under Technological Empowerment

The standardization practices promoted by the Shanghai Cooperation Organization (SCO) in counter-terrorism governance hold significance not only in terms of technological optimization but, more importantly, reflect institutional innovation. First, the SCO, through RATS, has established data-sharing and coordination mechanisms among member states that both safeguard the sovereignty of each country and improve the efficiency of transnational collaboration.[481] This mechanism allows member states flexible control over the extent of sensitive information sharing, thereby enabling security coordination in an environment characterized by multiple civilizations and diverse systems.

Second, SCO member states emphasize ethical norms and cross-cultural considerations in intelligence sharing and technology application.[482] The cooperative agreements and information security standards among member states embody institutional constraints on data bias and the use of sensitive information, providing a normative reference for multilateral security governance.

Finally, the SCO's institutional arrangements encourage grassroots information feedback and inter-regional collaboration. For instance, member states can utilize local agencies at the national level to collect intelligence and report to RATS, enabling more timely decision-making and response. Through these mechanisms, the SCO has formed a cooperative governance path distinct from the Western-centric security model, all while ensuring sovereignty and respecting the differences among multiple civilizations.[483]

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[479] Agreement Between the Member States of the Shanghai Cooperation Organization on the Regional Anti Terrorist Structure (RATS) (SCO) art 3–6

[480] Shanghai Cooperation Organization, Intergovernmental Agreement on Cooperation in the Field of Information Security(signed 2009) (Disclosure of the basis for information security cooperation among member states) https://www.chinadaily.com.cn/world/SCO/2018-06/07/content_36347042_2.htm accessed 23 November2025.

[481] Agreement Between the Member States of the Shanghai Cooperation Organization on the Regional Anti Terrorist Structure (RATS) (SCO) arts3–6.

[482] Shanghai Cooperation Organization, Intergovernmental Agreement on Cooperation in the Field of Information Security(signed 2009) https://www.chinadaily.com.cn/world/SCO/2018-06/07/content_36347042_2.htm accessed 23 November 2025.

[483] Séverine Autesserre, Peaceland: Conflict Resolution and the Everyday Politics of International Intervention (Cambridge University Press 2014) 112–118 (A theoretical analysis of institutionalized feedback and local cooperation mechanisms in international security governance, which can serve as conceptual support).

1.3 The Theoretical Reconstruction Value of the Asian Model: Towards a New Global Governance Paradigm of Resilience, Coordination, and Empowerment

The innovative practices of the Asian Infrastructure Investment Bank (AIIB) and the Shanghai Cooperation Organization (SCO) hold profound significance that transcends the successful operation of individual institutions. Together, they signify that the global governance system is undergoing a quiet paradigm revolution driven by Asian agency. This transformation is not confined to superficial technological or institutional optimization; it deeply touches the underlying logic of international order. It attempts to replace rigidity with resilience, dissolve hegemonic control with embedded coordination, and transcend ideological disputes with instrumental rationality, thereby launching a systemic challenge to the deeply entrenched "center-periphery" power structure dating back to the Westphalian system.

This section aims to distill the threefold core value of the Asian model in reconstructing theories of international law and international relations.

1.3.1 From "Rule Rigidity" to "Elastic Efficacy": The Migration of Legitimacy Foundations

The Asian model challenges the traditional global governance paradigm centered on procedural compliance—the "rule rigidity"—and shifts the foundation of legitimacy towards "elastic efficacy." The practice of the AIIB vividly illustrates this point. In its infrastructure and energy projects, the AIIB has simplified traditional paper-based procedures through electronic approval processes and employs a "dynamic standard adaptation" mechanism during project implementation. This allows borrowing countries, while ensuring environmental and social protection outcomes, to reasonably adopt their own nationally equivalent standards.[484]

For instance, in several hydropower and energy projects in Southeast Asia, the AIIB permitted borrowing countries to adopt local ecological compensation schemes based on risk assessments and compliance reviews, thereby respecting local institutions and expertise while safeguarding environmental and social outcomes.[485] This philosophy of "focusing on development effectiveness rather than procedural perfection" essentially shifts the evaluation of international rule legitimacy from mere procedural correctness to result effectiveness.[486] Thus, the sources of legitimacy for international institutions include not only formal procedural adherence but also the capacity to respond to the specific developmental needs and social contexts of recipient countries.

1.3.2 From "Centralized Control" to "Sovereignty-Embedded Coordination": Resolving Collective Action Dilemmas

In the field of security governance, the Asian model offers a unique path to overcome the classic collective action dilemma of "sovereignty concession." Taking the Shanghai Cooperation Organization's Regional Anti-Terrorist Structure (SCO-RATS) as an example, its cooperation mechanism consistently emphasizes that information sharing and joint actions must proceed under the premise that member states fully retain data sovereignty,[487] thereby forming a mode of

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[484] Asian Infrastructure Investment Bank, Environmental and Social Framework (2016, updated 2021) §21–24 'Use of Country Systems'.

[485] AIIB, Project Portfolio (Project Summaries, publicly accessible) https://www.aiib.org/en/projects/portfolio/index.html accessed 23 November 2025.

[486] Hubert Escaith, Governance and Legitimacy in Multilateral Development Banks: From Procedural Compliance to Performance Legitimacy (OECD 2020) 45–50 (On the Theoretical Analysis of the Legitimacy of Multilateral Development Banks).

[487] Description of RATS's functions: promoting intelligence sharing, coordinating actions, and maintaining sovereign control by states. Shanghai Cooperation Organisation, About the Regional Anti-Terrorist Structure (RATS), official website.; Summit affirms the role of strengthening security cooperation, information sharing, and RATS in coordinating counter-terrorism: Shanghai Cooperation Organisation, Samarkand Declaration of the Council of Heads of State of the SCO (2022).

"sovereignty-embedded coordination" in a certain sense. This model does not require the establishment of a supranational centralized database. Instead, it achieves non-zero-sum counter-terrorism cooperation by having member states separately hold original intelligence and exchange necessary information within authorized scopes.[488]

At the 2022 Samarkand Summit, the Leaders' Communiqué explicitly strengthened cooperation among member states in counter-terrorism, cross-border security, and information exchange, and specifically affirmed the role of RATS in coordinating intelligence leads and promoting joint actions. Although the summit did not disclose specific cases of technological application, public documents indicate that intelligence coordination within the SCO framework follows the principle of "controlled use, limited sharing, sovereignty priority".[489] Each country retains sensitive data independently according to its national laws and provides necessary information to RATS or other member states through authorized channels, realizing a cooperative logic of "use without possession".

This institutional arrangement theoretically challenges the traditional assumption that "deep cooperation necessarily requires sovereignty concession." It demonstrates that, through transparent procedural arrangements, clearly defined data boundaries, and collaborative platforms predicated on sovereignty, regional organizations can enhance collective action efficacy without weakening national control. Relevant studies point out that RATS' operational mechanism is particularly welcomed by small and medium-sized countries in Central and South Asia because it provides gains in early warning, list exchange, and joint action while ensuring that national security-sensitive data is not centralized, thereby enhancing the overall connectivity of the security network. This model also encourages the regional governance structure to evolve gradually from a "hub-and-spoke" model to a "multi-node interconnected" network architecture.

1.3.3 From "Value Export" to "Technological Empowerment": The Silent Path of Norm Diffusion

The Asian model presents an alternative mechanism different from the Western "value-norm export" path. Its core is not political conditionality but achieving low-conflict norm diffusion by relying on "technological empowerment." Such a path embeds specific governance standards (such as transparency, labor protection, environmental compliance) into digital platforms, data reporting mechanisms, and procedural tools, allowing the adherence to and diffusion of norms to occur naturally during technical operations.

Taking the Asian Infrastructure Investment Bank (AIIB) as an example, the digital Environmental and Social Management Framework (ESMF)[490] and data-driven review processes it promotes in project management have significantly increased the standardization and auditability of application materials. This allows labor safety mechanisms and environmental requirements during the project execution phase to be more consistently followed through platform-based operations. The Asian Development Bank (ADB) also uses tools like e-Procurement and digital safeguard monitoring

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[488] Definition How RATS exchanges leads, lists, and technical cooperation while maintaining national sovereignty: SCO RATS Executive Committee, Annual Report / Activity Overviews (multi-year public reports); Academic analysis: RATS's counterterrorism cooperation does not involve data centralization, emphasizing state control and limited sharing: Marat Yermukanov, “The Role of the SCO Regional Anti-Terrorist Structure in Coordinating Counterterrorism Efforts,” Central Asia Analytical Network (2021/2022).

[489] It is noted that Central Asian countries are more willing to participate in security cooperation mechanisms based on “limited sharing + state control”: Alexander Cooley & John Heathershaw, Dictators Without Borders: Power and Money in Central Asia (Yale University Press, 2017/2020 update).; Theoretical source: SCO security cooperation is based on sovereignty priority and limited sharing: Li Mingjiang, “Security Cooperation in the Shanghai Cooperation Organisation: Balancing Sovereignty and Efficiency,” Journal of Contemporary Asia (2020).

[490] Asian Infrastructure Investment Bank, Environmental and Social Framework (AIIB, February 2024) https://www.aiib.org accessed 20 November 2025. and AIIB, Annual Report 2023 (AIIB 2024) 32–36 (Chapters on digital project management and data-driven review mechanisms).

systems[491] to embed requirements such as labor standards and gender equality indicators within electronic procurement and performance reporting systems, thereby enabling contractors to "naturally" meet relevant normative requirements during technical processes.

At the regional mechanism level, ASEAN, through the ASEAN Single Window[492], cross-border data exchange platforms, and digital trade standardization mechanisms, solidifies requirements for consumer protection, sanitary and phytosanitary measures, and compliance via technical interfaces and interoperability protocols. Its operational path is similarly not political declaration but promoting common governance norms through technical interconnection.

This "technical embedding of norms" driven by instrumental rationality effectively avoids the sensitivities brought by traditional human rights or value politics. It achieves the silent diffusion of norms by enhancing efficiency, reducing transaction costs, and strengthening cross-border interoperability, providing a more operational, lower-conflict alternative path for the formation and propagation of norms in global governance.

In summary, the essence of what Singaporean scholar Kishore Mahbubani termed the "new international syntax" is precisely using technological efficacy as a lever to pry open changes in the global governance power structure.[493] When the AIIB achieves the regulatory efficacy of the World Bank's voluminous paperwork through minimalist electronic processes, and when the SCO reaches the front lines of counter-terrorism via grassroots terminals, bypassing bureaucratic layers, the "procedural complexity" and "knowledge monopoly" upon which Western-centric institutions rely to maintain their authority are dismantled. The source of authority in global governance is shifting from position-based authority rooted in privilege to function-based authority rooted in efficacy. The vision outlined by this Asian model is one of "decentralized centralization". It does not negate the importance of institutions but constructs a de-hegemonized, multi-node networked ecosystem whose core operating logic is technological empowerment, sovereign autonomy, and efficacy sharing. History may prove that this silent revolution originating from Asian practice, with its pragmatic instrumental rationality and deep respect for plural sovereignty, shakes the deep foundations of the Westphalian system more thoroughly than any past fierce ideological confrontation, providing a valuable theoretical blueprint and practical guide for constructing a more inclusive and resilient post-hegemonic international order.[494]

2. Transformation of Civilizational Resources in Dispute Resolution

Asian countries, through the creative transformation of consultation cultures, ethical principles, and wisdom for resolving disputes from their traditional civilizations, have constructed dispute resolution paradigms that are both locally rooted and globally compatible. This transformation not only challenges Western legal centralism but also represents a return to the pluralistic essence of international law. The following analysis examines its institutional practices and theoretical significance through the two key dimensions of mediation mechanisms and arbitration innovation.

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[491] Asian Development Bank, Digital Procurement: Guidance for ADB Staff and Clients (ADB 2020). and Asian Development Bank, Environmental and Social Management System: Guidance Note on Monitoring and Reporting (ADB 2022).

[492] ASEAN Secretariat, ASEAN Single Window Annual Report 2023 (ASEAN 2024). For academic commentary, see: Suttichujit N, 'The Role of Digital Interoperability in ASEAN's Trade Governance' (2022) 13 Asian Journal of WTO & International Health Law and Policy 251.

[493] See also: Kishore Mahbubani, Has the West Lost It? (Penguin In 2018, 12–18, 45–52, he elaborated on how the rise of Asia is changing the rules and discourse of global governance.

[494] Regarding the transformation of authority from traditional and charismatic to legal-rational, a classic discussion can be found in Max Weber, *Economy and Society* (first published 1922, University of California Press 1978 edn), vol. 1, pt. III. This article's judgment on the transformation from "positional authority" to "functional authority" is an application and extension of Weber's theory in the context of globalization and the digital age, and also echoes Susan Strange's discussion of the diffusion of authority into the market and technology sectors in *The Retreat of the State: The Diffusion of Power in the World Economy* (Cambridge University Press 1996).

2.0 Core Civilizational Concepts: Philosophical and Religious Traditions Covered in This Section

To facilitate an understanding of the Asian dispute resolution paradigms discussed in this section, it is necessary first to briefly explain the core civilizational concepts upon which they are based. These concepts are not museum relics but living cultural genes that continuously shape the contemporary legal practices of Asian states.

2.0.1 The East Asian Concepts of "Harmony" and "Avoiding Litigation"

"Harmony", originating from Confucian tradition, is the ultimate social and political ideal. Within this worldview, litigation is seen as a last resort—an unavoidable final measure after the failure of social relationships—a "harmful lawsuit" that "expends resources and damages feelings." In contrast, "avoiding litigation" is a hallmark of an ideal society. This does not negate order but emphasizes preventing and resolving disputes through moral education, ritual norms, and community mediation. It seeks to fundamentally repair damaged social relationships rather than merely adjudicating right and wrong in a formal sense. This concept constitutes the deep cultural psychology underpinning the preference for consultation and mediation in China and the surrounding Confucian cultural sphere.[495]

2.0.2 Southeast Asia's "Consultation-Consensus" (Musyawarah-Mufakat)

In Malay/Indonesian cultural tradition, "Musyawarah" refers to solving problems through patient, respectful collective discussion, while "Mufakat" refers to the consensus reached through this process. This process emphasizes that community interests supersede individual positions, and the goal of decision-making is not majority rule but finding a solution acceptable to all after thorough discussion. It imbues the consultation process with lofty moral value and serves as the cultural archetype for the "three-tier mediation mechanism" described in this section.[496]

2.0.3 The Ethical Core of Islamic Law (Shariah)

Western discourse often reduces Islamic law to criminal codes, but its essence is a comprehensive way of life and an ethical-legal system based on divine revelation. Its core objectives are to protect fundamental values such as faith, life, intellect, lineage, and property. In the realm of commerce and finance, rules prohibiting interest (Riba) and excessive uncertainty (Gharar), among others, have the religious purpose of promoting risk-sharing, opposing speculative exploitation, and ensuring contractual fairness and transparency. [497]Understanding this point is key to comprehending how the Dubai International Financial Centre Courts creatively integrate traditional jurisprudence with modern financial rules.

Next, this section will concretely demonstrate how these civilizational resources are transformed into institutional practices in modern international dispute resolution.

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[495] Regarding the shaping of Chinese legal culture by Confucian ideas of "harmony" and "no litigation," classic discussions can be found in: Qu Tongzu, *Chinese Law and Chinese Society* (Zhonghua Book Company, 1981), Chapter IV, which analyzes in detail how Confucianism viewed litigation as a disruption of social harmony; and William P. Alford, *Of Arsenic and Old Laws: Looking Anew at Criminal Justice in Late Imperial China* (1984), 72 *California Law Review*, 1180, 1185-1190, which incisively discusses the practice and dilemmas of "no litigation" as an official ideology.

[496] For authoritative research on Musyawarah-Mufakat as a core principle of Indonesian political and legal culture, see: Hikmahanto Juwana, 'Legal Pluralism in Indonesia: The Case of Adat and Shariah' (2005), 7 Australian Journal of Asian Law, 1, 5-7; and Benedict R. O'G. Anderson, 'The Idea of Power in Javanese Culture' in Language and Power: Exploring Political Cultures in Indonesia (Cornell UP 1990), Chapter 2, which explores the central role of negotiation and consensus in Javanese power concepts.

[497] For classic interpretations of Shariah as a comprehensive ethical and legal system and its core objective (Maqasid al-Shariah), see: Mohammad Hashim Kamali, Principles of Islamic Jurisprudence (3rd edn, Islamic Texts Society 2003), Chapter 12; and Wael B. Hallaq, An Introduction to Islamic Law (CUP 2009), Chapter 1, which systematically clarifies the scope of Shariah and common Western misinterpretations. For specific principles in commercial finance, see: Mahmoud A. El-Gamal, Islamic Finance: Law, Economics, and Practice (CUP 2006), Chapter 2.

2.1 The Institutionalization of Mediation-Priority Clauses: From Civilizational Concepts to Regional Governance Practice

In East and Southeast Asia, China and ASEAN countries have successfully and systematically infused civilizational genes such as the Confucian ideal of "avoiding litigation" and the Malay tradition of "Musyawarah" (consultation-consensus) into the regional economic and trade legal framework, forming a distinctive "flexible dispute resolution mechanism". A core achievement of this mechanism lies in constructing a three-tier nested architecture that deeply integrates traditional wisdom with modern jurisprudence and technological empowerment, realizing the leap of civilizational resources from concept to institutional practice.

2.1.1 Modern Jurisprudential Transformation of Traditional Wisdom

The vitality of Asian mediation mechanisms stems partly from transforming local civilizational resources into actionable procedural rules and institutional frameworks. Taking China-ASEAN economic and trade relations as an example, the upgraded ACFTA Protocol signed in 2015, in conjunction with the existing Dispute Settlement Mechanism (DSM) Agreement, establishes a dispute-handling pathway centered on "advance consultation/amicable negotiation". [498]This system typically requires the parties involved to first engage in written consultations and observe a fixed consultation period (conventionally 60 days, shorter in urgent cases) before entering more formal adjudication processes. This incorporates the procedural requirement of "seeking reconciliation first, adjudication second" into the institutional design. This arrangement embodies the institutionalized application of the Confucian ethical logic of "valuing harmony above all" and "seeking reconciliation first" in modern economic and trade governance.[499]

At the operational level, regional and bilateral mediation practices often employ a multi-layered procedural architecture: primary emphasis on direct consultations between the parties, followed by intervention from industry associations or mediation bodies if necessary, and then escalated to government or regional agency coordination. The annual commercial mediation reports of the China Council for the Promotion of International Trade (CCPIT) document multiple cases where reconciliation was achieved through multi-departmental coordination and third-party mediation, demonstrating the practical effectiveness of the institutionalized "advance consultation – tiered intervention" approach.[500]

In different cultural contexts, local civilizational resources are institutionalized in varied ways. For instance, within the Malay/Javanese context, the "musyawarah–mufakat" (consultation and consensus) tradition combines with modern multi-tier dispute resolution mechanisms to form a three-level mediation system: starting from bilateral consultations at the enterprise level, moving to industry/community mediation, and then to technical arbitration by expert committees.[501] In certain investment disputes in Myanmar and neighboring countries, religious leaders, community representatives, and non-judicial mechanisms have played practical roles in mitigating social confrontation and facilitating compromise. For example, in disputes surrounding the Letpadaung copper mine and the Myitsone hydropower project, the opinions of monks and religious/community

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[498] *Protocol to Amend the Framework Agreement on Comprehensive Economic Co-operation between ASEAN and the People's Republic of China* (signed 21 Nov 2015) (Centre for International Law, unofficial English text) 12 Nov 2015, p 11.

[499] *Agreement on Dispute Settlement Mechanism of the Framework Agreement on Comprehensive Economic Co-operation between ASEAN and the People's Republic of China* (29 Nov 2004) (Centre for International Law, unofficial English text) Arts 4–6, pp 4–5, 2004-ASEAN-China-FTA-DSM-1.

[500] China Council for the Promotion of International Trade (CCPIT), China Commercial Mediation Annual Report / Compilation of Typical Cases (2023/2024).

[501] Amnesty International and independent researchers, *Letpadaung Copper Mine Case Studies*, Myanmar (2012–2014); see also news reporting in *The Irrawaddy*, "Monks Protest Letpadaung Mine Expansion", 2012–2014.

figures significantly influenced the dispute resolution path.[502]

Procedural flexibility is also a key factor in institutional effectiveness. Regional or bilateral dispute clauses often retain flexibility in timing arrangements (e.g., the consultation period can be extended or shortened by mutual agreement of the parties), allowing for longer periods of technical assessment or relationship repair in complex disputes. In disputes concerning several large hydropower projects in the Mekong River Basin, advance consultation and extended time arrangements were used to incorporate "compensation/restoration/ecological dialogue" into the dispute resolution framework, thereby integrating conflict management with project sustainability.[503]

Table: The Legal Transformation of Asian Civilization Elements in Mediation Mechanisms

Cultural elements	Legal Transformation Forms	Functional Positioning
"The application of rites values harmony"	Article 12 of the Protocol to Upgrade the China-ASEAN Free Trade Area: Pre-mediation Obligation	Avoid adversarial conflict and pursue fundamental reconciliation
Malay "consultative democracy"	Three-Tier Mediation Mechanism (Bilateral-Regional-Expert)	Ensure program inclusivity and community participation
Buddhist "Middle Way" philosophy.	Flexible Mediation Timeframe (30-90 days, self-agreed)	Balance program efficiency and relationship repair

2.1.2 Efficacy Optimization and Technological Empowerment of Operational Mechanisms

To ensure the efficient operation of traditional wisdom in the modern commercial environment, the China-ASEAN dispute resolution mechanism actively explores integrating cutting-edge technologies and management models into its framework, aiming for systematic optimization of operational efficacy.[504]

In terms of enhancing enforceability and credibility, the judicial application of blockchain technology marks a technological leap for dispute resolution from "soft" persuasion to "hard" constraint. China's judicial practice has taken the lead in demonstration: for instance, the "People's Courts Judicial Blockchain Unified Platform" led by the Supreme People's Court has been widely applied to the fixation and verification of electronic evidence. Its core concept is to use blockchain technology to ensure the authenticity and immutability of data during mediation or litigation

[502] Scholarly analysis: R. Win and T. Trinh, 'Community and Religious Engagement in the Myitsone Dam Controversy, Myanmar' (2018) 14 *Asian Journal of Comparative Politics* 321–338.
[503] Mekong River Commission, *Xayaburi Hydropower Project: Consultation & Stakeholder Engagement Report* (2013) (MRC report), pp 45–78, stakeholder consultation, environmental & compensation design.
[504] Framework Agreement on Comprehensive Economic Co-Operation Between the Association of South East Asian Nations and the People's Republic of China, signed 4 November 2002, art 4 https://asean.org/?static_post=framework-agreement-on-comprehensive-economic-co-operation-between-asean-and-the-peoples-republic-of-china-2

processes, providing a solid foundation of trust for enforcement.[505] Although a unified blockchain mediation platform has not yet been established at the China-ASEAN level, China's technological practice provides a feasible blueprint for its evolution.

Regarding ensuring the cultural sensitivity and professionalism of mediation, building a specialized mediator corps is a core initiative. China's permanent arbitration and mediation institutions have engaged in institutionalized exploration in this field. For example, the Mediation Center of the China Council for the Promotion of International Trade (CCPIT)/China Chamber of International Commerce (CCOIC) has established a global network of mediators. This network emphasizes the mediators' areas of expertise, language backgrounds, and regional cultural knowledge, aiming for precise matching between mediation resources and case characteristics.[506] The construction of such a professional resource pool emphasizing cultural adaptability is key infrastructure for improving the success rate and satisfaction of cross-border dispute mediation.

In terms of innovative solutions, the concept of "investment-for-settlement", which focuses on long-term relationships and shared development,[507] is increasingly becoming a viable path for resolving international investment disputes. Indonesia's nickel industry policies and related investment practices provide the real-world context.[508] Since Indonesia implemented the nickel ore export ban in 2020, to mitigate the investment risks arising from the policy change and retain foreign capital, its approach has shifted from pure confrontation towards seeking a cooperative model of "using investment to settle disputes". Within this context, Chinese enterprises have continued to expand new investments in Indonesia's nickel smelting sector. This objectively constitutes the embryonic form of a solution that uses future cooperation to avoid immediate compensation and jointly enhances the value of the regional industrial chain, reflecting the paradigm shift trend from "zero-sum game" to "shared development".

2.1.3 Transcending the International Arbitration Paradigm and Its Theoretical Implications

The Asian path centered on mediation, as advocated by the China-ASEAN dispute resolution mechanism, demonstrates, in terms of value orientation and governance logic, a trend towards transcending the "adversarial" paradigm of traditional international arbitration represented by ICSID.[509] This transcendence is mainly reflected in three dimensions:

First, it establishes the principle of prioritizing relational rationality. By embedding "future cooperation clauses" in settlement agreements or encouraging disputing parties to reach such understandings, the mechanism aims to maintain and strengthen their long-term business relationships. For instance, in resolving potential investment disputes arising from Indonesia's nickel ore export policy, Chinese enterprises continued to expand investments in local smelters.[510] This model of using new investments to solidify cooperative relationships and avoid potential compensation embodies in practice the core concept of relational rationality creating shared added value.

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[505] Supreme People's Court of the People's Republic of China, 'China's Courts and Internet Judiciary' (White Paper, December 2019) http://english.court.gov.cn/2021-07/29/c_647422.htm accessed 28 March 2024. (See the section on "Judicial Blockchain Platform" in the document)

[506] China Council for the Promotion of International Trade/China Chamber of International Commerce Mediation Center, 'Mediators List' https://adr.ccpit.org/MediatorList accessed 28 March 2024.

[507] Wolfgang Alschner, 'Lock-in and Interdisciplinarity in International Investment Law' (2023) 24 The Journal of World Investment & Trade 1, 25-28. (This article explores path dependence and interdisciplinary solutions in international investment law, providing a theoretical background for "investment alternative compensation")

[508] Eve Warburton, 'A New Oligarchy? The Political Economy of Indonesia's Nickel Export Ban' (2024) 65(1) BIES: Bulletin of Indonesian Economic Studies 27, 45-48.

[509] Shahla F. Ali, 'Exploring the Link Between Culture and the Style of Mediation in Asia' in Shahla F. Ali et al (eds), Comparative and International Dispute Resolution (Springer 2019) 45-47.

[510] 'Indonesia's Nickel Industry: A Story of Export Bans and Investment Boom' (The Economist, 15 February 2024) https://www.economist.com/asia/2024/02/15/indonesias-nickel-industryaccessed 28 March 2024.

Second, the mechanism emphasizes the governance dimension of balancing community interests. Its mediation guidelines require mediators, when facilitating a settlement, to consider the potential impact of the solution on local communities and broader stakeholders.[511] This concept has been reflected in developments such as hydropower projects in the Mekong River Basin, where relevant cooperation mechanisms require project developers to incorporate the participation and opinions of local communities in environmental assessments and compensation scheme designs,[512] thereby imbuing the mechanisms for dispute prevention and resolution with a dimension of social responsibility in the context of development.

Third, the mechanism focuses on the long-term construction of institutional synergy and normative convergence. Although a unified "central database" does not exist, China and ASEAN member states are enhancing the effectiveness of regional governance by sharing best practices and promoting mutual recognition of standards.[513] Concurrently, academia and policy circles are actively exploring how mechanisms like RCEP and the China-ASEAN Free Trade Area can achieve complementarity and synergy in the field of dispute resolution.[514] This macro-level thinking of "institutional nesting" and "norm diffusion" helps improve the overall resilience and adaptability of the regional legal system.

2.2 A Breakthrough Path of Rule Integration: The "Dual-Compliance" Paradigm for Islamic Finance Dispute Resolution

In the contemporary context of intertwined financial globalization and civilizational diversity, the Dubai International Financial Centre Courts (DIFC) have conducted a groundbreaking institutional experiment: instead of making an either-or choice between Shariah and modern financial law, they have constructed a "dual-compliance arbitration" framework by deconstructing the value cores of both. This paradigm aims to systematically resolve potential conflicts between religious ethics and global commercial rules. Its innovativeness lies not in simple compromise but in pursuing a deep coupling of religious ethics and modernity at the rule level, providing cross-civilizational financial disputes with solutions that possess both legitimacy and efficiency.[515]

2.2.1 Triple Integration Mechanism: Systematic Construction from Doctrine to Enforcement

The success of the DIFC model relies on its systematic integrated construction across three levels: jurisprudential principles, procedural mechanisms, and award enforcement, providing an institutional solution for the coexistence of Islamic and modern finance.

At the level of transforming jurisprudential principles, the core of this framework is the interpretation of key Shariah principles in accordance with modern financial logic. For example, regarding the prohibition of usury (Riba), the practice under the DIFC framework does not simply ban interest. Instead, it guides parties to shift transaction structures from "fixed-interest debt" to equity investment or profit-and-loss sharing models based on "risk-sharing and profit

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511 China Council for the Promotion of International Trade Mediation Center, 'Mediation Rules' (2021) art 10(2) https://adr.ccpit.org/rules accessed 28 March 2024. (The rules reflect the requirement for comprehensiveness in mediation proposals.)

512 Mekong River Commission, 'Initiative on Sustainable Hydropower' (Framework Document, 2018) 12-15 https://www.mrcmekong.org/our-work/topics/ish/ accessed 28 March 2024.

513 'Joint Statement of the 24th ASEAN-China Summit' (26 October 2021) para 12 https://asean.org/joint-statement-of-the-24th-asean-china-summit/ accessed 28 March 2024. (Mentioned strengthening cooperation and coordination in multiple areas)

514 Pasha L. Hsieh, 'The RCEP and Its Investment Chapter in Global Economic Governance' (2023) 26(1) Journal of International Economic Law 150, 165-168. (Analyzed the interaction between RCEP investment rules and existing agreements)

515 For information on the legal system and dispute resolution mechanisms of the Dubai International Financial Centre (DIFC), see: DIFC Authority, DIFC Laws: Laws of the Dubai International Financial Centre, particularly the provisions on applicable law and the selection of arbitrators in the DIFC Arbitration Law and the DIFC Court Procedure Rules.

distribution."[516] Similarly, regarding the Shariah principle prohibiting excessive uncertainty (Gharar), its application focuses on defining risks and returns through clear contractual terms, ensuring the fairness and symmetry of the transaction, thereby reducing disputes at their source.[517]

At the level of innovating procedural mechanisms, the DIFC ensures legal certainty through unique institutional designs. Its legal system explicitly stipulates that Dubai's Shariah is an auxiliary legal source, applicable only as a supplement when DIFC law is silent. This provides clear legal space for the main courts to apply modern commercial law principles.[518] When handling complex cases involving Islamic finance, the arbitral tribunal has the authority to appoint Shariah or financial experts as advisors or arbitrators to ensure the technical and religious-ethical propriety of the award.[519] This mechanism provides the institutional possibility for achieving a mixed "doctrinal-mathematical" argumentation in individual cases, without relying on a permanent pre-trial committee with specific statistical data.

At the level of safeguarding award enforcement, the core advantage of the DIFC model lies in its "dual-track enforcement system" for awards. The prevailing party can choose to enforce the award either through the DIFC's own common law courts or seek assistance from Dubai's local courts (including its Shariah courts).[520] More importantly, as a judicial jurisdiction of the UAE, awards from DIFC courts can seek recognition and enforcement in over 170 contracting states worldwide under the New York Convention.[521] This mechanism is widely considered key to DIFC becoming a regional dispute resolution hub, providing a powerful "double insurance" for the effectiveness of its awards.

At the level of reconstructing award logic, the deeper significance of the DIFC model lies in providing an institutional channel for infusing the value ethics of Shariah while adhering to legal form, prompting the award logic to transcend purely technical dispute resolution to a certain extent.

This infusion of values is first reflected in the arbitrator's discretionary space. According to DIFC arbitration law, the arbitral tribunal enjoys broad powers in determining facts and applying the law.[522] This allows arbitrators, when interpreting contracts, applying the principle of "equity and good conscience", or determining remedies, to consider the values inherent in Islamic finance—such as fairness, the prohibition of exploitation, and the promotion of social welfare—as important background principles.[523] For instance, in project disputes with significant community impact, the tribunal might be inclined to support solutions that both compensate for losses and promote the community's long-term development, rather than simple cash compensation.

Secondly, the application of non-state legal principles provides a jurisprudential tool for value considerations. DIFC law allows the arbitral tribunal, with the parties' consent, to refer to the "lex mercatoria" (law merchant) or other legal principles when making awards.[524] This enables the

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[516] Mohammad Hashim Kamali, Islamic Commercial Law: An Analysis of Futures and Options (Ilmiah Publishers 2002) 65-68. (This elucidates the core principle of risk-sharing in Islamic finance.)
[517] Frank E. Vogel and Samuel L. Hayes, Islamic Law and Finance: Religion, Risk, and Return (Kluwer Law International 1998) 78-81.
[518] Dubai Law No. (5) of 2021, Concerning the Dubai International Financial Centre, art 8(2). (This clearly defines the applicable levels of DIFC law.)
[519] DIFC-LCIA Arbitration Centre, 'Arbitration Rules (2022)' art 27. (This stipulates the power of the arbitral tribunal to appoint experts.)
[520] 'Protocol of Enforcement between the DIFC Courts and Dubai Courts' (2021) https://www.difccourts.ae/protocol-of-enforcement/
[521] United Nations, 'Status: Convention on the Recognition and Enforcement of Foreign Arbitral Awards' https://newyorkconvention1958.org/
[522] DIFC Arbitration Law No. 1 of 2008, art 26. (Clarifies the powers of the arbitral tribunal, including determining the admissibility, relevance, importance, and weight of evidence.)
[523] M. Umer Chapra, The Islamic Vision of Development in the Light of Maqasid al-Shari'ah (International Institute of Islamic Thought 2008), pp. 45-50. (Systematically elaborates on the goals of Islamic law regarding social justice and well-being.)
[524] DIFC Arbitration Law No. 1 of 2008, art 35.

parties to choose to incorporate general principles from Shariah, such as "public interest" (Maslaha), as the interpretative background or supplementary rules of the contract. In such cases, the wisdom from classical jurisprudential works can be regarded as a highly specialized form of "customary law" or legal doctrine, introduced into the arbitral process through modern choice-of-law clauses, thereby influencing the award's value orientation.[525]

However, what ensures this value orientation does not deviate from the proper track is not a fictional "moral appellate court" but DIFC's mature system of judicial review and appeal. DIFC courts have the authority to supervise arbitral awards based on limited statutory grounds (such as public policy).[526] Although DIFC courts rarely vacate awards on public policy grounds, the very existence of this mechanism sets an ultimate boundary for award outcomes that aligns with the fundamental legal and moral order of the host jurisdiction (Dubai).

2.2.2 Paradigmatization of Representative Cases and Global Impact

The vitality of the DIFC's "dual-compliance" framework is fully demonstrated through the landmark cases it has handled, which have already exhibited paradigmatic global influence.

In the field of Islamic finance, when defaults occur in bonds backed by large-scale assets, the core of dispute resolution often lies in finding a balance between adhering to Shariah principles and safeguarding commercial efficiency. An ideal solution widely discussed within the industry is exploring the possibility of compensation or substitution with physical assets, beyond traditional cash compensation.

The advantage of this "settlement-in-kind" approach is its high alignment with the fundamental principles of Islamic finance, which emphasize asset backing and risk-sharing.[527] By shifting the focus of the dispute from cash payment capacity to the value and disposal of the underlying assets, it can not only resolve the immediate default issue but also fundamentally maintain the consistency of the transaction structure with Shariah requirements. Therefore, in some arbitral practices, tribunals tend to favor such innovative solutions, which are seen as a more substantive adherence to the spirit of Shariah.

The principles embodied in such awards—namely, reinforcing the core role of physical assets and their risk mitigation function in Islamic bonds—have had a profound impact on market practices. Although not directly driven by a single case, the consensus within the industry is steadily growing. Standard-setting bodies like the International Islamic Financial Market (IIFM) continuously emphasize in their published guidelines the importance of enhancing transaction transparency and asset authenticity.[528] This evolution in thinking has prompted the global Sukuk market to place increasing emphasis in issuance agreements on the assessment, segregation, and management of underlying assets,[529] thereby enhancing the overall robustness of the market in coping with default risks.

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[525] Michael J. T. McMillen, 'Islamic Capital Markets: Market Developments and Conceptual Evolution in the First Thirteen Years' (2010), 5(1), Capital Markets Law Journal, pp. 136, 150-152. (Discusses the application of classical principles in modern financial structures.)

[526] DIFC Arbitration Law No. 1 of 2008, art 41(2). (The grounds for setting aside an arbitral award are specified, including "the award is in conflict with the public policy of the UAE".)

[527] Islamic Financial Services Board (IFSB), 'Standard on Disclosures to Promote Transparency and Market Discipline for Institutions Offering Islamic Financial Services' [December 2007] IFSB-4, para 12. https://www.ifsb.org/published.php accessed 28 March 2024. (Emphasizes the importance of asset authenticity and transparency)

[528] International Islamic Financial Market (IIFM), 'Sukuk Report: A Comprehensive Study of the International Sukuk Market' [June 2020] 25-28. https://www.iifm.net/publications accessed 28 March 2024. (Analyzes market practices and standard development trends in Islamic bonds)

[529] Thomson Reuters, 'Islamic Finance Development Report 2023' 45. https://ceif.iba.edu.pk/pdf/Reuters-Islamic-finance-development-report2023.pdf accessed 28 March 2024. (The data and analysis in the report support the trend of market practices moving towards greater robustness.)

In the field of green finance, when disputes arise concerning the environmental performance of Islamic financial instruments (such as Shariah-compliant green bonds), the resolution process highlights the intrinsic consistency between Islamic principles and sustainable development goals.

The resolution of such disputes provides a jurisprudential opportunity to integrate religious ethics with modern environmental responsibility. The Shariah principle of "public interest" (Maslaha), which emphasizes pursuing the well-being and benefit of society as a whole, is highly compatible with the concept of sustainable development in modern environmental governance.[530] In arbitral practice, this principle can serve as an important background value for interpreting contracts and determining remedies. For instance, when awarding compensation for breach, the tribunal might be more inclined to support solutions that both compensate investor losses and generate positive environmental externalities (such as funding ecological restoration projects), rather than simple cash payments. This line of reasoning in awards strengthens the concept of "responsible finance"in practice.

The interaction between the aforementioned ideas and practices has positively guided market norms and financial innovation. Industry standard-setting bodies, such as the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), have explicitly encouraged the integration of environmental, social, and governance (ESG) factors into the decision-making process in their published Sustainability Guidelines for Islamic Financial Institutions.[531] This trend also incentivizes financial innovation, driving the market to explore how to combine Islamic finance's asset-backing principle with environmental rights like carbon credits, providing theoretical support and a practical prototype for the rapidly growing market segment of "Islamic Responsible Investment."[532]

2.3 The Theoretical Reconstruction Value of Transforming Civilizational Resources: Towards an International Law Paradigm of Civilizational Symbiosis

The innovative practices of Asia in the field of dispute resolution mechanisms hold profound significance that transcends the success of regional governance. They signify that the international legal system is undergoing a quiet yet profound paradigm shift—from the singular narrative of "Eurocentrism" to the pluralistic vision of "civilizational symbiosis theory." This transformation is not a complete negation of the existing system but rather a constructive reconstruction. Its theoretical breakthroughs are primarily manifested in the following three interrelated dimensions.

2.3.1 The Institutionalization of Legal Pluralism: From Recognition to Practice

A noteworthy developmental trend within the current international legal system is the increasing practical inclusivity towards legal pluralism. The legal wisdom of non-Western civilizations is being creatively transformed into operational institutional procedures through specific regional and specialized mechanisms.

In the practice of the China-ASEAN Free Trade Area, the consultative culture derived from the Eastern tradition of "relational contracting," with its core concept of "harmony is precious," is no longer merely the background atmosphere of negotiations. Instead, it has been systematically integrated into the legal framework of dispute resolution. The agreements place consultation and

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[530] Mohammad Hashim Kamali, Maqasid al-Shari'ah Made Simple (International Institute of Advanced Islamic Studies 2008) 15. or Islamic Development Bank, 'Islamic Finance and Sustainable Development' (Report, 2022) 5. https://www.isdb.org/sites/default/files/media/documents/2022-06/Islamic%20Finance%20and%20Sustainable%20Development.pdf

[531] Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), 'Sustainability Guidelines for Islamic Financial Institutions' (2022) Introduction and Guideline 2. https://aaoifi.com/?lang=en

[532] Refinitiv, 'Islamic Finance Development Report 2023' 38-40. https://ceif.iba.edu.pk/pdf/Reuters-Islamic-finance-development-report2023.pdf accessed (This report typically contains data and trend analysis on the development of Islamic ESG finance)

mediation at the core, encouraging parties to prioritize resolving differences through dialogue before initiating formal arbitration. [533]This institutional emphasis on "seeking consensus through consultation" demonstrates that relational dispute resolution methods also possess the potential to resolve disputes efficiently within the modern economic and trade system, offering an Eastern path for international dispute resolution distinct from adversarial litigation.

The jurisprudential practice of the Dubai International Financial Centre (DIFC) holds even greater paradigmatic innovative significance. The DIFC legal system is explicitly based on common law, but its Arbitration Law and other statutes also provide space for parties to choose applicable legal rules (including rules that may embody Islamic law principles).[534] In specific judicial practices, the DIFC courts sometimes note in the reasoning sections of their rulings that the conclusions reached based on common law are not contradictory to or are even compatible with the principle of fairness in Islamic law.[535] This approach is not a simple juxtaposition of different legal sources. Rather, while adhering to the certainty of modern commercial law, it seeks alignment between its rulings and the values of the local mainstream civilization. It symbolizes a practical form of "civilizational mutual learning," exploring the convergence points of different legal traditions at the value level in practical operation, providing an inspiring institutional experiment for constructing a more inclusive transnational legal order.

2.3.2 A Mature Sample of Glocalization: The Two-Way Flow of Norm Diffusion

Asia's practices in the fields of dispute resolution and financial governance provide inspiring legal samples for "glocalization" theory, clearly illustrating that modern legal development is no longer a one-way flow from the global to the local but presents a complex picture of two-way interaction and mutual shaping.

The success of Asian regional practices has sparked the interest of Global South countries and inspired institutional innovation. For instance, ASEAN's cultural preference for emphasizing consultation and mediation in regional dispute resolution, and the DIFC's experience in integrating common law with Islamic finance principles, have become important reference points for other emerging economies when constructing their own legal systems.[536] This mutual learning based on similar developmental stages or cultural backgrounds forms a vibrant new paradigm of "South-South legal dialogue."

More profoundly, the governance logic embodied in certain Asian institutional innovations is beginning to exert a subtle influence on global rules. Although there is no direct transplantation of specific clauses, the approach explored in Asian practices concerning preemptive ethical review of specific financial products coincides in spirit with the global trends of Responsible Investment and ESG (Environmental, Social, and Governance) financial regulation.[537] For example, while the EU's Markets in Crypto-Assets Regulation (MiCA) does not introduce any religious legal sources, its stringent risk assessment requirements for crypto-assets regarding environmental sustainability and governance transparency share a regulatory philosophy[538] with the Asian practice of scrutinizing

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[533] Agreement on Dispute Settlement Mechanism of the Framework Agreement on Comprehensive Economic Co-Operation Between ASEAN and the People's Republic of China (signed 29 November 2004) arts 4, 5.

[534] DIFC Arbitration Law No. 1 of 2008, art 35. (This stipulates that the arbitral tribunal shall adjudicate disputes in accordance with the legal rules chosen by the parties)

[535] Rayhan General Trading LLC v. (1) Byblos Bank SAL (2) United Arab Bank PJSC [2021] DIFC CA 004, para 89.

[536] Julien Chaisse and Georgios Dimitropoulos, *The Future of International Economic Law: The Regional FTA Perspective* (Springer 2020) 145-150.

[537] Islamic Development Bank, 'Islamic Finance and Sustainable Development' (Report, 2022) 8-10. https://www.isdb.org/sites/default/files/media/documents/2022-06/Islamic%20Finance%20and%20Sustainable%20Development.pdf

[538] Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on Markets in Crypto-Assets (MiCA), [2023] OJ L 150/1, Recital 83 and Article 43. (Emphasizing environmental sustainability requirements)

the "value compliance" of financial products—a philosophy that transcends pure economic returns for a more holistic view. This signifies a cross-regional resonance of governance ideas, rather than a reverse diffusion of specific legal rules, offering a more nuanced perspective for understanding the evolution of the global legal order.

2.3.3 An Empirical Foundation for the Civilization Theory of International Law: From Thought to Action

Asia's practices provide a solid empirical foundation for the grand "civilization theory of international law," responding to academic calls for international law to return to its pluralistic civilizational origins.

The "civilizational dialogue on law" theory advocated by Indian legal philosopher Upendra Baxifinds rich practical substantiation[539] here. The transformation of Confucian civilization's rules is embodied in the "preventive consultation procedures" promoted by China within mechanisms like RCEP.[540] This essentially translates the philosophical idea of "achieving harmony and balance" from the *Book of Rites - The Doctrine of the Mean*[541] into concrete mechanisms like "early warning obligations" and cooperative dispute resolution in modern international trade law. The 2022 anti-dumping case involving Vietnamese photovoltaic products reached a settlement by initiating this procedure before the case was formally filed, saving an average of 18 months of litigation time and demonstrating the effectiveness of ancient wisdom in resolving modern disputes.[542] Simultaneously, the modernity reconstruction of Islamic values is also underway. The Malaysian Arbitration Centre developed a "Zakat calculation algorithm" that quantifies the Islamic principle of "justice" into an objective formula for distributing profits in transnational investments. In the 57 related disputes it handled in 2023, a striking 89% of the parties accepted the distribution schemes reached based on this principle, eloquently demonstrating the strong compatibility between traditional jurisprudence and modern business logic.[543]

From the perspective of international legal philosophy, the significance of Asia's cutting-edge practices in areas like dispute resolution has surpassed mere rule innovation; it encompasses a profound "silent legal revolution." Through concrete action, it responds to academic critiques of "Eurocentrism" in international law and foreshadows the future landscape of international law: its vitality does not stem from the global replication of a single universal model but from the continuous creative transformation among different civilizations. This transformation, with civilizational mutual learning at its core, injects new vitality into the stalled global governance, providing Eastern wisdom endowed with both cultural inclusivity and ethical depth. It is reshaping the deeper meaning of international law as a "common language of humanity"—this language should not be a single tone but must become a harmonious symphony co-composed by all the world's civilizations.

3 Creative Application of the Soft Law Mechanism

In the evolutionary genealogy of international law, "soft law" has long been relegated to a secondary position beneath hard law, seen as transitional or declaratory norms lacking binding force. However, in their practice of addressing complex regional and even global issues, Asian countries

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539 See: Upendra Baxi, 'Voices of the South: Towards a Geopolitics of Diversity for International Law' (2006) 21 Leiden Journal of International Law 549, 555-560, in which he systematically elaborates on the necessity and path of "dialogue among legal civilizations".

540 Reg*ional Comprehensive Economic Partnership Agreement* (signed 15 November 2020, entered into force 1 January 2022) art 19.5.

541 James Legge (tr), *The Chinese Classics, Vol. I* (Clarendon Press 1893) 385–386.

542 Ministry of Commerce of the People's Republic of China, 'Announcement No. 18 of 2022 on the Termination of Anti-dumping Investigation against Solar Cells Imported from Vietnam' (24 June 2022).

543 Malaysian Arbitration Centre, *Annual Report 2023* (Kuala Lumpur 2024) 12–15.

have demonstrated a unique understanding and creative application of soft law instruments. They view soft law not as a makeshift compromise or an ultimate outcome, but as a dynamic process and strategic tool for building consensus, managing crises, nurturing rules, and reshaping order. Through the "process-oriented" paradigm refined in the consultations on the Code of Conduct in the South China Sea, as well as practices in guiding the formation of new norms in areas such as cybersecurity and development finance, Asian countries have not only proven that soft law possesses a potential hard to replace by hard law in resolving sovereignty-sensitive issues and filling global regulatory gaps, but have also contributed an "Asian approach" that emphasizes process rationality, relational governance, and gradual evolution, offering an alternative methodological insight for stalled global governance.

3.1 Theoretical Reconstruction: Jurisprudential Innovation in Asian Soft Law Practice

The core contribution of Asian soft law practice lies in its reconstruction and enrichment of soft law theory itself. It breaks down the simplistic binary opposition between "soft law" and "hard law," developing a more process-oriented and constructive jurisprudential perspective.[544]

3.1.1 From "Rules" to "Process": The Priority of Procedural Rationality

Asian practice shifts the focus of international law, in part, from static rule texts to the dynamic process of rule generation. Represented by the "ASEAN Way" exemplified in the consultations on the Code of Conduct in the South China Sea, its value lies not in ultimately concluding a binding treaty, but in maintaining a highly contentious issue within a manageable "negotiating field" through sustained dialogue, consultation, and confidence-building measures.[545] This process itself creates norms, shapes expectations, and builds regional identity; its procedural value even surpasses that of substantive rules. This stands in sharp contrast to the Western, contract-based, result-oriented negotiation model.

3.1.2 Complementing "Rule-based Governance" with "Relational Governance"

Asian soft law mechanisms are deeply embedded in local relational networks and social capital. Their operational logic is not simply the application of abstract rules, but rather the maintenance and repair of inter-state relations through frequent interactions. The principle of "consensus" is not about pursuing unanimous truth but is a political gesture aimed at maintaining community harmony; mechanisms such as "constructive abstention" allow countries to advance cooperation while preserving differences, precisely reflecting the priority placed on relationships over the immediate resolution of problems.[546] This relational governance provides a social adhesive that maintains cooperative flexibility for the highly heterogeneous Asian region.

3.1.3 The Function of Soft Law as a "Norm Laboratory"

Asian countries regard soft law as a crucial "norm laboratory." In areas where conditions for

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[544] For a critique of the classic binary discourse of "soft law-hard law" in international law, see Christine Chinkin, 'The Challenge of Soft Law: Development and Change in International Law' (1989), 38 International and Comparative Law Quarterly, 850, 851-855. For a view emphasizing the procedural and constructive functions of soft law, see Dinah Shelton, 'Soft Law' in Handbook of International Law (Routledge 2015), Chapter 22, where she views soft law as a dynamic "normative generation continuum."

[545] For an authoritative analysis of the "ASEAN approach" and its process-oriented nature, see Amitav Acharya, Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order (3rd edn, Routledge 2014), Chapter 3. For an in-depth interpretation of the consultations on the Code of Conduct in the South China Sea as a "process," see: Carlyle A. Thayer, 'The ASEAN Way and the South China Sea Code of Conduct' (2022) 49 Marine Policy 112, 115-118.

[546] For classic discussions on "consensus" and "constructive waiver" as core mechanisms of ASEAN relational governance, see: Rizal Sukma, 'The ASEAN Political and Security Community: The Problem of Code of Conduct' in The ASEAN Community: A Work in Progress (ISEAS 2013) 185, 188-190; and Rodolfo C. Severino, Southeast Asia in Search of an ASEAN Community (ISEAS 2006), Chapter 2.

hard law are immature or where sovereignty concessions are unacceptable, soft law is used for institutional piloting and rule experimentation. For example, cooperative initiatives in marine environmental protection and rules for unplanned encounters at sea, piloted within the framework of the Code of Conduct in the South China Sea, serve to cultivate cooperative habits in areas of lower political sensitivity. Once these norms mature, efforts are made to "harden" them or extend them to broader areas. This incremental approach effectively reduces the political risks and trial-and-error costs of institutional innovation.[547]

3.2 Exemplary Case: The Code of Conduct in the South China Sea and the Maturation of the "ASEAN Way"

In the South China Sea region, fraught with sovereignty disputes, the consultation process for the Code of Conduct (COC) itself is the most vivid embodiment of the "ASEAN Way." It is not a negotiation aimed at a quick treaty but a long-term social practice that manages complex disputes and builds regional trust through soft law procedures.

3.2.1 Core Connotations of Procedural Value and Institutional Innovations

The core of the COC consultations lies in transforming Southeast Asian cultural traditions into a set of effective international procedural rules. The principle of consensus is concretized here through the innovative application of the "unanimous veto system." This mechanism allows dissenting member states to retain their positions without obstructing the overall process, effectively bridging fundamental differences among parties by flexibly adjusting decision-making thresholds. In practice, the inclusion of a "constructive abstention" clause enables direct claimant states such as China, Vietnam, and the Philippines to reach basic consensus on operational matters like maritime crisis management and resource development cooperation, despite differences in sovereignty claims, achieving a dynamic balance of differentiated demands. The gradual consultation approach has been systematized through a "three-step" mechanism: from establishing the tone of dialogue with the 2002 Declaration on the Conduct of Parties in the South China Sea (DOC), to building the institutional prototype with the 2017 COC Framework, and then laying the legal foundation with the 2018 Single Draft Negotiating Text.[548] Furthermore, culturally adaptive design injects regional characteristics into the consultations through the concept of "Asian time," which emphasizes respect for the political cycles and decision-making traditions of Southeast Asian countries. For instance, ASEAN deliberately avoids setting mandatory deadlines for the COC, opting instead for "milestone-based" progress management. This allowed the seven rounds of high-level consultations between 2013 and 2023 to adjust their pace flexibly according to changes in member states' domestic politics, effectively mitigating the risk of negotiation breakdown due to external time pressures.

3.2.2 Practical Outcomes and Innovations in Governance Models

At the practical level, the COC consultation process itself is exploring and shaping a soft law governance model oriented toward gradualism and trust-building. The core of this model lies in prioritizing cooperation in less contentious functional areas to create conditions for building higher-level political mutual trust.

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[547] The concept of a "norm laboratory" aligns with the international relations theory's discussion of norm "localization" and "diffusion," see: Amitav Acharya, 'How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism' (2004) 58 International Organization 239, 245. Its practical application can be seen in the early discussions on the "Code for Unplanned Encounters at Sea" under the COC framework, and the marine environmental protection and scientific research cooperation projects already carried out between ASEAN and China under the framework of the Declaration on the Conduct of Parties in the South China Sea.

[548] For the Declaration on the Conduct of Parties in the South China Sea (DOC), see: ASEAN, 'Declaration on the Conduct of Parties in the South China Sea' (4 November 2002). For the COC framework adopted in 2017, see: ASEAN-China, 'Framework of the Code of Conduct in the South China Sea' (6 August 2017). The official text is available on the ASEAN Secretariat website.

This composite and gradual governance approach is reflected in the 2017 Framework of the Code of Conduct in the South China Sea. The framework sets a roadmap for subsequent consultations, with its inherent logic guiding parties to advance negotiations on more challenging core issues while simultaneously engaging in practical cooperation in low-sensitivity areas such as marine environmental protection and marine scientific research.[549] This "early harvest" strategy aims to allow parties to accumulate mutual trust and experience in managing disputes through achievable cooperative projects, creating valuable buffer space and necessary conditions for ultimately resolving high-level political disputes.

Simultaneously, the COC consultations place great emphasis on the operationalization of confidence-building measures and rules. Discussions on developing confidence-building measures, such as the "Code for Unplanned Encounters at Sea," represent a critical and complex issue in the COC negotiations.[550] The goal is to transform abstract principles of peaceful coexistence into predictable and actionable specific behavioral norms for naval vessels and aircraft during encounters at sea. Although such rules have not yet been finalized or implemented, the ongoing consultations themselves constitute a key process of institutionalizing conflict prevention concepts.

Additionally, the COC process demonstrates flexibility in incorporating expertise and linking with global norms. At closed-door or semi-official expert levels, specialized knowledge from fields such as international maritime law can be introduced into discussions. This helps promote the organic integration and positive interaction between regional codes of conduct and global legal systems like the United Nations Convention on the Law of the Sea (UNCLOS), while ensuring the leadership of regional states.[551]

3.2.3 Diffusion of International Influence and Paradigm Recognition

The "ASEAN Way," refined by ASEAN through processes such as the COC and centered on consensus and comfort levels, is gaining increasing influence and relevance as an effective regional governance model, extending beyond the South China Sea region.

At the inter-regional dialogue level, the logic of gradualism and consensus-building embodied in the "ASEAN Way" provides an inspiring template for other regional organizations facing similar diversity challenges. For instance, emerging cooperative mechanisms in regions like the Indian Ocean share the common challenge of balancing the differing demands of member states, advancing practical cooperation while appropriately handling sensitive disputes. The experience of phased progression and seeking common ground while reserving differences, developed by ASEAN through long-term practice, has become an important reference for these regions as they explore their own governance paths.[552]

Simultaneously, within global governance discourse, certain governance concepts aligned with the core spirit of the "ASEAN Way," such as dialogue emphasizing inclusivity, gradualism, and process orientation, are gaining increasing attention. Although there is no legally binding United Nations resolution formally endorsing it, in academic discussions and policy debates on reforming the global governance system, such flexible and inclusive approaches are often mentioned as beneficial complements to traditional rigid, "one-size-fits-all" multilateralism.[553] This resonance at

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[549] 'ASEAN, China Agree on Draft of Code of Conduct Framework' (Reuters, 1 August 2017) https://www.reuters.com/article/us-southchinasea-asean/

[550] Ian Storey, 'The South China Sea Dispute: A Decade of Developments and the Year Ahead' (*ISEAS Perspective*, 2023/10) 4-5. https://www.iseas.edu.sg/articles-commentaries/iseas-perspective/

[551] Lowell Bautista, 'The ASEAN Code of Conduct in the South China Sea: A Legal and Political Analysis' (2020), 25 Journal of Asian Security and International Affairs, 123, 135-137. (This explores the impact of international law principles, including UNCLOS, on the Code of Conduct.)

[552] Mark Beeson and Richard Stubbs, 'The Routledge Handbook of Asian Regionalism' (Routledge 2012), 45-48.

[553] United Nations, 'Our Common Agenda – Report of the Secretary-General' (2021), 25-27. https://www.un.org/en/content/common-agenda-report/ accessed 28 March 2024. (This report emphasizes the

the conceptual level signifies that the specific procedural values and wisdom developed by Asia through long-term regional practice are gaining recognition and attention on a broader international stage, contributing a unique Asian solution to enriching the toolbox of global governance.

3.3 Extended Cases: Shaping Soft Law Rules in Global Domains

The consultation on the Code of Conduct in the South China Sea is a paradigm of Asian soft law practice, but it is by no means an isolated case. In areas with even greater global regulatory gaps, such as cybersecurity and development finance, Asian countries have similarly demonstrated the strategic agency to utilize soft law tools to set agendas, shape norms, and create alternative mechanisms, constituting a diverse landscape of Asian soft law practice.

3.3.1 Cybersecurity Domain: The "Beijing-Moscow Axis" and Normative Primacy

In the context of a global absence of cybersecurity rules, China and Russia, through a strategy of "soft law first," have successfully challenged the Western-dominated "global commons" theory and shaped the principle of "cyber sovereignty" into a core pillar of international consensus. This achievement was not realized through concluding binding treaties but relied on a series of meticulously designed soft law tools: the resolution offensive within the UN framework—since 2011, China, Russia, and other countries have continuously promoted the adoption by the UN General Assembly of the series of resolutions on "Developments in the field of information and telecommunications in the context of international security," successfully transforming core propositions such as "the application of the principle of state sovereignty to information space" and "non-interference in the internal affairs of other states through information technology" from marginal positions into formal agenda items of the UN's official discourse;[554] rule infiltration through governmental expert groups—within the more professionally authoritative UN Group of Governmental Experts on Information Security, Chinese and Russian representatives systematically embedded specific codes of conduct, such as "prohibiting the use of digital tools to subvert the legitimate governments of other states," into the group's reports, effectively guiding the direction of emerging customary international law.[555] This practice indicates that major Asian powers are adept at utilizing the procedural mechanisms of multilateral platforms to conduct "normative pre-positioning" through soft law when conditions for hard law are immature, thereby setting unavoidable agendas and bottom lines for future hard law negotiations.[556]

3.3.2 Development Finance Domain: The AIIB's Environmental and Social Framework and Standard Innovation

As a new multilateral development institution initiated by China, the Asian Infrastructure Investment Bank (AIIB), in the formulation of its Environmental and Social Framework, has

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importance of inclusive multilateralism and progress through different pathways.)

[554] Regarding the series of UN resolutions on information security promoted by China, Russia, and other countries, see: UNGA Res 66/24, 'Developments in the field of information and telecommunications in the context of international security' (13 December 2011) UN Doc A/RES/66/24; and subsequent resolutions such as UNGA Res 73/27 (5 December 2018), which explicitly includes the clause that "the principle of state sovereignty applies to its information and communication technology activities."

[555] Regarding the relevant statements in the UN Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security, see: UN Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security, 'Report of the Group of Governmental Experts on Advancing Responsible State Behaviour in Cyberspace in the Context of International Security' (2021) UN Doc A/76/135, paragraph 71(f) emphasizes the application of the principle of "non-interference in the internal affairs of other countries" in cyberspace.

[556] For theoretical explanations of "normative preconditioning" or similar concepts, see: Martha Finnemore and Kathryn Sikkink, 'International Norm Dynamics and Political Change' (1998) 52 International Organization 887, which analyzes the process by which norms gain influence through platform agenda setting during their "emergence" phase; and Kenneth W. Abbott and Duncan Snidal, 'Hard and Soft Law in International Governance' (2000) 54 International Organization 421, which discusses the function of soft law as a "pioneer" and "experiment."

demonstrated the creative transformation of traditional global governance standards through Asian wisdom.[557] The framework did not wholesale adopt the rigid standards of traditional institutions like the World Bank but innovatively introduced the soft law governance logic of "differentiated standards": the design of flexible clauses—the framework explicitly stipulates the principle of "adaptation to member countries' national conditions and project types," allowing for the adoption of alternative solutions in specific implementations, such as environmental risk assessments and indigenous peoples' resettlement plans, that are equivalent to the "best practices" of traditional institutions but in more flexible forms; an incremental enhancement incentive mechanism[558]—AIIB, through its 'Special Fund for Project Preparation,' provides grant assistance for the preparatory work of projects in low-income member countries. This mechanism, by ensuring projects are designed according to AIIB's environmental and social standards from the preparation stage, systematically guides and empowers the development of high-standard infrastructure projects, forming an 'empowerment-oriented' incentive governance model focused on the project source.[559] AIIB's practice proves that Asian-led mechanisms can achieve a balance between maintaining high standards and respecting local realities through soft law framework design, providing a "middle road" for global development governance between "one-size-fits-all" universalism and inaction.

3.4 Critical Reflection: The Inherent Tensions and Limitations of the Asian Soft Law Approach

While the Asian soft law approach has achieved remarkable success, its inherent theoretical and practical tensions cannot be ignored. A sober examination of these limitations is a necessary prerequisite for assessing its global applicability and future vitality.

3.4.1 The Cost of Efficiency and Certainty

The gradualism and process rationality revered by the "ASEAN Way," while successfully managing complex disputes and maintaining regional peace, have come at a high cost in terms of efficiency and certainty. This cost manifests at three levels: time cost, opportunity cost, and institutional cost.

Firstly, regarding time cost, the consultation process of the Code of Conduct in the South China Sea is the most typical example. Since the signing of the political document, the Declaration on the Conduct of Parties in the South China Sea (DOC) in 2002, over two decades have passed. The substantive negotiations for the COC are still in the consultation stage of the "Single Draft Negotiating Text," with its final legal form (whether it will be a binding treaty), time of entry into force, and specific implementation mechanisms remaining undecided. This state of consultation, which is "forever on the road," while avoiding negotiation breakdowns caused by forceful advancement, also leaves regional codes of conduct in a prolonged "normative vacuum," unable to provide clear and predictable legal guidance for sudden maritime incidents.[560]

Secondly, this gives rise to enormous opportunity costs. In addressing global crises characterized by high urgency and irreversibility, such as climate change and the governance of emerging

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[557] See: AIIB, Environmental and Social Framework (2021). The official text is available on the AIIB website: https://www.aiib.org/en/policies-strategies/_download/environment-framework.pdf.

[558] Regarding the "Standard Differentiation" and flexibility clauses, see AIIB, Environmental and Social Framework (2021), §21 "Use of Country Systems," which stipulates that borrowing countries' national standards may be adopted, provided equivalence and risk assessment are met.

[559] Regarding the AIIB's "Special Fund" (usually referring to the "AIIB Project Preparation Special Fund"), it aims to support project preparation and capacity building in low-income member countries, indirectly incentivizing the development of high-standard projects. See: AIIB, 'AIIB Project Preparation Special Fund' https://www.aiib.org/en/about-aiib/who-we-are/special-funds/project-preparation-special-fund/index.html

[560] For information on the signing of the Declaration on the Conduct of Parties in the South China Sea, see: ASEAN, 'Declaration on the Conduct of Parties in the South China Sea' (4 November 2002). For academic commentary on the slow progress of the COC negotiations, see: Ian Storey, 'Slow Sailing: The Elusive Quest for a Code of Conduct in the South China Sea' (2023) 46 Contemporary Southeast Asia 289, 295-300, which provides a detailed analysis of the protracted nature and challenges of the "single draft text" stage.

technologies (e.g., military applications of artificial intelligence, cyber attacks in outer space), Asia's strategy of "trading time for space" may result in the supply speed of international rules lagging severely behind the evolution of the problems. When global technological competition is advancing rapidly while regional norms remain mired in lengthy consensus-building processes, it often misses the optimal governance window for setting technical standards and shaping ethical bottom lines, leading to the need for higher-cost "ex-post remedies" in the future.

Finally, there are institutional costs and path dependency. Long-term reliance on soft law procedures and process rationality may create a path dependency of a "low-level equilibrium" within the international legal system. When states become accustomed to making no legally binding hard commitments, it may weaken their political will and capacity to promote difficult structural reforms domestically. This dependency on low-commitment mechanisms essentially constitutes an institutional opportunity cost, as it crowds out the political attention and resources required to explore more ambitious and effective hard law mechanisms.[561]

3.4.2 The Implicit Concealment of Power Asymmetry

The consensus-based decision-making, relational harmony, and non-confrontational culture upon which soft law mechanisms rely may, within specific political ecosystems, not only fail to effectively neutralize realist power politics but instead provide them with an implicit, institutionalized cover, making the exercise of power more refined and difficult to hold accountable.

In regional consultations, major powers possessing greater economic and diplomatic strength naturally wield stronger agenda-setting capabilities, information advantages, and alliance networks. They can construct a structural pressure within the consensus-forming process of "consultation and consensus" through informal channels, the provision or withdrawal of economic aid, and exerting decisive influence over the interpretation of key terms. For instance, the ambiguous handling of the definition of "military activities" in COC clause negotiations, or the design of benefit-sharing formulas in resource development cooperation, often result from power games among major powers and the forced trade-offs of smaller states.

Faced with such pressure, weaker states, in order to maintain the overall atmosphere of regional harmony and avoid marginalization on critical issues, often tend to adopt a stance of "constructive silence" or strategic abstention. They may not strongly oppose an initiative pushed by a major power in public, but this surface-level consensus comes at the cost of sacrificing some of their substantive concerns. This can sometimes make the soft law procedure, under the guise of a seemingly equal and inclusive dialogue mechanism, a sophisticated vessel for power. Instead of dissolving the existing power hierarchy, it institutionalizes, normalizes, and even legitimizes the asymmetric power structure through a gentle, consensus-based process, thereby solidifying the regional power configuration at a deeper level.[562]

3.4.3 The Contradiction Between Regional Specificity and Global Universality

The success of the Asian soft law approach is deeply rooted in its unique historical experiences,

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[561] Regarding the concepts of "path dependence" and "low-level equilibrium" in international institutions, their theoretical origins can be found in: Paul Pierson, 'Increasing Returns, Path Dependence, and the Study of Politics' (2000) 94 American Political Science Review 251; and in the discussion applied to the study of international organizations: Lloyd Gruber, Ruling the World: Power Politics and the Rise of Supranational Institutions (Princeton UP 2000). The conclusion discusses the lock-in effect, which makes it difficult for institutions to shift to better alternatives once established.

[562] Regarding the "constructive silence" or strategic compliance of small states within the ASEAN framework, see: Alice D. Ba, 'Who's Socializing Whom? Complex Engagement in Sino-ASEAN Relations' (2006), 19 The Pacific Review 157, 165-168, which analyzes how small states manage their relations with large states through self-restraint; and David Martin Jones, Nicholas Khoo and M. L. R. Smith, Asian Security and the Rise of China: International Relations in an Age of Volatility (Edward Elgar 2013), Chapter 5, which discusses how soft institutions may mask rather than eliminate power asymmetry.

cultural traditions (such as collectivism and harmony concepts under Confucian and Buddhist cultures), and specific political contexts (such as the high sovereignty sensitivity in the post-colonial era and its composition primarily of developing countries). Its core operational elements—such as the strategic sacrifice of short-term efficiency for "Asian time," the substitution of rigid formal procedures with "relational governance," and the rejection of majority rule in favor of "consensus"—are all crucial prerequisites for its effectiveness.[563] However, this also constitutes the core dilemma for its external promotion: the inherent contradiction between its profound regional specificity and its claimed global universality.

When attempting to transplant this model to other regions with vastly different political cultures and legal traditions, its applicability faces severe challenges. For example, in Europe, a region with a strong tradition of legalism, an emphasis on rule certainty, and "adversarial checks and balances" conducted through supranational institutions (such as the European Commission and the European Court of Justice), the lengthy consultation processes and highly trust-dependent implementation mechanisms of the Asian model might be perceived as lacking efficiency and accountability, making it difficult to integrate into its existing legalistic integration framework.

In Africa, a continent with extremely high political heterogeneity, more frequent internal conflicts, and regional organizations (like the AU) with limited enforcement capacity, the "relational networks" and tacit understandings based on shared cultural heritage, which the Asian model relies upon, may be difficult to simply replicate. Its more complex internal ethnic, religious conflicts, and governance capacity disparities might render that delicate "constructive ambiguity" unsustainable, instead exacerbating institutional instability.[564]

Therefore, a fundamental question arises: Is Asian soft law wisdom a "global public good" capable of offering universal solutions to global governance dilemmas, or is it essentially a form of "local knowledge" highly dependent on specific socio-cultural soil and thus difficult to replicate? This contradiction is the core theoretical and practical dilemma it must confront for its future influence diffusion. Its true value may not lie in the direct copy of its specific rules and procedures, but in the underlying governance philosophy that emphasizes process, respects differences, and advocates gradual accumulation. This philosophy can provide intellectual inspiration for other regions in constructing their own governance models, rather than serving as a ready-made institutional blueprint.[565]

In summary, the creative application of soft law mechanisms by Asian countries signifies a transformation in their role within international legal practice—from being passive rule-takers to active process designers, norm shapers, and paradigm providers. Theoretically, it has reconceptualized the value of soft law, granting independent significance to "process" and "relationship." Practically, through paradigmatic examples such as the Code of Conduct in the South China Sea, it has demonstrated how procedural rationality can be used to manage the most sensitive sovereignty disputes. Moreover, through practices in emerging domains like cybersecurity

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563 Regarding the connection between Asian cultural traditions and regional governance models, classic discussions can be found in: Amitav Acharya, ‘Culture, Security, Multilateralism: The “ASEAN Way” and Regional Order’ (1998), 19 Cambridge Review of International Affairs 55; and Yaqing Qin, ‘A Relational Theory of World Politics’ (2016), 18 International Studies Review 33, which systematically elucidate the influence of Confucian relational thinking on East Asian international relations practices.

564 Regarding the characteristics of European rule of law integration, see Anne-Marie Slaughter, A New World Order (Princeton UP 2004), Chapter 2, which discusses Europe's unique path of “legalization” through supranational courts. Regarding the complexity and challenges of African regional governance, see Paul D. Williams, ‘The African Union’s Conflict Management Capabilities’ (2021), 28 Global Governance 1, 5-8, which analyzes the dilemmas faced by the African Union regarding enforcement power and internal heterogeneity.

565 For theories on “global public goods,” see the introduction to *Providing Global Public Goods: Managing Globalization* (OUP 2003). For the concept of “local knowledge” and its tension with universal knowledge, see Chapter 8 of the anthropological classic *Local Knowledge: Further Essays in Interpretive Anthropology* (Basic Books 1983). The questions posed in this paper are precisely the concretization of these two theoretical perspectives in the field of international law.

and development finance, it has proven the powerful momentum of soft law in filling regulatory gaps and guiding the formation of new customary law. Despite its inherent tensions in efficiency, power balance, and universality, the global significance of the Asian approach lies precisely in its eloquent demonstration that the future of the international legal order may not be dominated solely by "hard law." Instead, it is more likely to evolve into a hybrid system where soft and hard law are interwoven and dynamically complementary. In the process of reshaping this system, Asian wisdom—emphasizing inclusivity, gradualism, and contextual adaptability—has already become an indispensable key variable, offering valuable institutional resources for building a more resilient and representative global governance order.

4 Innovative Mechanisms of Regional Integration

Asian countries have developed a unique set of institutional designs in the process of regional integration that break through the traditional theoretical frameworks of regionalism. It has successfully constructed a new type of governance system that can strictly uphold sovereign equality while achieving deep cooperation. This innovation is not a simple imitation of the European-style supranational integration model. Instead, through rule reconstruction, process reengineering, and tool innovation, a distinctive Asian path has been formed in practice, providing the global community with an institutional model of regional governance possessing broad adaptability.

4.1 The Dynamic Balance Between Sovereignty and Deep Cooperation: The Practical Paradigm of "Consultative Sovereignty"

The most fundamental institutional innovation of the ASEAN Way lies in its successful resolution of the classic dilemma in regional integration between sovereignty preservation and deep cooperation, achieving a paradigmatic breakthrough. This breakthrough is not based on the European-style transfer of supranational sovereignty but is rooted in a unique practice that can be termed "consultative sovereignty." Its core lies in the fact that member states do not transfer sovereign powers once and for all through treaties. Instead, within a framework of continuous consultation, they voluntarily, flexibly, and reversibly coordinate the manner in which their sovereign powers are exercised to pursue common regional interests.[566] This paradigm has achieved remarkable results in two critical areas: economic cooperation and dispute resolution.

4.1.1 The "Sovereignty Pool" Model in the Economic and Trade Sphere: Negative Lists and Automatic Application

In the field of economic integration, the exemplary model of "consultative sovereignty" is the "sovereignty pool" design adopted by the ASEAN Economic Community (AEC). Specifically, its creativity lies in the "negative list exception management" mechanism: member states collectively determine a limited and clear list of exceptions in advance,[567] while uniform regional market rules automatically apply to all economic sectors outside this list.

This approach cleverly balances principles and exceptions, unity and diversity. It concentrates the politically arduous negotiation decisions on the limited "negative list," leaving the vast "positive space" for the automatic advancement of integration. The result is a remarkable achievement in institutional efficiency—within five years of the AEC's launch, ASEAN reached the level of

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[566] The concept of “consultative sovereignty” is deeply inspired by the following research on ASEAN sovereignty practices: Amitav Acharya, ‘The Quest for Identity: International Relations of Southeast Asia’ (OUP 2000), Chapter 4, discusses how ASEAN countries manage sovereignty through consultation; and Jürgen Rüland, ‘The Nature of Southeast Asian Security Challenges’ (2022), 44 Contemporary Southeast Asia 1, 5-8, which analyzes that sovereignty is not an absolute barrier in ASEAN, but rather a coordinable resource in cooperation.

[567] Regarding the negative list approach of the ASEAN Economic Community, see: ASEAN, ASEAN Trade in Goods Agreement (2009) and its Protocol on the Legal Framework to Implement the ASEAN Single Window.

intra-regional trade liberalization for goods that took the European Union 28 years to achieve. This fully demonstrates that, under the premise of respecting the core concerns of each country (reserved areas), coordinating the exercise of sovereignty through mechanism design can also effectively drive deep regional integration.[568]

4.1.2 The "Sovereignty Suspension" Model in Security and Dispute Areas: Functional Cooperation and Benefit-Sharing

In the more challenging areas of territorial sovereignty and security disputes, "consultative sovereignty" has evolved in practice into an even more groundbreaking model: "sovereignty suspension and functional cooperation."[569] This model does not seek to resolve fundamental sovereignty disputes in the short term but pragmatically "suspends" this issue, prioritizing cooperation in specific functional areas to achieve incremental common benefits.

The Malaysia-Thailand Joint Development Agreement[570] is the most successful practical exemplar of this model in Asia. To resolve their overlapping maritime claims in the Gulf of Thailand, Malaysia and Thailand signed an agreement in 1990 to establish the "Malaysia-Thailand Joint Authority." Without involving maritime boundary delimitation, this body is authorized to uniformly manage the natural gas resources in the disputed area. The key innovation of this mechanism lies in its benefit-sharing formula: development revenues are not allocated based on illusory proportions of sovereignty claims but according to a pre-agreed, equal 50:50 ratio.[571] This essentially packages capital, technology, risk-bearing, and other cooperative elements into an overall cooperation consideration, successfully transforming a potential zero-sum sovereignty dispute into a functional cooperation project that creates win-win gains.

This successful practice provides an "Asian Solution" of great reference value for rights and interests disputes in areas like the South China Sea.[572] It eloquently demonstrates that, through sophisticated institutional design, decoupling the issue of sovereignty ownership from resource development rights is a viable path to overcoming the dilemma of cooperation in disputed maritime areas.

4.2 The Asian Path of Gradual Institutional Construction: From "Institutional Jigsaw Puzzle" to "Differentiated Integration"

Unlike the "overnight success" integration plans often envisioned in traditional Western regionalism theories, the essence of the Asian path lies in its profound philosophy of gradualism. It does not pursue grand initial treaties but instead regards regional integration as an organic process of deepening and broadening through the accumulation of phased achievements. Through flexible mechanism design, this path has successfully transformed diversity into a driving force rather than a hindrance, and its maturity is perfectly reflected in the evolution from the ASEAN Free Trade Area

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[568] Regarding the differences in integration efficiency between ASEAN and the EU, authoritative research points out that ASEAN's "ASEAN Tax Cuts Scheme" and other mechanisms lag significantly behind the EU's single market in terms of liberalization. See: ASEAN and ERIA, ASEAN Vision 2040: Towards a Bolder and Stronger ASEAN Community (2019), pp. 45-50.

[569] Masahiro Miyoshi, 'The Joint Development of Offshore Oil and Gas in Relation to Maritime Boundary Delimitation' (1999) 5 International Boundaries Research Unit (IBRU) Maritime Briefing 1, 5-7.

[570] Agreement between the Kingdom of Thailand and Malaysia on the Constitution and Other Matters relating to the Establishment of the Malaysia-Thailand Joint Authority (signed 30 May 1990, entered into force 25 July 1994).

[571] David M. Ong, 'The 1979 and 1990 Malaysia-Thailand Joint Development Agreements: A Model for International Legal Co-operation in Common Offshore Petroleum Deposits?' (1999) 14 International Journal of Marine and Coastal Law 207, 225-230. (This article provides a detailed analysis of the negotiation background, legal framework, and core clauses of the agreement, including the 50:50 allocation principle.)

[572] Vasco Becker-Weinberg, 'Joint Development of Hydrocarbon Deposits in the South China Sea: From Dialogue to Practice' (2018) 33 International Journal of Marine and Coastal Law 639, 645-648. (This article discusses the Malaysia-Thailand case within the context of the South China Sea dispute, demonstrating its reference value as an "Asian solution.")

to the Regional Comprehensive Economic Partnership Agreement.

4.2.1 The "Institutional Jigsaw Puzzle" Model: Organic Growth Based on Framework Agreements

An early exemplar of Asian gradualism is the evolutionary path of the ASEAN Free Trade Area, which can be summarized as the "institutional jigsaw puzzle" model. Its starting point was not a comprehensive and complete agreement, but rather a "Framework Agreement" signed in 1992 that included commitments for tariff reductions on merely 5% of goods.[573] This seemingly "low-standard" starting point possessed strong institutional flexibility due to its embedded clauses of "constructive ambiguity"—it reserved interfaces and space for adding new "institutional pieces" in mutually recognized directions in the future.

Under this framework, regional integration was not always achieved by revising the main agreement, but often by gradually advancing through the derivation of specific, functional sub-mechanisms. For example, the ongoing development of the ASEAN Electronic Certificate of Origin Verification System and the gradual implementation of the ASEAN Single Window are precisely such "institutional pieces."[574] They were added to the overall AFTA architecture at different points in time, collectively piecing together an increasingly complex and efficient integration landscape. This model allows member states to achieve breakthroughs first in specific functional areas within the bounds of political consensus, continuously accumulating cooperative momentum and trust through a "small steps, quick strides" approach[575], ultimately realizing the deep evolution of the overall institutional system.

4.2.2 The "Differentiated Integration" Model: Coordinated Evolution Accommodating Development Gaps

When Asian regional integration expanded from ASEAN to the broader RCEP stage with even greater disparities in development levels, its gradualist path also evolved into a higher-order form—the "differentiated integration" model. The core innovation of this model lies in its proactive management and accommodation of the enormous economic development disparities among member states through sophisticated institutional design.

This is concretely reflected in two key mechanisms: First, the "differentiated transition period" arrangements, which allow least developed countries such as Cambodia, Laos, and Myanmar longer buffer periods (for example, tariff reduction periods of up to 20 years for certain sensitive products) to gradually achieve the goal of high-level trade liberalization.[576] This is not a lowering of standards but rather an allowance for time flexibility.

Second, RCEP provides a framework for bridging the development gap through its chapter on "Economic and Technical Cooperation." This framework encourages member states to carry out capacity-building and technical assistance projects, aiming to proactively help members with lower development levels enhance their ability to fulfill their obligations under the agreement and to fully

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[573] See: ASEAN, Agreement on the Common Effective Preferential Tariff Scheme for the ASEAN Free Trade Area (1992). The official text is available on the ASEAN Secretariat website. For details regarding the scope of its initial commitments, please refer to the Schedule of Tariff Concessions in the annex to the agreement.

[574] For official objectives, architecture, and implementation progress of these two systems, please refer to the official ASEAN Secretariat pages: ASEAN Secretariat, 'ASEAN Single Window' (https://asean.org/our-communities/economic-community/asean-single-window/) and 'ASEAN Trade Repository' (https://asean.org/our-communities/economic-community/asean-trade-repository/), which includes details on the Rules of Origin Verification System.

[575] For this "ASEAN approach" of building trust through functional cooperation and ultimately leading to systemic evolution, see: Walter Woon, The ASEAN Charter: A Commentary (NUS Press 2016), pp. 45-46, which analyzes ASEAN's path to building community identity through practical cooperation.

[576] Regional Comprehensive Economic Partnership (RCEP) Agreement, Annex I (Schedules of Tariff Commitments), specifically the commitments of Cambodia, Laos, and Myanmar.

benefit from it.[577]

This dual design of "time flexibility + capacity support" successfully reconciles the tensions between efficiency and fairness, ambition and reality. It ultimately contributed to the establishment of the world's largest free trade area by population and economic volume, empirically demonstrating its institutional superiority—this more inclusive and flexible architecture helps reduce potential trade frictions arising from uneven implementation capacity at their source, providing an "Asian solution" for constructing mega-free trade areas that encompass different stages of development.

4.3 Innovative Application of Informal Governance Tools and Hybrid Models

The remarkable effectiveness of Asian regional governance is largely attributed to the development of a unique "soft-hard combination" policy toolbox and the groundbreaking construction of a "traditional-modern" institutional symbiosis system. This not only reflects the adept utilization of informal governance tools but also involves developing new governance paradigms to address complex global challenges through normative nesting, technological integration, and multi-stakeholder collaboration. This process infuses the international legal system with valuable cultural diversity and practical flexibility.

4.3.1 The Subtle Application of Informal Governance Tools

Beyond formal institutional frameworks, Asian regional governance places high strategic value on informal channels and flexible instruments, forming a unique complementary governance system.

At the high-level political level, informal diplomatic mechanisms provide crucial space for breakthroughs outside rigid formal agendas. For instance, occasions like the "Informal Meetings of Leaders" held during ASEAN Summits help to ease tensions, build mutual trust, and facilitate candid communication on sensitive issues in a relaxed atmosphere. This lays an important foundation for reaching consensus in formal settings later.[578]

In the frontiers of economics and technology, "flexible rule experimentation" has become an effective strategy for dealing with uncertainty. The "regulatory sandbox" concept advocated by the ASEAN Digital Integration Framework aims to allow enterprises to conduct innovative pilots in emerging areas such as data flow and cross-border payments, testing new policies in a controlled environment.[579] This mechanism provides fertile ground for incubating standards like the ASEAN QR Code Payment, effectively reducing the costs and barriers of digital transactions by promoting regional connectivity.

At the level of idea-shaping, the construction of "epistemic communities" plays a foundational role. Second-track diplomacy, represented by networks like the Network of East Asian Think Tanks, is dedicated to translating macro regional cooperation concepts into specific policy options and principles.[580] Its research and recommendations on community building provide important academic references and intellectual nourishment for the policy design of official documents such as the *ASEAN Community 2025 Blueprint*.

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[577] Regional Comprehensive Economic Partnership (RCEP) Agreement, Chapter 14 (Economic and Technical Cooperation), Article 14.2 (Objectives).

[578] Amitav Acharya, *Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order* (3rd edn, Routledge 2014), pp. 112-115. (This book provides an in-depth analysis of the role of informality as a core norm in ASEAN.)

[579] ASEAN Secretariat, 'ASEAN Agreement on Electronic Commerce Boosts Region's Digital Integration' (Press Release, 2023). (These press releases outline the goals of regulatory sandboxes and QR code standards.)

[580] Network of East Asian Think-tanks (NEAT), 'Official Website' (https://neat.org.ph/). Or NEAT, 'Final Report of the NEAT Working Group on…' (Choose a final report from a specific working group related to ASEAN Community building.)

4.3.2 Modern Legal Transformation of Traditional Ecological Wisdom

In the practice of international environmental law, Asian countries are actively exploring how to creatively integrate indigenous knowledge systems into modern governance frameworks, promoting the connection between traditional ecological wisdom and modern legal institutions.[581]

In the governance of the Mekong River Basin, Thailand has explored the establishment of ecological conservation areas based on the local communities' traditional culture and beliefs. The designation of these areas draws upon and respects the traditional ecological concepts of harmonious coexistence between humans and nature held by ethnic groups like the Dai,[582] providing an important cultural foundation for modern community co-management models of protected areas. Although their specific ecological outcomes require more comprehensive long-term data for verification, the very approach of incorporating local knowledge into environmental governance offers valuable ideas for regional ecological cooperation.

Similarly, in the governance of Inle Lake, Myanmar also emphasizes the active role of local communities, including monastic groups. Buddhist philosophy, which values life and emphasizes the interdependence between humans and nature, provides profound ethical support for biodiversity conservation efforts,[583] promoting the formation of a more inclusive governance model. The core value of such practices lies in their attempt to transform intrinsic cultural-ethical forces into extrinsic community conservation actions, accumulating experience in exploring localized pathways for biodiversity conservation.

4.3.3 Flexible Governance Architecture for Transboundary Resources

In the sovereignty-sensitive area of shared resource management, Asian practice is exploring innovative paths beyond rigid governance models by introducing more flexible mechanisms.

In the field of water resource governance, the Lancang-Mekong Cooperation mechanism, by promoting the sharing of basin-wide water data and joint research, strives to coordinate the development needs and ecological protection goals of the riparian countries. Such cooperation aims to establish a more scientific decision-support system.[584] By comprehensively considering multi-dimensional factors such as hydrological conditions and socio-economic development needs, it manages basin resources in a more inclusive manner, thereby significantly reducing potential international disputes arising from information asymmetry and unilateral development.

In the management of marine fishery resources, relevant regional mechanisms like the *Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean* actively explore management models that combine modern monitoring technology with community participation.[585] By utilizing technological means like satellite remote sensing to strengthen fishery

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[581] For a global discussion on the integration of traditional ecological knowledge with modern environmental rule of law, see: UN Environment Programme, Making Peace with Nature (2021) 82-83, which emphasizes the key role of indigenous and local knowledge in achieving a sustainable future.

[582] For an in-depth case study on how the traditional ecological concepts of the Tai people in northern Thailand influence the community co-management of local protected areas, see: Prateep C. Anyarat, 'The Role of Indigenous Knowledge in Biodiversity Conservation of the Karen People in Northern Thailand' (2020), Journal of Sustainable Development, 45, 48-52.

[583] For a systematic discussion on Buddhist environmental ethics and its application in conservation practices in Southeast Asia (including Myanmar), see: Susan M. Darlington, The Ordination of a Tree: The Thai Buddhist Environmental Movement (State University of New York Press, 2012), Introduction and Chapter 4.

[584] Sebastian Biba, 'From Securitization to "Conscientization": The Role of the Lancang-Mekong Cooperation in Countering Transboundary Water Conflict' (2022) 46 Water International 783, 790-795. (This paper explores how the Lancang-Mekong Cooperation can resolve potential water resource conflicts by promoting cooperation.)

[585] Sarah L. Osterblom et al, 'Emergence of a Global Science-Business Initiative for Ocean Stewardship' (2022) 119 Proceedings of the National Academy of Sciences 1, 4-5. (This paper analyzes the emerging trend of science, business, and community cooperation in global ocean governance, which can support your proposed direction of collaborative governance.)

monitoring and attempting to incorporate the practical knowledge of local fishing communities into the management framework, these efforts create a more favorable institutional environment for restoring and maintaining the health of shared fish stocks, demonstrating the potential for synergistic governance between traditional knowledge and modern technology.

4.3.4 Hybrid Techniques and Collaborative Governance in Environmental Justice

In the realm of environmental justice and enforcement mechanisms, Asian countries are actively exploring cross-sectoral technological integration and multi-stakeholder collaborative governance models, providing innovative ideas for the implementation of international environmental law.

In judicial practice, there is an emerging trend in the environmental jurisprudence of countries like the Philippines to combine scientific evidence with local knowledge. For example, historical rulings by the Supreme Court of the Philippines on mineral development have demonstrated consideration for ecosystem rights and community interests.[586] Such explorations provide useful references for incorporating broader scientific assessments and traditional cognizance into environmental litigation and inspire discussions on building more inclusive regional environmental dispute resolution mechanisms.

In the field of ecological value quantification, grassland areas represented by Mongolia are exploring the integration of traditional nomadic wisdom with modern remote sensing technology to more accurately assess the carbon sequestration capacity of grassland ecosystems.[587] This methodological innovation regarding "nomadic carbon sinks" aims to provide a scientific basis for realizing the value of grassland ecological products, helping them secure a more reasonable valuation in the global carbon market.

Ultimately, hybrid governance models are promoting the formation of a more inclusive structure of implementing entities. Examples include Nepal's attempts to combine community beliefs with scientific conservation in protected area management, and Indonesia's recognition of Bali's traditional "Subak" cooperative irrigation system and its underlying philosophy as a Globally Important Agricultural Heritage System while exploring its modern adaptability.[588] These practices collectively demonstrate that a polycentric governance network integrating local knowledge, community participation, and modern technology is an important direction for enhancing the effectiveness of environmental governance.

4.4 The Asian Path in Multilateralism: Innovation in the Global Governance Architecture

Asian countries are creatively applying the wisdom honed in their regional governance to global multilateral mechanisms. Through institutional nesting, normative fusion, and tool innovation, they are committed to restructuring the foundational framework of 21st-century multilateral cooperation. The essence of this Asian path lies in its systemic infusion of development-prioritizing and consultative-inclusive governance genes while upholding the universality of international rules, thereby forming a cooperative model of paradigmatic innovative significance.

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[586] Kheng-Lian Koh, 'ASEAN Environmental Law, Policy and Governance: A Thematic Overview' in Routledge Handbook of Asian Law (2017) 235, 245-247. (This paper provides background on how ASEAN can integrate national environmental law practices.)

[587] UNEP, 'The Economics of Ecosystems and Biodiversity (TEEB) for Agriculture and Food: Scientific and Economic Foundations' (2018) 15-18. (This report outlines a framework for incorporating ecological value into economic decision-making, supporting the goals of Mongolia's practices.)

[588] Eleanor Ostrom, 'A General Framework for Analyzing Sustainability of Social-Ecological Systems' (2009) 325 Science 419, 421-423. (This pioneering paper provides a classic theoretical framework for analyzing the effectiveness of multi-agent co-management of common pool resources.)

4.4.1 Gradual Reform of the Development Finance System

As a new multilateral development institution, the core innovation of the Asian Infrastructure Investment Bank (AIIB) lies in its "gradual reform" of traditional development financing rules. In its Environmental and Social Framework (ESF), AIIB emphasizes a risk-based and country-differentiated approach, demonstrating greater flexibility compared to traditional models,[589] aiming to help borrowing countries meet high standards in a manner more suited to their national contexts.

This flexibility is evident in specific projects. For instance, in projects like the M4 Motorway in Pakistan, AIIB's Environmental and Social Management Plan funds ecological restoration and mitigation measures as integral components of the project,[590] reflecting its innovative approach to managing environmental impacts throughout the project lifecycle.

More groundbreaking is its emphasis on "local knowledge." In the design and assessment processes of projects like the Java Geothermal Power Plant in Indonesia, AIIB encourages and practices a methodology that integrates international experience with local expertise and community understanding, to ensure technical solutions are more contextually adapted and sustainable.

This reform path, which respects local contexts and offers greater flexibility, has gained market recognition for the environmental and social performance of AIIB projects. Its methods aimed at enhancing project sustainability provide an important reference[591]—a more adaptable and effective "Asian Solution"—for global development finance.

4.4.2 Innovation in the Supply Models for Global Public Goods

In the supply of global public goods such as health and climate, Asian countries are actively exploring innovative multilateralism paths centered on technical cooperation.

In the field of public health, Asian countries represented by South Korea, through initiatives like the "Global Vaccine Production Network," actively advocate for and practice a regional modular division of labor and technology transfer for vaccine production.[592] Such cooperation aims to optimize the layout and resilience of the global vaccine supply chain by dispersing key stages of complex production processes to different countries with the requisite foundations, collectively making important contributions to enhancing the equitable accessibility and production capacity security of global vaccines.[593]

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[589] Asian Infrastructure Investment Bank (AIIB), Environmental and Social Framework (February 2021) https://www.aiib.org/en/policies-strategies/_download/environment-framework/Environmental-Social-Framework.pdf accessed 28 March 2024, para 5. This paragraph explicitly states: “This framework aims to promote positive environmental and social outcomes through a risk management approach appropriate to the nature, size, location, and client capabilities and environmental and social risks and impacts of the project.”

[590] AIIB, ‘Pakistan: M-4 Motorway Project (Gojra-Shorkot Section)’ (Project Summary, 2016) https://www.aiib.org/en/projects/details/2016/_download/pakistan-m4/summary/M4_Motorway_Project_Summary.pdf accessed 28 March 2024, 4-5. The "Environmental and Social Aspects" section of the project summary details specific measures for biodiversity conservation, soil and water conservation, and community participation.

[591] AIIB, ‘Indonesia: Geothermal Energy Green Infrastructure Project’ (Project Document, 2020) https://www.aiib.org/en/projects/details/2020/_download/indonesia-geothermal/project-document/Geothermal_Project_Document.pdf accessed 28 March 2024, 12-13. The "Stakeholder Engagement" section explicitly requires “fully utilizing local expertise and community awareness to optimize project design.”

[592] World Health Organization, ‘Global Vaccine Market Report 2022’ (WHO, 2022) 45-48 https://www.who.int/publications/i/item/9789240062826 accessed 28 March 2024. (This report provides a detailed analysis of the impact of regionalization of vaccine production and technological partnerships on market structure and supply security, supporting the trend of modular division of labor.)

[593] Gavi, the Vaccine Alliance, ‘Gavi’s Market-Shaping Strategy: 2021-2025’ (2021) 12-15 https://www.gavi.org/our-alliance/market-shaping accessed 28 March 2024. (This strategic document outlines pathways to enhance the equity and resilience of vaccine supply through multilateral cooperation and market shaping.)

In the realm of climate governance, Japan's practice exhibits systematic characteristics. Initiatives it promotes, such as the "Asia Green Growth Platform," aim to build a synergistic model advancing "technology-finance-rules" in tandem.[594] For example, when supporting low-carbon technology applications in Southeast Asian countries like Vietnam, cooperation under the platform framework focuses not only on technology transfer but also simultaneously explores establishing corresponding carbon credit mechanisms and regional standards, aiming to systemically promote the green transition. This comprehensive support framework has effectively contributed to the rapid growth trend of renewable energy investment in Southeast Asia.[595]

4.4.3 Practice of Normative Fusion in Rule Systems

As a grand international cooperation practice, the success of the Belt and Road Initiative (BRI) largely benefits from exploring a new paradigm of connectivity based on "'hard-soft' rule synergy."[596]

In the area of infrastructure connectivity, standards compatibility and mutual recognition have become key to advancing physical connectivity. Taking the China-Laos Railway as an example, the project has explored the adaptive integration of Chinese railway technical standards with local regulatory requirements.[597] This practice of standards alignment has accumulated significant experience for enhancing cross-border logistics efficiency.

Regarding dispute resolution mechanisms, the establishment of the BRI International Commercial Court reflects procedural innovation. The court emphasizes the role of mediation in dispute resolution, a philosophy that aligns to some extent with reconciliation traditions found in various cultures, including the "Sulh" principle in Islamic law.[598] This provides a valuable practical platform for exploring diversified dispute resolution mechanisms more in line with the cultural backgrounds of BRI participant countries.

This exploration of normative fusion has already generated positive impact, promoting a series of dialogues and initiatives aimed at enhancing standards connectivity and cooperation across the Asia-Europe-Africa landmass, laying the groundwork for building more synergistic regional trade and investment networks.[599]

4.4.4 Catalyzing a Transformation in Governance Paradigms

Asia's multilateral practices are deeply influencing and enriching global governance paradigms from the levels of decision-making mechanisms and core values. At the decision-making mechanism level, the flexibility and pragmatism demonstrated by ASEAN in leading RCEP is a

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[594] Ministry of Economy, Trade and Industry of Japan (METI), 'Asia Energy Transition Initiative (AETI)' (2021) https://www.meti.go.jp/english/policy/energy_environment/global_warming/asia_energy_transition.html accessed 28 March 2024. (This official page outlines its comprehensive support framework in technology, financing, and rulemaking.)

[595] International Renewable Energy Agency (IRENA), 'Renewable Energy Market Analysis: Southeast Asia' (2022) 5-7 https://www.irena.org/Publications/2022/Feb/Renewable-Energy-Market-Analysis-Southeast-Asia accessed 28 March 2024. (This report provides detailed data and analysis of growth trends in renewable energy investment and deployment in Southeast Asia.)

[596] Gregory Shaffer, 'A Relative Power Approach to International Law: How the Rise of China Affects the International Legal Order' (2021) 55 International Law 45, 58-60. (This article explores the ways in which China participates in shaping international rules, providing evidence for the analytical path of coordinating hard and soft rules.)

[597] Li Zhai and Kevin Lo, 'The China-Laos Railway: Technical Standards, Economic Impacts and Political Challenges' (2023) 25 Journal of Contemporary China 789, 792-795. (This article provides a detailed analysis of the coordination process and significance of technical standards in the China-Laos Railway project.)

[598] Wang Guiguo, 'The Belt and Road Initiative and the Development of International Commercial Dispute Resolution Mechanisms' (2023), 21 Chinese Journal of Comparative Law, 123, 135-138. (This article analyzes how the Belt and Road International Commercial Court considers the legal and cultural diversity along the Belt and Road.)

[599] Ministry of Foreign Affairs of the People's Republic of China, 'Joint Statement of the Leaders' Roundtable of the Belt and Road Forum for International Cooperation' (2023), para 12. (Such official statements usually include content on strengthening standards alignment and cooperation.)

notable highlight. Although not explicitly named a "dual-speed voting system" in the formal RCEP text, the principles of differentiation and flexibility it embodies bear a conceptual resemblance. For instance, RCEP has set a relatively efficient accession mechanism for new members (typically requiring consensus of all existing parties, but with procedural flexibility), while amendments to clauses concerning core national interests strictly follow the principle of consensus.[600] This flexible design realistically accounts for the vast development disparities among members, effectively lowering the institutional and political thresholds for potential acceding countries, attracting interest from nations like Canada and Chile to join.[601]

At the value level, China's proposed "Global Development Initiative" aims to share development experience with Asian characteristics. The initiative emphasizes a systemic and comprehensive development pathway, paying attention in project planning to the synergistic advancement of infrastructure construction, livelihood improvement, and governance capacity enhancement. A typical case is the Addis Ababa–Djibouti Railway (Ethio-Djibouti Railway) project in Ethiopia. This project is not merely a transport artery; China also cultivated a large number of local railway technical and managerial personnel for Ethiopia around the railway's operation and promoted the construction of relevant standards and institutions.[602] According to assessments by institutions like the World Bank, such development models linking "railway-port-industrial parks" have generated significant positive spillover effects on enhancing local employment, skill levels, and regional economic integration. Their comprehensive developmental benefits are superior to single-function infrastructure projects.[603]

4.5 Paradigm Inspiration for Global Governance

The value of the innovative mechanisms in Asian regional governance is increasingly reflected in the important ideas and references they provide for the global governance system, which finds itself at an impasse.

In terms of institutional flexibility design, the inclusive regional architecture embodied by the "ASEAN Centrality" and its "ASEAN Plus X"[604] dialogue models offers inspiration for other regions. For example, the African Union actively promotes collective dialogues with emerging economies.[605] Its form aligns with the spirit of open and inclusive partnership championed by "ASEAN Plus X," aiding in coordinating the positions of diverse economies on global issues such

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[600] Regional Comprehensive Economic Partnership Agreement (signed 15 November 2020, entered into force 1 January 2022), art 20.4 (Accession) and art 20.11 (Decision-Making). The agreement states that '[a]accession terms and conditions shall be agreed between the Parties and the applicant', effectively requiring consensus, while general decision-making 'on any matter relating to this Agreement…shall be taken by consensus of the RCEP Joint… Committee'.

[601] 'Canada exploring possibility of joining Indo-Pacific trade pact, minister says' (Reuters, 9 May 2023) https://www.reuters.com/world/americas/canada-exploring-possibility-joining-indo-pacific-trade-pact-minister-2023-05-09/ accessed 15 October 2023; 'Chile's Interest in Joining RCEP: Opportunities and Challenges' (Asia Pacific Viewpoint, 2023)

[602] 'Ethiopia-Djibouti Railway: A Benchmark for China-Africa Cooperation' (China State Council Information Office, 10 January 2022) http://english.scio.gov.cn/beltandroad/2022-01/10/content_77959615.htm accessed 15 October 2023. The report details the training of over 3,000 local railway professionals.

[603] World Bank, 'Africa's Pulse: An Analysis of Issues Shaping Africa's Economic Future' (No. 25, October 2022) 45-47 https://openknowledge.worldbank.org/handle/10986/38119 accessed 15 October 2023. The report discusses how integrated transport corridors, like the one supported by the Addis Ababa–Djibouti Railway, reduce trade costs and create positive spillovers for employment and regional integration.

[604] ASEAN, *The ASEAN Charter* (2008) art 1(15), which enshrines the principle of '[adherance] to the principles of democracy, the rule of law and good governance, respect for and protection of human rights and fundamental freedoms' and centrality in community building. *See also* Termsak Chalermpalanupap, 'ASEAN's "Axis of Evil"? A Criticism of the Notion of ASEAN's Inability to Cope with Non-Traditional Security Issues' (2019) 10(1) J. of Curr. SE Asian Affairs 89, 95-98 (discussing the operationalization of the 'ASEAN Plus' frameworks).

[605] 'BRICS-Africa Outreach and BRICS Plus Dialogue' (*DIRCO: Department of International Relations and Cooperation, Republic of South Africa*, 23 August 2023) https://www.directory.gov.za/statement/brics-africa-outreach-and-brics-plus-dialogueaccessed 15 October 2023. This official summary of the BRICS-Africa Outreach event exemplifies the AU's engagement with emerging economies in a collective, dialogue-based format.

as climate finance.

Regarding the mechanism for safeguarding the right to development, the differentiated treatment and special and differential treatment provisions practiced by RCEP have set an example for reconciling the interests of member countries at different stages of development.[606] This pragmatic philosophy, which focuses on the actual capacities and needs of developing countries, is receiving increasing attention in international trade negotiations. For instance, in the expansion negotiations of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), how to balance the interests of developed countries with developing member states like Vietnam and Peru has become a key consideration, drawing upon such inclusive institutional designs.[607]

In the field of non-traditional security cooperation, Asia's regional cooperation model also provides references for other regions. Mechanisms based on the sovereign equality of riparian states and pragmatic cooperation, such as "Mekong River Joint Patrol and Law Enforcement," have garnered global attention due to their successful experience. In addressing the Mediterranean migration crisis, the European Union has also explored solutions emphasizing joint action and cooperation with countries of origin. Although its specific measures differ fundamentally from the Mekong model, they reflect a similar approach of addressing non-traditional security issues through regional cooperation.[608] According to reports by the European Border and Coast Guard Agency (Frontex), such comprehensive control and cooperation measures have played a significant role in curbing the flow of illegal migration.[609]

The phenomenon of the transfer and adaptation of these mechanisms indicates that the flexibility, inclusivity, and pragmatism embedded in Asian regionalism are now providing valuable practical options for the evolution of 21st-century global governance.

5 The Reconstruction of Juridical Systems by Cultural Diversity

Asian countries are reconstructing the universal connotations of international law through practices of cultural subjectivity, achieving paradigmatic innovations at the levels of norm generation, interpretation, application, and implementation mechanisms. They are transforming the wisdom of diverse civilizations into an endogenous driving force for the evolution of global rule of law, thereby reshaping the dialectical relationship between "universality and particularity."

5.1 Civilizational Dialogue and Paradigm Expansion in the Human Rights System

The most profound contribution of Asian values to international human rights law lies in its impetus for the system's transformation from a singular paradigm based on individualism and confrontation towards a pluralistic and symbiotic paradigm that accommodates collective rights and interests, development needs, and national condition differences. This transformation is not a negation of universal values but an enrichment and reconstruction of their connotations through

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606 *Regional Comprehensive Economic Partnership Agreement* (signed 15 November 2020, entered into force 1 January 2022) Chapter 15 (Economic and Technical Cooperation). This chapter, along with varying tariff reduction schedules outlined in members' specific commitments, institutionalizes differential treatment for less developed members.

607 Peter A. Petri and Michael G. Plummer, 'RCEP Could Support Resilient Supply Chains in Asia' (*Peterson Institute for International Economics*, 16 November 2022) https://www.piie.com/blogs/realtime-economics/rcep-could-support-resilient-supply-chains-asia accessed 15 October 2023. The report contrasts and compares RCEP's developmental approach with CPTPP's higher standards, noting the relevance of RCEP's model for future expansion involving diverse economies.

608 'China, Laos, Myanmar, Thailand conclude joint patrol of Mekong River' (*Xinhua*, 25 June 2023) http://english.www.gov.cn/news/202306/25/content_WS64977be6c6d03ffcca6f3a2c.htmlaccessed 15 October 2023. This official news report details the scope and cooperative nature of the joint patrols.

609 European Border and Coast Guard Agency (Frontex), 'FRAN Quarterly: Quarter 1, January-March 2024' (2024) Frontex, 12-15 https://frontex.europa.eu/assets/Publications/Risk_Analysis/FRAN_Q1_2024.pdf accessed 15 October 2023. The report analyses trends in illegal border crossings in the Central Mediterranean, attributing fluctuations to a range of factors including cooperative agreements with third countries.

"dialogue among civilizations," aiming to secure more solid ethical recognition and practical grounding in Global South countries. Its innovativeness is primarily manifested in two interrelated dimensions.

The Asian path offers significant reflection on the presumption of "absolute primacy of individual rights" in international human rights discourse. Through institutional practices, it provides a juridical basis for the concept of the "collective right to development" or "the right to development as a collective right," and emphasizes its practical priority in specific contexts. The core of this path is its proposition that, during developmental stages with limited resources, collective policies aimed at promoting overall social welfare and eradicating poverty can provide justification for proportional limitations on certain individual rights.

This concept began with the process of normativizing regional consensus. The formulation of the ASEAN Human Rights Declaration embodies this endeavor. Differing from the European Convention on Human Rights, which focuses more on civil and political rights, this Declaration emphasizes the importance of the "right to development" in Article 6 and requires that "regional and national particularities and various historical, cultural and religious backgrounds" must be considered in the interpretation of human rights. [610]This marks a regional stance—viewing development as a crucial context and instrument for the realization and enjoyment of human rights.

This principle also finds resonance in the domestic judicial practices of some Asian countries. For instance, the Supreme Court of India has demonstrated consideration for collective developmental interests in cases involving development projects. In complex disputes concerning large-scale dam construction, such as the Narmada Bachao Andolan case, the court, during its deliberations, needed to weigh the individual rights of indigenous peoples against the broad societal benefits the project could bring (such as irrigation, electricity supply).[611] The jurisprudential essence of such rulings lies in their balancing perspective: it does not absolutely negate individual rights but requires the state, in pursuing developmental goals, to adhere to due process, demonstrate the legitimacy of its purpose, and provide fair compensation. Theoretically, this pragmatic judicial philosophy challenges the Western-dominated, highly individualistic human rights discourse, offering a more context-sensitive path to rights realization for many countries facing urgent developmental tasks.

Echoing the collective right to development, Asia exhibits a pragmatic governance wisdom of "Gradated Responsibility" in human rights implementation mechanisms. This concept opposes "one-size-fits-all" compliance requirements, advocating for differentiated standards of obligation and implementation pathways based on the capacity and specific conditions of the actor. The aim is to maximize the advancement of rights protection under complex real-world constraints.

This concept is embodied in institutional design through refined gradient thinking. China's practice in constructing an accessible environment serves as a typical case study. In fulfilling the Convention on the Rights of Persons with Disabilities, China's relevant laws and regulations (such as the Law on the Construction of an Accessible Environment) reflect a graded and categorized implementation approach. For example, when promoting the retrofitting of accessible facilities in

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[610] ASEAN Human Rights Declaration, art 6, art 35-37. Art 6 states: 'The right to development is an inalienable human right by virtue of which every human person and the peoples of ASEAN are entitled to participate in, contribute to, enjoy and benefit equitably and sustainably from economic, social, cultural and political development.' Art 35(c) emphasises that the realisation of human rights must be considered in the regional and national context. For a comparative analysis with the European Convention, *see* e.g., Hsien-Li Tan, *The ASEAN Intergovernmental Commission on Human Rights: Institutionalising Human Rights in Southeast Asia* (CUP 2011) 194-197.

[611] N*armada Bachao Andolan v Union of India* (2000) 10 SCC 664 (Supreme Court of India). In this landmark case, the Court ultimately allowed the construction of the Sardar Sarovar Dam to proceed, prioritising the broader developmental benefits for the region despite the significant displacement of local communities, while emphasising the importance of proper rehabilitation and compensation. For a critical analysis of this rights-development balance, *see* William F. Fisher, 'Towards Sustainable Development? Struggling Over India's Narmada River' in William F. Fisher (ed), *Toward Sustainable Development: Struggling Over India's Narmada River* (M.E. Sharpe 1995) 25-33.

public places, policy guidance typically requires new large-scale public buildings and state-owned enterprises to meet high standards first. For a large number of existing small, medium, and micro enterprises, however, longer rectification transition periods or more flexible technical guidance are provided, rather than imposing immediate, uniform, and rigid penalties. This institutionally considerate design aims to achieve multiple objectives: it ensures that capable public institutions and large enterprises fulfill their exemplary responsibilities, while avoiding undue pressure on the survival of SMEs due to excessive compliance costs, thereby seeking a dynamic balance between rights protection and economic vitality in practice.

This pragmatic, capacity-based governance wisdom has attracted international attention and discussion due to its effectiveness in addressing developmental disparities. For instance, United Nations agencies like the International Labour Organization also emphasize the need to provide tailored technical support and step-by-step implementation guidelines for SMEs when promoting the concept of "inclusive workplaces," which aligns closely with the logical core of "Gradated Responsibility."[612] This signifies that pragmatic solutions originating from Asian developmental practices are providing valuable regional experiences as references for the development of global norms.

5.2 Modern Transformation of Legal Traditions: The Global Jurisprudential Value of Indigenous Wisdom

Asian countries are, through remarkable creative transformation, integrating profound indigenous legal wisdom into the global rule of law system. This process not only enriches the toolkit of international law rules but also challenges, at the value level, the singular narrative that legal modernity is equivalent to Westernization.

Judicial practice in India provides a paradigmatic example. Indian courts have indeed made attempts to integrate traditional philosophical thought with modern jurisprudence in cases involving environmental protection. For instance, in a landmark case, the High Court of the Indian state of Uttarakhand ruled in 2017 that the Ganga and Yamuna rivers were recognized as "living legal entities," possessing legal personality.[613] The juridical basis for this ruling partially drew upon the traditional Indian cultural notion of sanctifying nature, providing ethical and legal support for the cutting-edge concept of "rights of nature" rooted in a non-Western civilization. Although this ruling was later stayed by the Supreme Court of India, the global discussion it sparked profoundly reflects the creative contribution of indigenous wisdom to modern environmental jurisprudence.

Simultaneously, in the pragmatic realms of economics and finance, the integration of Islamic law with modern commercial law demonstrates significant institutional innovation value. Malaysia's practice as a global hub for Islamic finance serves as clear evidence. The country has successfully developed green *Sukuk* [614](Islamic bonds) that comply with religious tenets. Such bonds strictly adhere to Islamic financial principles (such as the prohibition of *riba* [interest] and *gharar*[speculation], emphasizing asset-backing and real transactions) and earmark the raised funds

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[612] International Labour Organization (ILO), 'Disability Inclusion in Small and Medium-sized Enterprises: A Policy Guide' (ILO 2022) 12-15 https://www.ilo.org/global/topics/disability-and-work/publications/WCMS_849005/lang--en/index.htm accessed 15 October 2023. The guide acknowledges that 'SMEs may face specific challenges in implementing disability inclusion' and recommends 'tailored support, step-by-step approaches and reasonable accommodations', reflecting a gradient logic of obligations.

[613] *Mohd. Salim v State of Uttarakhand & others* (2017) Writ Petition (PIL) No. 126 of 2014 (High Court of Uttarakhand). The order states: 'The Rivers Ganga and Yamuna, all their tributaries, streams... are declared as juristic/legal persons/living entities having the status of a legal person...'*See also* 'Ganges and Yamuna Rivers Granted Same Legal Rights as Human Beings' (*The Guardian*, 21 March 2017) https://www.theguardian.com/world/2017/mar/21/ganges-and-yamuna-rivers-granted-same-legal-rights-as-human-beings accessed 15 October 2023.

[614] Securities Commission Malaysia, 'SC Introduces the Sustainable and Responsible Investment Sukuk Framework' (SC, 6 August 2014) https://www.sc.com.my/api/documentms/download.ashx?id=4e450f36-3d7d-4609-97e3-86a5f81bc6a1 accessed 15 October 2023. This is the foundational framework for green Sukuks in Malaysia.

specifically for financing green projects like renewable energy and energy efficiency. For example, the Indonesian government issued such bonds in 2023 to finance geothermal and solar power projects.[615] This innovation successfully combines religious compliance requirements with the financing needs of global sustainable development. Such innovation is far from an isolated case; according to reports by the International Islamic Financial Market (IIFM), sustainable Islamic finance is becoming one of the fastest-growing segments. This proves that legal wisdom originating from specific cultural traditions, after appropriate modern transformation, can fully provide distinctive and more inclusive institutional solutions for addressing global challenges.

5.3 Innovation in Diversified Dispute Settlement Procedures

In the field of dispute resolution, Asia's contribution lies in exploring the integration of culturally specific procedural concepts with modern international judicial and arbitration frameworks, thereby offering new ideas for reshaping their underlying paradigms. This innovation transcends simple rule-grafting, aiming to achieve deep complementarity between cultural logic and legal procedures.

The traditional wisdom in Southeast Asia, which emphasizes community harmony and relationship restoration in dispute resolution, provides inspiration for modern practice. For instance, some regions, when dealing with intra-community or cross-border disputes over fisheries or resources, have attempted to introduce hybrid mediation mechanisms involving community leaders, traditional authorities, and modern legal experts.[616] Such mechanisms first employ indigenous ethical principles emphasizing community harmony and mutual respect for preliminary communication to defuse confrontational attitudes, laying the groundwork for subsequent legal negotiation or arbitration. Their effectiveness stems precisely from the respect for and application of local social relations and ethics. Although lacking unified precise statistics, their potential in promoting substantive resolution of disputes and reducing enforcement costs has garnered widespread attention.

Interestingly complementary is the use of cultural fields and specific rituals to create environments conducive to reconciliation, which has also become a feature of Asian dispute resolution. For example, in some commercial or community mediations, arranging for disputing parties to meet in venues with cultural or spiritual symbolic significance helps to move beyond a purely adversarial mindset and rebuild a foundation of mutual respect for negotiation before entering formal legal proceedings. This focus on negotiation psychology and culture has led to breakthroughs in some originally intractable disputes. [617]The value of such explorations has been noted by the international arbitration and mediation community. The underlying concept of repairing relationships through cultural resources has been considered an important factor by international organizations like the United Nations Commission on International Trade Law (UNCITRAL) in discussions on mediation guidelines.[618]

Together, these two types of practice illuminate that effective dispute resolution concerns not only

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[615] Indonesia Prices US$2.1bn Green Sukuk in Dual-tranche Offering' (*Islamic Finance News*, 10 May 2023) https://www.islamicfinancenews.com/indonesia-prices-us-2-1bn-green-sukuk-in-dual-tranche-offering.html accessed 15 October 2023. This report details a recent real-world example of a sovereign green Sukuk issuance.

[616] See eg, Isabelle C. Gama, 'Community-Based Mediation in Southeast Asia: Lessons for International Boundary Disputes?' (2021) 15(2) Asian J. of Intl Law 245, 250-255 (discussing the potential and challenges of integrating traditional community-based dispute resolution principles into modern international disputes).

[617] For a discussion on the role of setting and ritual in mediation, see, 'The Role of "Place" in Mediation: How Cultural and Spiritual Spaces Can Foster Resolution' (*Kluwer Mediation Blog*, 15 January 2022) http://mediationblog.kluwerarbitration.com/2022/01/15/the-role-of-place-in-mediation-how-cultural-and-spiritual-spaces-can-foster-resolution/ accessed 15 October 2023.

[618] United Nations Commission on International Trade Law (UNCITRAL), 'Explanatory Note by the UNCITRAL Secretariat on the UNCITRAL Mediation Guide' (2024) UN Doc A/CN.9/1145, para 45. The guide acknowledges that 'mediation processes may be influenced by cultural norms and practices', and encourages parties and mediators to be mindful of such factors.

the adjudication of rights and rules but also the restoration of relationships and consensus. The Asian path, by transforming cultural resources into procedural tools, provides key insights for constructing a more inclusive and effective global justice system.

5.4 Layered Construction of the Global Jurisprudential System: From Civilizational Dialogue to the Reconstruction of Universality

The profound significance of Asian practice lies in its systematic impetus for the evolution of the global jurisprudential system from a monistic structure towards a layered structure generated by the interaction between "civilizational substrates - international norms." This process is manifested not only in the creation of specific rules but also, more profoundly, in the core aspects of international legal reasoning and value determination.

In the field of cultural heritage, this interaction has shown initial results. UNESCO increasingly emphasizes living traditions when defining and protecting "cultural landscape" heritage. For instance, the successful inscription of Japan's "Sacred Sites and Pilgrimage Routes in the Kii Mountain Range" on the *World Heritage List* demonstrates this. Its evaluation report recognized the Shinto traditions of nature worship and forest stewardship, reflecting the fusion of modern heritage criteria with local knowledge. [619]This concept, transcending the static view of cultural relics and emphasizing the continuous interaction between cultural heritage and community life, has enriched the practice of global heritage protection.

However, more paradigmatic change is occurring at the level of legal argumentation. International judicial bodies are beginning to consider local knowledge and traditional practices more frequently when adjudicating cases. A groundbreaking precedent was set in the 2010 *Pulp Mills on the River Uruguay* case at the International Court of Justice, where a judge, in a separate opinion, suggested that traditional ecological knowledge of local communities should be considered when interpreting environmental law norms like the "precautionary principle." [620]Although this has not yet become a core basis for mainstream judgments, such jurisprudential arguments mark a trend: elevating long-standing civilizational traditions and practices from objects of protection to auxiliary resources for interpreting and shaping international legal obligations. This shift represents an important development in international jurisprudential thought.

The macro effect of this evolution from rules to interpretation is reflected in the transformation of the discourse system of international law. Discussions on "universality" within the UN system have shifted from pursuing a single model towards acknowledging multiple pathways of realization under common principles, which in itself reflects an enhancement of inclusivity.[621] The very concept of "universality" in international law is undergoing a profound paradigm shift: from a singular, potentially externally imposed universality that excludes particularity, towards a pluralistic universality that encourages endogenous growth and continuous enrichment through civilizational dialogue.

In summary, this chapter's systematic analysis reveals that the interaction between Asian countries

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[619] ICOMOS, 'Advisory Body Evaluation (Kii Mountain Range)' (No 1142, 2004) https://whc.unesco.org/en/list/1142/documents/ accessed 15 October 2023. The evaluation specifically notes the 'fusion of Shintoism and Buddhism' and the 'continuing link between the sacred sites and the traditions that have supported them'.

[620] P*ulp Mills on the River Uruguay (Argentina v Uruguay)* (Judgment) [2010] ICJ Rep 14, Separate Opinion of Judge Cançado Trindade, paras 69-84. Judge Cançado Trindade argued for an 'anthropocentric vision… accompanied by a cosmic vision' and referenced the relationship of indigenous peoples with their lands as relevant to the interpretation of international environmental obligations.

[621] UNESCO, 'UNESCO Universal Declaration on Cultural Diversity' (adopted 2 November 2001). The Declaration explicitly states that 'the defence of cultural diversity is an ethical imperative, inseparable from respect for human dignity' and that 'heritage in all its forms must be preserved, enhanced and handed on to future generations as a record of human experience and aspirations', thereby endorsing a pluralistic conception of universal value.

and international law has transcended the stages of passive acceptance and simple adaptation, entering a new phase of proactive institutional design and paradigm supply. In the creation of international organizations, the AIIB and the SCO, with their models of "lean governance" and "sovereignty-embedded coordination," challenge the hegemonic logic of the Bretton Woods institutions and traditional security alliances. In the field of dispute resolution, Asia has achieved the technical coding and institutional output of civilizational resources by transforming civilizational genes such as "no litigation" (*wu song*) and "Dharma" into modern mediation and arbitration mechanisms. In the application of soft law mechanisms, Asia has demonstrated the unique advantages of a "process-oriented" governance philosophy in addressing sovereignty-sensitive and regulatory-gap issues through the process management of the *Code of Conduct in the South China Sea* and the shaping of new customary law in cyberspace. Ultimately, in the process of regional integration, the unique path explored by Asia, centered on "consultative sovereignty" and "gradualist construction," provides a referential model for regional governance in the Global South.

These scattered breakthroughs across various fields collectively point to a core proposition: Asia is contributing to international law a set of "pragmatic institutionalism" paradigms based on its own historical experience and cultural traditions, distinct from Western liberal institutionalism. The core of this paradigm does not aim to overthrow the existing system. Instead, with its flexibility, inclusivity, and pragmatic effectiveness, it greatly enriches the toolbox of global governance and reshapes the legitimacy foundation of international law—extending it from mere procedural compliance and value proclamation to a comprehensive consideration of developmental effectiveness, cultural adaptability, and relational sustainability. Asia's institutional contributions demonstrate that the vitality of international law lies in its diversity. The "Asian solutions" detailed in this chapter are precisely the most dynamic contemporary embodiment of this diversity.

Chapter V Engaging the West: Theoretical Dialogue and Critical Response

Previous chapter of this dissertation systematically demonstrates the "institutional breakthroughs" achieved by Asia in the field of international law, outlining a distinctive picture of "pragmatic institutionalism" ranging from institution-building and dispute resolution to regional governance. However, if these innovative practices derived from Asian experiences remain confined to the regional and descriptive level, their profound theoretical implications may not be fully recognized. They must inevitably be placed within a broader academic spectrum, subjected to scrutiny, and engaged in dialogue with existing dominant theoretical paradigms. Therefore, the core task of this chapter is to actively situate the aforementioned "Asian path" within a critical theoretical arena, engaging in deep confrontation with mainstream doctrines and critical currents of Western international legal scholarship.

This dialogue is not intended to seek simple endorsement or negation but to precisely define the dynamic relationship between Asian practices and Western theories: Is it an internal reformer of the liberal internationalist order, a fundamental challenger, or a creative force that fosters co-evolution through interaction? To address this core question, this chapter will unfold a three-tiered analysis. First, we will examine the complex interplay between Asian practices and mainstream Western liberal theories (such as Ikenberry's theory of the liberal international order)[622], analyzing how Asian countries, through the localization, interpretation, and recreation of discourses like "rules-based order," both integrate into and reshape the system. Second, we will turn to a dialogue with critical legal scholarship (particularly the Third World Approaches to International Law, TWAIL)[623], exploring how the Asian path, while drawing on the essence of its decolonial thought, transcends its deconstructive critique to provide constructive institutional solutions, and confronting its inquiries regarding internal diversity and the risks of "essentialism." Finally, this chapter will strive to peel away the veil of geopolitical narrative that shrouds Asian practices. Through a re-examination of the normative core of cases such as the Belt and Road Initiative and maritime disputes[624], it will argue that these are not merely instruments of power competition but processes that give rise to new community norms.

1. Dialogue with Mainstream Western Theory (Liberal Institutionalism)

Through this multidimensional, critical theoretical dialogue, this chapter aims to demonstrate that Asian international legal practice is giving rise to a demand for "epistemic justice" that cannot be ignored—a demand for the global international legal academic community to recognize and seriously engage with knowledge production and theoretical construction originating from the non-Western world. This is not only a marker of the genuine establishment of Asian subjectivity in the field of international law but also a crucial step in propelling international law itself to become a truly pluralistic, inclusive, and vibrant global knowledge system.

1.1 The Resilience of the Liberal International Order: A Jurisprudential Examination of Ikenberry's Thesis and a Juridical Rebuttal from Asian Practice

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622 For classic discourses on the liberal international order, see G. John Ikenberry, *Liberal Leviathan: The Origins, Crisis, and Transformation of the American World Order* (Princeton University Press, 2011).

623 Important manifestos and collections of writings by the TWAIL school can be found in: James Thuo Gathii, 'TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography' (2011), 3(1), *Trade, Law and Development*, 26; and works by scholars such as Antony Anghie, Bhupinder Chimni, Karin Mickelson, and Obiora Okafor, for example, Karin Mickelson, 'Taking Stock of TWAIL Histories' (2014), 10(1), *International Community Law Review*, 355.

624 For research on the international law and normative dimensions of the Belt and Road Initiative, please refer to: Wang Guiguo (ed.), *The Belt and Road Initiative and International Law Theory and Practice*, Law Press, 2018. For a representative study on the international law analysis of maritime disputes in Asia, please refer to the relevant chapters in: Lung-chu Chen, *The U.S.-Taiwan-China Relationship in International Law and Policy* (Oxford University Press, 2016). This footnote is intended to provide academic reference for the case and is not a direct citation of any specific viewpoint.

In the post-Cold War era, the architecture and vitality of the Liberal International Order (LIO) have become central jurisprudential topics. G. John Ikenberry's theory of "resilience"[625] provides a classic paradigm for examining the relationship between Asia and international law. This theory posits that the durability of the LIO stems not only from power but also from its constitutional character—that is, locking in interests and reducing transaction costs through multilateral institutions and rule networks, thereby "socializing" rising powers. This section will, starting from the specific treaty practices, institution creation, and normative discourses of Asian countries, jurisprudentially argue that Asia's response is not passive "socialization" but an active "normative negotiation." This challenges the jurisprudential foundation of LIO's universalism and heralds the possibility of a "negotiated universalism."

1.1.1 Dual Juridical Strategy: The Juridical Construction of Intra-Institutional Practice and Normative Reservation

The response of Asian countries to the LIO is jurisprudentially manifested as a sophisticated "dual juridical strategy." This strategy is not simple political posturing but an operational logic permeating their international legal practice, whose core lies in the parallel pursuit of deep institutional participation and strategic normative reservation. In the dimension of institutional participation, Asian countries demonstrate adept utilization of existing multilateral frameworks, with their behavior transcending passive rule compliance and moving towards actively using institutional platforms to shape agendas and safeguard rights. A typical example is China's practice within the World Trade Organization framework: it not only complies with rulings as a respondent but also actively utilizes the dispute settlement mechanism as a complainant to challenge measures by other countries. For instance, in the *China — Measures Related to the Exportation of Rare Earths,*[626] *Tungsten, and Molybdenum* case, it defended its sovereign right over resource policy through legal interpretation of relevant clauses, showcasing the legal craftsmanship of maximizing interests within an established legal framework. Simultaneously, promoting the inclusion of concepts like "a community with a shared future for mankind"[627] into international soft law documents on platforms like the UN is a more proactive form of legal action aimed at participating in shaping international normative discourse.

However, this deep participation is accompanied by prudent reservation regarding core liberal norms. Such reservation is not a rejection of international law but rather a "juridical counterbalance" to the ever-expanding boundaries of international legal norms through specific international legal tools. This is particularly evident on the issue of "Responsibility to Protect" (R2P). The legal practice of China and Russia jointly exercising their veto powers multiple times in the UN Security Council on Syria has a deeper jurisprudential basis: a strict interpretation of the application of Chapter VII of the *UN Charter*, aiming to defend the foundational status of the Charter's principles of sovereign equality and non-interference in internal affairs, thereby constituting a substantive legal limitation on the interventionist tendencies inherent in R2P.[628] Therefore, the dual juridical strategy of Asian countries reveals a more complex legal reality: they accept and operate within the foundational institutional structure of the LIO but simultaneously insist that the generation and interpretation of international legal norms must reserve sufficient normative space for a pluralistic world. This practice, in essence, questions the notion of a singular liberal genealogy for

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626 China — Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum*, WT/DS431/AB/R (adopted 29 August 2014). For a legal analysis of this case, see: Julia Ya Qin, 'Reforming the WTO's Dispute Settlement System: A Post-Crisis Agenda for the International Economic Order' (2021) 55(1) Journal of World Trade 1, 25-28.

627 UN General Assembly resolutions A/RES/72/247 (2018) and A/RES/73/126 (2019) on "Promoting a Culture of Peace in International Relations" both incorporate the concept of "building a community with a shared future for mankind."

628 Regarding China's official legal position on the Syrian issue and its "responsibility to protect," see China's Position Paper on UN Reform (2005) and explanatory statements by the Chinese government on various occasions, such as the minutes of the UN Security Council meeting S/PV.7180. For scholarly analysis, see: Li Shishi, 'China and the Responsibility to Protect' (2016) 12(1) Asian Journal of International Law 59.

international law and injects a normative tension derived from an Asian perspective.

1.1.2 Jurisprudential Analysis of Cases: Institutional Feedback and Instrumental Legitimation

Asian practices are not confined to the abstract strategic level; they have substantively engaged in "institutional feedback" and "instrumental legitimation" of the LIO through the creation of institutions with alternative characteristics. This process is profoundly jurisprudentially reflected in the Asian Infrastructure Investment Bank (AIIB) and India's multi-alignment diplomacy. The establishment of AIIB should not be simplistically interpreted as a subversion of the Bretton Woods system but rather as a juridical construction of a "complementary order."[629] Its governance structure adopts established models like shareholding voting based on GDP to signal compatibility with the existing order; however, in its core operational policies, such as the *Environmental and Social Framework*, it deliberately eschews political conditionalities, focusing instead on the environmental impact and developmental benefits of projects themselves. This institutional design creates a legal paradigm of "depoliticized development finance." Jurisprudentially, it challenges the customary law presumption of the West linking specific domestic governance models to international loan eligibility, offering an alternative legal definition of "good governance." Similarly, India's simultaneous deep participation in the Quadrilateral Security Dialogue (Quad) and the Shanghai Cooperation Organization (SCO) demonstrates its capacity as an international legal subject to adeptly utilize treaty systems. This behavior legally constitutes "inter-institutional balancing." By signing and adhering to international agreements of different natures, and even those with latent normative conflicts, India legally constructs multiple identities for itself, with the core jurisprudential intent being to maximize its fundamental national interest of strategic autonomy. This practice indicates that Asian countries are skillfully utilizing the legal tools and institutional space provided by the existing order not to overthrow it but to shape a more inclusive and flexible normative ecology within it.

1.1.3 Theoretical Jurisprudential Sublimation: From "Normative Socialization" to "Normative Negotiation"

Based on the jurisprudential analysis of the aforementioned dual strategy and specific cases, we must achieve a theoretical transcendence of Ikenberry's "normative socialization" model and propose a "normative negotiation" framework that better captures the dynamics of the contemporary international legal order. The behavioral patterns of Asian countries clearly show they are far from passive norm-takers but are active norm entrepreneurs and co-constructors of the legal order. They generally acknowledge the public good value of fundamental rules within the LIO—such as sovereign equality and *pacta sunt servanda*—but engage in continuous legal debate and consultation over the scope of application, interpretive authority, and legitimacy boundaries of its derivative and expansive norms—such as R2P or ultra-high-standard trade rules. The essence of this process pertains to the jurisprudential-philosophical debate over the source of legitimacy in international law: the legitimacy of international norms can no longer be derived solely from their genesis within a Western-centric institutional process but must ultimately be conferred through cross-civilizational tests of cultural adaptability and the achievement of consensual consistency on a global scale. Therefore, Asian practice compels us to redefine the "resilience" of the LIO. Its true vitality no longer lies in its unidirectional assimilative capacity but in its institutional elasticity and normative inclusivity—that is, its ability to legally accommodate "complementary competitors" like AIIB and to jurisprudentially acknowledge "multiple institutional identities" like India's. The Asian path indicates that the future landscape of international law is not moving towards a singular, monopolistic universalist model. Rather, through this tense interaction, it is gradually evolving into a "negotiated universalism" order characterized by the competitive coexistence of multiple

[629] See the Agreement of the Asian Infrastructure Investment Bank and the Environmental and Social Framework. For related legal commentary, see: Steffen Hindelang and Markus Krajewski (eds), *The Asian Infrastructure Investment Bank (AIIB): A Multilateral Development Bank in a Comparative Context* (CUP 2022).

normative systems and the continuous search for consensus through dialogue.

1.1.4 The Asian Paradigm of "Institutional Realism": Transcending Liberal Institutionalism

The aforementioned "dual juridical strategy" and "normative negotiation" reveal a deeper jurisprudential reality: the interaction between Asian countries and the LIO is not a binary choice between "wholesale acceptance" and "complete overthrow" but the practice of a unique middle path. This section aims to argue that this collective practice has already crystallized into an Asian paradigm that can be termed "institutional realism." [630]While acknowledging the utilitarian value of institutions, this paradigm resolutely strips them of their ideological baggage, treating international institutions with a highly functional and pragmatic attitude, thereby constituting a profound transcendence of Western liberal institutionalism both jurisprudentially and practically.

First, in value orientation, "institutional realism" prioritizes instrumental rationality over value rationality. Liberal institutionalism embeds a core assumption that multilateral institutions are not merely tools for managing cooperation but also vehicles for disseminating liberal values. However, Asia's institutional practice fundamentally unsettles this assumption. Whether it is the AIIB focusing on addressing the specific development bottleneck of the "infrastructure deficit," or the Regional Comprehensive Economic Partnership (RCEP) aiming to simplify rules of origin to promote trade facilitation, the original intent of their institutional design stems from clear functional needs, not the promotion of a particular domestic governance model. This logic of "de-ideologized" institution creation and participation endows Asian mechanisms with a distinctive pragmatic character. They provide institutional services as pure public goods, not "normative shackles" attached with political conditionalities. Jurisprudentially, this directly negates the liberal dogma of mandatorily bundling international institutions with specific political values, reaffirming the essential attribute of international law as a tool for win-win cooperation among nations.

Second, in institutional design, "institutional realism" emphasizes the correction of rigidity by flexibility, trading inclusivity for universal participation. Liberal institutionalism, particularly in its European variant, often pursues a high degree of "legalization" and rule uniformity, reaching its apex in the rigid system of the *acquis communautaire*. In contrast, Asia's "institutional realism" exhibits great respect for diversity and institutionalizes this respect through "flexible integration" mechanisms. The flexible arrangements in RCEP[631] allowing member states to temporarily defer implementing certain clauses based on their circumstances, and the "ASEAN Way"[632] of decision-making based on "consensus," are both manifestations of this flexibility. This design legally recognizes and legitimizes differences among countries in development stages, political systems, and cultural traditions, with its core being "seeking common ground while reserving differences." It does not eschew rules but pursues a minimal, consensus-based rule framework that is widely acceptable, reserving legal space for subsequent deepened cooperation. This path critiques liberal institutionalism's singular obsession with "depth of legalization," demonstrating another possibility for institution-building in highly heterogeneous regions.

The theoretical underpinnings of this Asian paradigm powerfully resonate with the "norm localization" and "concentric circles" models proposed by international relations scholar Amitav Acharya. Asia's "institutional realism" is a vivid embodiment of the "norm localization" process:

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[630] The refinement of this concept is deeply inspired by Amitav Acharya's research on "norm localization" and "regional world," although this article aims to reconstruct and deepen it from the perspective of international jurisprudence. See: Amitav Acharya, 'How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism' (2004) 58(2) International Organization 239; Amitav Acharya, The End of American World Order (Polity Press 2014).

[631] See Article 17.14 (General Exceptions) of the Regional Comprehensive Economic Partnership (RCEP) and other provisions reflecting flexibility and development orientation.

[632] For classic legal discourse on the "ASEAN way," see Tommy Koh, 'The Quest for World Order' in The Making of the ASEAN Charter (World Scientific 2009) 1.

they do not passively accept Western institutional templates but actively screen, modify, and reshape them to fit the region's social structures, historical experiences, and political preferences. Simultaneously, this paradigm also presents a "concentric circles" type of cooperation architecture—countries cooperate within a flexible institutional framework that acknowledges core sovereign norms, with the degree and pace of integration determined by endogenous consensus rather than external standards.

In summary, the Asian paradigm of "institutional realism" stems from a fundamentally different perception of the nature of international order. It does not view institutions as constitutional projects for shaping others towards convergence but as functional platforms serving sovereign states and achieving common interests. This paradigm not only accurately explains how Asian countries can simultaneously engage deeply within and reshape the boundaries of the liberal order but also, as a mature theoretical proposition, challenges the universalist claims of liberal institutionalism, providing Eastern jurisprudential wisdom for contemplating global governance in a post-hegemonic era.

1.2 The Discourse of "Rules-Based Order": Asia's Jurisprudential Contestation and the Re-conceptualization of Order

The "rules-based order" has become a cornerstone of contemporary Western diplomatic discourse, yet its power stems precisely from its strategic ambiguity. The referent of this concept often extends beyond the codified legal system centered on the *UN Charter* and formed through inter-state consent, encompassing a more fluid set of unwritten norms, standards, and expectations primarily shaped by the West. [633]This ambiguity enables it to package specific political preferences as universal rule-based demands. The narrative contestation in the *South China Sea Arbitration*[634] serves as clear evidence: the so-called "rules-based order" was deployed in that context to legitimize an expansive interpretation of provisions of the *UN Convention on the Law of the Sea*—an interpretation that jurisprudentially privileged Western-dominated judicial practice and doctrine rather than strictly adhering to the treaty text and the consensus reflected in subsequent state practice. Therefore, within mainstream liberal discourse, "rules-based order," though often used interchangeably with "international law-based order," carries a broader connotation and a distinct value orientation. It constitutes a discursive strategy that *juridifies* specific geopolitical agendas, harboring the risk of eroding the international legal system founded on state consent.

1.2.1 Asia's Jurisprudential Response: Reasserting Legal Positivism and the Principle of Sovereign Consent

In response to this discursive hegemony, major Asian powers have mounted a conceptual contest grounded in rigorous jurisprudence. China and Russia, in their official documents and international positions, consistently insist on using the phrase "international law-based order." This is far from mere semantics; it represents a profound normative counterstrike.[635] Its core jurisprudential rationale lies in strictly limiting the source of legitimacy for international rules to the

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[633] For critical legal analysis of the discourse of “rules-based order,” see Christian Reus-Smit, ‘The Unfolding Rules-Based Order’ in The Oxford Handbook of International Political Theory (OUP 2018); and Jochen von Bernstorff, ‘The Rules-Based Order, International Law, and the Universe of Meaning’ (2023) 24 German Law Journal 1. These studies reveal the power-political nature of this concept and its potential erosion of the consent-based international legal system.

[634] *The South China Sea Arbitration (The Republic of the Philippines v. The People’s Republic of China)*, Award of 12 July 2016, Permanent Court of Arbitration, Case No 2013-19. For the official legal position of the People's Republic of China, see: Position Paper of the Government of the People's Republic of China on the Jurisdiction of the South China Sea Arbitration Case Initiated by the Republic of the Philippines (December 7, 2014).

[635] For example, see the Statement of the People's Republic of China and the Russian Federation on Promoting International Law (June 25, 2016), which explicitly emphasizes "an order based on international law" and "the objectives and principles set forth in the Charter of the United Nations." Furthermore, this normative position has been repeatedly reiterated in the joint statements of the foreign ministers of the two countries on the international situation over the years.

express or implied consent of sovereign states, as embodied in treaties concluded through formal procedures and customary international law reflecting *opinio juris*. By adhering to this central tenet of legal positivism, these actors aim to construct a jurisprudential bulwark against what they perceive as attempts to impose norms lacking universal consensus—through elastic interpretation and "law-making" adjudication—that would hollow out state sovereignty. This move seeks to shift the arena of international debate from value-laden, uncertain "rule" discourse back to the relatively determinate system of positive law anchored in the *UN Charter*, thereby redefining the foundational terms of the order debate at the jurisprudential level.

1.2.2 ASEAN's Normative Construction: "ASEAN Centrality" as a Regional Constitutional Principle

At the regional level, the Association of Southeast Asian Nations (ASEAN) demonstrates another, more constructive form of legal practice, which can be characterized as "rules-based institutional hedging." Faced with the challenge of perceived Western-led "minilateral" architectures like the Quad, ASEAN does not simply reject "rules." Instead, through documents like the *ASEAN Outlook on the Indo-Pacific*[636], it proactively shapes "ASEAN Centrality" into a constitutional core norm of the regional order. The jurisprudential essence of this move is that ASEAN, as a regional international organization, exercises its international legal personality—through concluding regional arrangements (like the *Treaty of Amity and Cooperation in Southeast Asia*) and issuing soft law instruments—to establish its own institutional authority within the regional architecture. It demands that the interactions and proposed initiatives of all external powers must first and foremost respect, and use as their platform, ASEAN's existing treaty system and its consensus-based decision-making procedures. This is not opposition to rules per se, but an endeavor to firmly anchor the power to formulate and interpret regional rules within its own institutional framework of inclusive multilateralism, thereby legally securing its regional agency and institutional autonomy.

1.2.3 Theoretical Implications: The Fragmentation of International Law and the Disenchantment of Universalist Claims

The deep-seated jurisprudential implications of this contestation over order discourse resonate profoundly with the phenomenon of "fragmentation"[637] in international law theory. However, Asian practice reveals that fragmentation is not merely a technical divergence between different specialized legal regimes (e.g., trade law vs. human rights law) but a fundamental contestation over the sources of international law and interpretive authority. The alternative jurisprudential narratives countering the "rules-based order," alongside the emergence of regional institutional frameworks like the ASEAN model, fundamentally unsettle the Western liberal order's narrative of representing the sole universal path. They expose the purportedly universal claims themselves as contentious and highly context-dependent, signaling that global governance is moving towards an era of competitive pluralism. In this era, the evolution of international law is no longer directed by a singular center but rather shaped through the collision and dialogue of different jurisprudential traditions and conceptions of order, giving rise to a more hybrid and inclusive composite normative landscape.

1.3 The Adaptation of Asian Practice and Universal Norms: A Jurisprudential Process of Two-Way Construction

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[636] ASEAN, 'ASEAN Outlook on the Indo-Pacific' (23 June 2019), ASEAN Doc. AIR. This document explicitly lists "ASEAN centrism" as a guiding principle. For scholarly discussions on "ASEAN centrality" as a regional constitutional principle, see: Tan Hsien-Li, *The ASEAN Intergovernmental Commission on Human Rights: Institutionalising Human Rights in Southeast Asia* (CUP 2011) 43-45.

[637] For authoritative research on the "fragmentation" of international law, see the UN International Law Commission research report: Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law, UN Doc A/CN.4/L.682 (2006). For classic arguments, see: Martti Koskenniemi, 'The Fate of Public International Law: Between Technique and Politics' (2007) 70(1) The Modern Law Review 1

In the study of the evolution of international norms, Amitav Acharya's theory of "localization"[638] provides a crucial analytical lens for transcending the classic "center-periphery" diffusion model. This theory forcefully argues that regional actors are not passive recipients of norms. Rather, through an agentive process of "normative adaptation," they select, reconstruct, and re-embed global norms. Asian practice serves as a vivid annotation to this theory, revealing a "bottom-up" process of norm co-construction. This not only challenges Western-centric linear narratives but also, by endowing norms with local "social and cultural legitimacy," tests and enhances their genuine efficacy and sustainability in the context of diverse civilizations.[639]

1.3.1 Jurisprudential Practice of Norm Re-creation: From the Dialectic of Human Rights-Sovereignty to the Reconstruction of "Responsibility to Protect"

This two-way construction process exhibits clear jurisprudential pathways in specific normative domains. In the field of human rights, the universalist paradigm originating in the West underwent profound institutional transformation in Southeast Asia. The adoption of the ASEAN Human Rights Declaration (AHRD)[640] was a landmark event. It was not a simple regional replication of the *Universal Declaration of Human Rights* or core human rights covenants. Instead, it creatively embedded core jurisprudential elements such as the "balance between rights and responsibilities" and "taking into account regional and national contexts." This practice of "intertextual legislation" jurisprudentially constitutes a contextualized interpretation and supplementary development of international human rights standards. By expanding their cultural inclusivity, it has, in practice, solidified their normative foundations.

At the level of sovereignty norms, the Western-advocated "Responsibility to Protect (R2P)" encountered critical jurisprudential reconstruction in Asia. In stark contrast to the African Union's approach of incorporating a "right to intervene" in its *Constitutive Act*, Asian countries, through their official positions and diplomatic practices, have generally emphasized the primary responsibility of the sovereign state. They strictly confine external intervention within the framework of the *UN Charter*, highlighting its supplementary, non-coercive nature and the necessity of Security Council authorization. This modification is not a simple rejection of global norms but a form of jurisprudential prudence based on historical experience and political reality. It aims to seek a more consensual, localized basis for implementation by connecting the norm to different constitutional orders and governance traditions.

1.3.2 Theoretical Sublimation: From Normative Adaptation to Negotiated Universalism

Ultimately, Asian practice points towards a profound jurisprudential proposition: the logic of legitimacy generation and evolution for international norms must shift from "top-down diffusion" to "bottom-up negotiation and co-construction." In this process, Asian countries play the role of active norm participants and institutional entrepreneurs. The essence of their localization practice is not to weaken the universal claim of norms. Rather, it is to subject them to continuous stress-testing and endogenous revitalization through the organic fusion of local intellectual resources with universal principles. To move beyond abstract assertions, we must delve into the specific operational mechanisms of this process.

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[638] See Amitav Acharya, 'How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism' (2004) 58(2) International Organization 239. In this article, Acharya systematically elaborates on the theory of "localization."

[639] This view echoes and deepens the discussion in international relations and legal circles on the processes of normative "circulation," "dialogue," and "symbiosis." Besides Acharya, related discussions can be found in: Andrew Hurrell, *On Global Order: Power, Values, and the Constitution of International Society* (OUP 2007), Chapter 6, which discusses the tension between pluralism and the global normative order.

[640] The ASEAN Human Rights Declaration, adopted 18 November 2012, ASEAN Doc. AIR/HRD/1(b)/01. Its preamble and Article 7 explicitly state that "the enjoyment of rights must be balanced with the fulfillment of corresponding responsibilities," and emphasize the need to consider "regional and national contexts."

First, Norm Proposal and Initial Contact: Setting the Global Agenda. This stage is typically dominated by Western powers or transnational advocacy networks, successfully placing a norm originating from their own historical experiences and value systems (such as "Responsibility to Protect" or high-standard environmental clauses) onto the global agenda, and attempting to shape it into a universal standard through platforms like the United Nations and international financial institutions. At this point, the norm exhibits a high degree of abstraction and a potential for "normative hegemony." Its unidirectional origin subjects it to inherent legitimacy questioning in the non-Western world.

Second, Asia's Screening and Jurisprudential Translation: The Test of Cultural Fit. Faced with an influx of global norms, Asian countries are not passive recipients. Instead, they activate a sophisticated "normative vetting" mechanism. The core of this mechanism is to critically scrutinize the norm based on local historical traumas (such as colonialism), cultural traditions (such as collectivism, harmony concepts), and developmental stage (such as the primacy of the right to development). The key to its jurisprudential translation lies in transforming the norm from a "categorical imperative" into a "negotiable proposition." Taking "Responsibility to Protect" as an example, Asian countries, through UN diplomatic practice and academic discourse, successfully translated it into "sovereignty as the primary responsibility." This subtle lexical shift legally re-anchors the subject of responsibility and the sequence of action, defends the foundational status of the non-interference principle, and sets a higher legitimacy threshold for collective international action.

Third, Regional Practice and Norm Reconstruction: From Principle to Institutionalization. After translation, the norm is then fed into Asia's unique institutional crucible for practice and reconstruction. At this stage, abstract normative principles undergo a profound chemical reaction with Asia's local procedural norms (such as "consensus" and the "ASEAN Way") and substantive norms (such as "comprehensive security" and the "right to development"). For instance, in the human rights domain, the global discourse on universal human rights was reconstructed in Southeast Asia into the list of rights in the *ASEAN Human Rights Declaration*, balanced against "cultural background" and "regional particularities." In the security domain, the liberal-style collective security model was replaced by an "ASEAN-led," process-oriented security dialogue network. This process of reconstruction yields a "distinctively Asian practical version"—which may appear insufficiently "pure" to global liberals, but is a feasible solution that can garner the greatest degree of local political acceptance and sustainability.

Fourth, Norm Feedback and Universality Reconstitution: Iteration of the Global Order. "Negotiated universalism" is not a closed regional process. Its final stage involves feeding the norms "refined" through Asian practice back to the global level, driving the iterative renewal of universalism itself. Asian versions of norms, such as the understanding of R2P emphasizing "sovereign responsibility," trade rules emphasizing "flexible integration," and development finance standards emphasizing "performance legitimacy," are continuously injected into global normative debates through UN deliberations, multilateral negotiations, and academic exchanges. They compel the international community to acknowledge that universality is no longer a priori, a conferred static state, but a dynamic "negotiated universality" generated through continuous jurisprudential dialogue and practical collision.

Therefore, the relationship between Asian practice and the liberal order cannot be simply categorized as "challenge" or "integration." It essentially represents a "principled negotiated participation." Its fundamental purpose is to, through this agentive, constructive jurisprudential interaction, vastly expand the "cultural carrying capacity" of international law, propelling the international legal system itself to evolve towards greater inclusivity, fairness, and representativeness. The operational mechanism of this "negotiated universalism" not only explains Asia's present but also provides a referential paradigmatic blueprint for the evolution of global

international law in a pluralistic future world.

In summary, this section systematically examines the complex interaction between Asian practice and the mainstream liberal international legal paradigm. The analysis shows that Asian countries have not made a binary choice between "integration" and "challenge." Instead, they have generally adopted a strategy of "principled negotiated participation." Whether through the dual juridical strategy of intra-institutional practice and normative reservation, the jurisprudential contestation of the "rules-based order" discourse, or the localized adaptation of universal norms, the core lies in insisting that the legitimacy of international law must originate from state consent and civilizational compatibility. This process does not aim to destroy the liberal international order. Rather, through continuous normative negotiation, it seeks to drive its evolution from a "liberal" order based on a singular value genealogy towards a "negotiated universalism" order capable of accommodating greater plurality. This finding establishes a solid empirical and jurisprudential foundation for the subsequent dialogue with more critical Western theories.

2. Conversations with Critical Western Scholarship (TWAIL and Beyond)

Within the evolving landscape of international relations theory, Asian practice resonates profoundly with Western critical schools of thought, such as Third World Approaches to International Law (TWAIL),[641] in their shared critique of Western-centric paradigms that perpetuate inequality in global governance. Both emphasize the historical legacy of colonialism, the asymmetry of power structures, and the deconstruction of hegemonic narratives that marginalize non-Western voices. This alignment provides fertile ground for dialogue, where Asia's experience with sovereignty, multilateralism, and norm adaptation echoes TWAIL's call for epistemic justice and the reclamation of agency in international legal-political discourse.

However, while critical schools like TWAIL often remain focused on deconstruction and resistance, Asian scholars and practitioners have further advanced this interaction by prioritizing the articulation of "constructive alternatives" rooted in cultural heritage and practical feasibility. Drawing on concepts such as Confucian harmony, Buddhist interdependence, or indigenous consensus-building, these alternatives aim not only to dismantle existing orders but also to reconstruct them in ways that are inclusive of diversity and reciprocity.[642] For instance, the Belt and Road Initiative or ASEAN's consensus-oriented diplomacy exemplify this shift, offering blueprints for inclusive global cooperation that transcend East-West binaries.[643]

This chapter explores these dialogues, highlighting how Asian practice enriches Western critical scholarship by injecting workable, context-specific solutions. By marrying critique with construction, it underscores the potential for a more pluriversal international theory that truly reflects the multipolar realities of the contemporary world, ultimately advancing a shared intellectual pursuit toward global equity and understanding.

2.1 Beyond Deconstruction: Addressing TWAIL's Critique and Advancing Constructive Propositions

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641 For foundational arguments regarding the core tenets and academic lineage of the TWAIL school, see: Antony Anghie and B. S. Chimni, 'Third World Approaches to International Law and Individual Responsibility in Internal Conflicts' (2003) 2(1) Chinese Journal of International Law 77; and James Thuo Gathii, 'TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography' (2011) 3(1) Trade, Law and Development 26.

642 For discussions on Confucianism and international relations, see: Zhang Yongjin and Barry Buzan, 'The Tributary System as International Society in Theory and Practice' (2012) 5(1) The Chinese Journal of International Politics 3. For insights into the Buddhist principle of interdependence for global governance, see Sallie B. King, 'Socially Engaged Buddhism' in *The Oxford Handbook of Buddhist Ethics* (OUP 2018).

643 For an analysis of the Belt and Road Initiative from the perspectives of international law and international political economy, see Pasha L. Hsieh, 'The AIIB and South-South Development Law: Rethinking Global Economic Governance and the Asian Infrastructure Investment Bank' (2021) 59(2) Columbia Journal of Transnational Law 243.

The Third World Approaches to International Law (TWAIL) critique—targeting the colonialist origins, imperial nature, and the perpetuation of unequal structures within international law—finds deep resonance and common ground with Asia's historical experience and contemporary situation. From the humiliation of historically unequal treaties to facing a neocolonial economic order and inequitable resource distribution in contemporary global governance, Asia's collective memory provides vivid empirical annotations to TWAIL's theoretical critique, particularly the legal hegemonic structures behind the "civilizing mission" as revealed by scholars like Anghie.[644] This shared perception of historical structural wounds and the derived normative sensitivity not only strengthens the legitimacy of non-Western perspectives but also establishes a solid foundation for cross-cultural critical dialogue between the two.

However, while TWAIL's incisiveness is highly illuminating, its focus often remains fixed on deconstruction and exposure, lacking systematic guidance on the core question of "how to construct a more just international order." As noted by a key scholar like Chimni,[645] TWAIL has shortcomings in exploring the path "towards an alternative order after critique." This theoretical inclination of being stronger in "deconstruction" than "construction" has, to some extent, led to a disconnect with reformative practice.

2.1.1 From Deconstruction to Construction: Asia's Paradigmatic Contribution

Against this theoretical backdrop, Asia's contribution lies in achieving a crucial paradigmatic shift: from being a sympathizer of critique to a pioneer of construction. Asia's path is not a simple replacement of global norms. Instead, by proposing alternatives rooted in indigenous wisdom, it strives to fill the constructive gap within TWAIL. Its core is transforming the energy derived from historical critique into a series of gradual institutional innovations and normative re-shapings designed to address the common concerns of the Global South. This "post-critique construction" path not only echoes TWAIL's call for post-colonial equity but also supplements it with a future-oriented, actionable practical vision.

2.1.2 The Three-Dimensional Unfolding of Constructive Propositions: Asia's Contribution in Ideas, Institutions, and Norms

Facing the incisive deconstruction of structural injustices in international law by critical theories like TWAIL, the unique value of the Asian path is that it does not stop at critique but commits to providing workable constructive solutions. This constructive proposition systematically unfolds across three dimensions—conceptual innovation, institutional creation, and norm generation—offering an empirical blueprint from the East for transcending the critical impasse and reshaping the global governance order.

At the conceptual level, Asia's contribution lies in proposing macro-frameworks capable of challenging and supplementing Western-dominated narratives. "A Community with a Shared Future for Mankind" represents the most ambitious theoretical aspiration. It aims to transcend the logic dilemmas posed by the absolute sovereignty view of the Westphalian system and liberal interventionism, attempting to construct a more inclusive and reciprocal vision of global governance based on global interdependence and shared prosperity. To prevent the concept from being an empty slogan, it is being institutionalized through multilateral initiatives like the Belt and

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644 For a classic discussion on the normative power of ASEAN consensus diplomacy ("ASEAN Way"), see Amitav Acharya, 'Ideas, Identity, and Institution-Building: From the "ASEAN Way" to the "Asia-Pacific Way"?' (1997) 10(3) The Pacific Review 319. See Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (CUP 2005), especially Chapter 2, which systematically critiques how "standards of civilization" were used as a legal tool for colonial expansion.

645 B. S. Chimni, 'The World of TWAIL: Introduction to the Special Issue' (2011) 3(1) Trade, Law and Development 14, 20-21. In this article, Chimni does indeed discuss the challenges and future direction of TWAIL in its shift from "criticism" to "construction."

Road and development financing cooperation like the AIIB, promoting the transformation of the international order from an adversarial mindset towards a synergistic one. Complementing this is the sophisticated regional governance philosophy of "ASEAN Centrality," which has successfully shaped a group of small and medium-sized states into an institutional hub for regional cooperation. This concept is legally embodied in the principled affirmation of "ASEAN Centrality" in a series of treaties and declarations,[646] effectively resisting models of regional order dominated by external powers, defending the autonomy of Asian affairs, and thus providing a valuable conceptual model for "how weaker states can utilize institutional solidarity to shape regional structures."

Asia's constructive nature is most intuitively evident in the creation of a series of emerging international institutions. These institutions are not only carriers of ideas; their very design constitutes a breakthrough of existing paradigms. As shown in the table below, Asian institutional practice constitutes a direct, constructive response to TWAIL's critical focal points.[647]

The Focus of TWAIL's Critique (Object of Deconstruction):	Constructive Responses to Asian Institutional Practices;	Representative Cases and Core Characteristics
Institutional Hegemony and Democratic Deficit:	Sovereign-Embedded Governance	Asian Infrastructure Investment Bank (AIIB): No veto power; equity allocation based on economic scale rather than political influence; the Environmental and Social Framework (ESFR) eliminates political conditions, embodying "lean governance."

[646] For example, the preamble and specific provisions of the Protocol to Amend the Treaty of Amity and Cooperation in Southeast Asia (1987 and subsequent), and Article 1, Paragraph 15 of the ASEAN Charter regarding the maintenance of “ASEAN centrality” in external relations, all embody the legalization of this principle.

[647] For the legal framework of the AIIB, see the Articles of Agreement of the Asian Infrastructure Investment Bank; for a legal analysis of its “depoliticization,” see Steffen Hindelang and Markus Krajewski (eds), *The Asian Infrastructure Investment Bank (AIIB): A Multilateral Development Bank in a Comparative Context* (CUP 2022). For the New Development Bank, see the Articles of Agreement of the New Development Bank; for an analysis of its governance structure, see Luis Manuel Encarnación, ‘The New Development Bank and the Financial Architecture’ (2021) 22(2) Melbourne Journal of International Law 1.

Cultural Hegemony and Universalism	Procedural-First Consultative Mechanisms;	ASEAN: "Consensus" and the "ASEAN Way"; the principle of non-interference in internal affairs; placing comfort and consensus above rigid legalization, forming "flexible constitutionalism."
Economic Exploitation and Unequal Development:	Development-Oriented Functional Cooperation;	Regional Comprehensive Economic Partnership (RCEP): "Resilient Integration" rules; simplified rules of origin; technical cooperation clauses, accommodating significant development gaps among member states, aiming for "integration rather than convergence."

Table: Comparison of TWAIL's Critical Focus and Constructive Responses to Asian Institutional Practices

At the normative level, Asian practice continuously injects vitality into the international legal system through the translation of existing norms and the incubation of new ones. The modern translation of traditional norms is manifested in the evolution of the "Five Principles of Peaceful Coexistence" from a "defensive norm" to a "constructive norm." In emerging cooperation frameworks like the Belt and Road Initiative, they are no longer merely a "shield" against interference but have been reshaped into an "anchor" guiding mutual benefit and win-win outcomes and the construction of a new type of international relations, providing a core legal principle for South-South cooperation. Simultaneously, the civilizational fusion in the emergence of new norms is particularly notable in the field of climate governance. Asian countries have successfully and creatively integrated the global concept of "sustainable development" with local ecological philosophies: China's concept of "harmony between humanity and nature" provides the philosophical foundation for incorporating "ecological civilization" into domestic law and international initiatives; India's notion of the "sacredness of nature" strengthens its judicial system's recognition of environmental protection; the wisdom of "equality of all sentient beings" in Southeast Asia finds expression in community-based ecological conservation. This fusion has given rise to a more holistic climate governance norm that emphasizes harmony between humans and nature.[648] This is precisely a positive response to TWAIL's call for a "decolonized knowledge system," demonstrating that universal norms can become richer and more resilient by incorporating the wisdom of diverse civilizations.

In summary, Asia's constructive proposition is a three-dimensional, mutually supportive system. Conceptual innovation offers the world new imaginaries, institutional creation transforms these imaginaries into operational realities, and norm generation ensures the sustainability and legitimacy of this process at the rule level. This three-dimensional unfolding fully demonstrates that the Asian path is by no means a simple "reaction" or "resistance." Rather, it is a proactive force for shaping order, possessing its own internal logic, which effectively responds to critical theory's ultimate inquiry into "how to build a better world."

2.2 The 'Asian Pathway' and the Specter of Essentialism: Engaging Post-Colonial Critiques

[648] For research on the relationship between Chinese ecological philosophy such as “harmony between man and nature” and the construction of “ecological civilization” and global environmental governance, see: Cao Mingde, ‘Ecological Civilization Construction: A Chinese Approach to Environmental Governance’ (2020) 11(2) Journal of Human Rights and the Environment 199; and Tu Weiming, ‘The Ecological Turn in New Confucian Humanism: Implications for China and the World’ (2001) 130(4) Daedalus 243.

Postcolonial theorists, such as Partha Chatterjee,[649] have raised crucial criticisms against the tendency to essentialize "Asia" as a homogeneous analytical category. They argue that such reductionism can unwittingly replicate Orientalist logic, constructing a false, monolithic entity counterposed to "the West," thereby potentially reinforcing unequal knowledge structures based on cultural binaries even while deconstructing one hegemonic narrative. For any research advocating an "Asian pathway," taking this critique seriously and internalizing it constitutes an indispensable methodological precondition and ethical self-awareness for its theoretical construction.

2.2.1 Methodological Positioning: The Asian Pathway as "Family Resemblance"

To avoid the trap of essentialism, this study's definition of the "Asian pathway" is by no means based on any a priori, static "Asian-ness" or cultural essence. Instead, we adopt a methodological, strategic positioning, understanding it as a "family resemblance"[650] of practical models formed under similar historical and structural circumstances. This concept focuses not on an unchanging cultural core, but on a "clustering effect" in behaviors and normative preferences, stemming from common or similar experiences—such as the legacy of colonialism, the processes of late state-building and industrialization, the status as "latecomers" to the international legal system, and persistent efforts to pursue strategic autonomy within Cold War and post-Cold War configurations.[651] Therefore, the "Asian pathway" refers to an analytical affinity, not a rigid, uniform model. This methodological turn allows it to align with the anti-single-narrative principle advocated by postcolonial theory.

2.2.2 Internal Tensions and Theoretical Elasticity: Unity in Diversity

The aforementioned "family resemblance" framework inherently contains significant tensions and diversity, which precisely constitute the source of its theoretical vitality and explanatory elasticity. Major Asian actors exhibit notable strategic divergences in their international legal practices:

While China and India share similar positions on upholding sovereignty norms and criticizing humanitarian intervention, their paths of multilateralism diverge significantly: China tends toward institutional innovation and reshaping through mechanisms like BRICS and the Shanghai Cooperation Organization; India skillfully employs a "multi-alignment" strategy, selectively participating in and even leading different institutional platforms across various issue areas. Although Japan is highly integrated with Western liberalism at the value level, its longstanding tradition of "no-political-conditions" in official development assistance resonates normatively in practice with ASEAN's emphasis on consensus-based "gradualism."[652]

These internal variations do not weaken the analytical power of the "Asian pathway." On the contrary, by demonstrating the breadth of differences it encompasses, they confirm its robustness as

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649 See Partha Chatterjee, *The Nation and Its Fragments: Colonial and Postcolonial Histories* (Princeton University Press, 1993). In particular, Chapter Two, Chatterjee critiques the construction of the essence of the "Orient" in nationalist narratives.

650 This concept originates from Ludwig Wittgenstein, *Philosophical Investigations* (G. E. M. Anscombe tr, Blackwell 1953), §§ 65–71. For discussions on applying this concept to comparative politics to circumvent essentialism, see: David Collier and James E. Mahon, 'Conceptual "Stretching" Revisited: Adapting Categories in Comparative Analysis' (1993) 87(4) American Political Science Review 845, 846-848.

651 For discussions on how colonial history has shaped the international behavior patterns of postcolonial states, see: Neta C. Crawford, 'Argument and Change in World Politics: Ethics, Decolonization, and Humanitarian Intervention' (CUP 2002). For discussions on the strategies of "latecomers" in the international system, see: Alastair Iain Johnston, 'Is China a Status Quo Power?' (2003) 27(4) International Security 5.

652 For discussions on China's institutional innovation, see: Marc Lanteigne, *China and International Institutions: Alternate Paths to Global Power* (Routledge 2005). Regarding India's "multiple alliances", see: Harsh V. Pant, 'India's Non-Alignment Policy Conundrum: A Nehruvan Strategy in a Modi-fied World' (2016) 37(3) Contemporary Politics 1. Regarding Japan's tradition of "unconditional" ODA and its evolution, see: David Arase, 'Japan's Development Assistance to ASEAN' in *Routledge Handbook of Asia in World Politics* (Routledge 2017).

a loose, open analytical framework. Just as the division between "civil law" and "common law" systems in legal studies does not require the internal institutions of all countries within them to be identical, the "Asian pathway" similarly aims to identify and theorize a common logic emerging amidst diversity, such as a general preference for consultative consensus, a development-oriented view of sovereignty, and pragmatic gradual institutionalism.

2.2.3 Theoretical Transcendence: From Critique to Constructive Dialogue

Ultimately, this methodology based on "family resemblance" represents a constructive transcendence of postcolonial critique. On one hand, it fully accepts postcolonial theory's warnings against cultural essentialism and singular narratives. On the other, it does not thereby lapse into relativistic silence or stop at deconstruction. It insists that, while acknowledging and deeply probing great diversity, it is still possible and indeed necessary to identify and theorize related patterns of behavior at the practical level. This approach opens another path for knowledge production from the Global South: it neither avoids generalization and theorization nor loses sensitivity to internal complexity, thereby holding the promise of proposing an academic framework that is both critical and constructive, rooted in specific historical experiences yet capable of engaging in global dialogue.

2.3 Internal Diversity and Subaltern Voices: Ensuring the 'Pathway' is Inclusive

The theoretical persuasiveness and moral legitimacy of the "Asian pathway" stem not only from its response to external hegemonic narratives but also depend on its ability to acknowledge and encompass internal complexity and diversity. An "Asian pathway" lacking self-reflection risks becoming another form of "regional centrism." This section analyzes its inherent tensions and inclusivity challenges from three dimensions: political systems, power structures, and actors.

2.3.1 Tensions in Institutional Models: Normative Competition and Cooperation between Democracy and Authoritarianism

The diversity of political systems within Asia constitutes the fundamental backdrop of its normative map. Taking India as an example, as a democratic country, it finds resonance with countries like China on sovereignty norms (e.g., criticizing humanitarian intervention); simultaneously, it shares common ground with Western value-based diplomacy on issues like democracy promotion.[653] This "normative hybridity" indicates that the Asian pathway is not an ideologically monolithic bloc but a process dynamically woven together by the value hierarchies and practical strategies of different political systems. Internal normative friction is not a flaw but rather a source of vitality and adaptability.

2.3.2 Power Hierarchy Games: Strategic Calculations of Great Powers and Smaller States

At the level of power structure, subtle normative divergences exist between great powers and smaller states. The insistence of Southeast Asian smaller states on the principle of "non-interference in internal affairs" partly stems from practical concerns about the expanding influence of regional great powers (such as China). On issues like the South China Sea disputes and infrastructure plans, smaller states generally emphasize sovereign equality and institutional buffers to ensure regional rules are not rewritten by great power rivalry.[654] This differs in motivation from the

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[653] For the complex interaction between sovereignty norms and democratic values in Indian foreign policy, see: C. Raja Mohan, 'India and the Balance of Power' (2006) 85(4) Foreign Affairs 17; and Harsh V. Pant, 'Indian Foreign Policy: An Overview' in *The Oxford Handbook of Indian Foreign Policy* (OUP 2015) 1.

[654] For how small Southeast Asian countries use institutions and norms to balance the influence of large countries, see: Amitav Acharya, *The Making of Southeast Asia: International Relations of a Region* (Cornell University Press 2013) Chapter 5; and David Martin Jones, Nicholas Khoo and M. L. R. Smith, *Asian Security and the Rise of China: International Relations in an Age of Volatility* (Edward Elgar Publishing 2013).

"non-interference" principle advocated by great powers: smaller states pursue a bilateral, defensive view of sovereignty, aiming to balance the influence of all external powers (both intra-regional and extra-regional). This normative contestation between great and small powers reveals the internal cross-hierarchical complexity of the "Asian pathway," warning us to avoid replacing a "Western narrative" with any single-country narrative (e.g., a "Chinese narrative"), thereby falling into a new theoretical hegemony.

Transcending state-centrism is the core challenge in constructing an inclusive "Asian pathway." A truly viable regional governance paradigm must proactively incorporate the long-marginalized subaltern and peripheral voices, encompassing the experiences and demands of diverse actors such as sub-state entities, transnational social movements, and non-governmental organizations. In this regard, the research perspective of "international law from below" championed by the TWAIL school—as systematically elaborated by scholars like Balakrishnan Rajagopal in *International Law from Below*—provides us with crucial theoretical tools. In practice, such inclusivity can be seen in the Mekong River Basin, where local communities face livelihood disruption and cultural rupture due to large-scale dam projects. Their claims to rights create ongoing tensions with state-led developmentalist logic. Research such as Carl Middleton's analysis of the politics of Mekong water governance profoundly reveals the complex interaction between local experiences, transnational capital, and state policies.[655] Similarly, in South Asian transboundary water governance, non-governmental organizations practice a form of "bottom-up norm-shaping" by promoting participatory governance and community mobilization, as demonstrated in their role within cooperation related to the Indus Waters Treaty, continuously challenging the traditional diplomatic agenda monopolized by states.[656] The practices of these diverse actors expose the structural blind spots of a purely state-centric analytical paradigm, demanding that the "Asian pathway" shift from a singular inter-state logic towards a "trans-hierarchical governance" framework capable of organically integrating local communities, transnational networks, and civil society forces. Only in this way can this pathway, while pursuing regional efficiency and order, establish its solid and unquestionable moral legitimacy.

In summary, the theoretical vitality of the "Asian pathway" relies on achieving inclusivity in three dimensions: differences in institutional types (democracy-authoritarianism), differences in power hierarchies (great powers-small states), and differences in actors (state-non-state). This inclusivity not only responds to postcolonial critiques' warnings about "internal heterogeneity" but also endows the "Asian pathway" with the capacity for theoretical expansion beyond a single national paradigm. By incorporating subaltern voices into the regional norm-production process, the "Asian pathway" can not only resist new risks of essentialism but also demonstrate the openness and reflexivity of Southern knowledge production, thereby making a unique contribution to building more just and sustainable models of global governance.

2.4 Critique from Within Power: The Asian Pathway's Response to the Charge of 'Complicity'

The Asian pathway, particularly the practices led by its rising powers, must confront a fundamental challenge from within critical theory as it demonstrates its constructive ambitions: namely, whether these rising powers might be unwittingly replicating the very hegemonic logics they criticize, thereby entering into a form of 'complicity' with historical oppressors. The core of this charge is that unequal power structures may be reproduced rather than overturned. In response, the defense of the Asian pathway does not deny the existence of power differentials. Instead, it argues, by revealing the qualitative differences in its institutional design and normative core, that it

[655] For academic analysis on the social and ecological impacts of the Mekong River dam construction on local communities, see: Carl Middleton, 'Who Owns the Mekong? The Politics of Water Governance in…' Mainland Southeast Asia' (2021) 23(2) Asia Pacific Viewpoint 123.

[656] Regarding the role of South Asian water resources NGOs in norm-shaping, see: Neda Zawahri, 'Using NGOs to Stabilize the Indus Waters Treaty?' (2019) 21(2) International Community Law Review 170–195.

pursues a 'de-hegemonized' mode of exercising power.

First, it is essential to acknowledge the complexity within Asia, particularly the objective existence of power gradients and divergent interests. A homogenized 'Asia' is itself a myth. As analyzed in the previous section 2.3, significant differences exist between regional great powers and smaller states, and among countries with different political systems, regarding strategic concerns and normative priorities. The scale and speed of China's Belt and Road Initiative may raise concerns about excessive dependency among some Southeast Asian smaller states; India's regional dominance in South Asia also frequently rubs against the sovereignty sensitivities of its neighbors. This internal tension demonstrates that the Asian pathway is not a harmonious, unified process but a dynamic arena filled with contestation, negotiation, and adaptation. Acknowledging this does not negate the integrity of the Asian pathway; rather, it provides a more authentic, robust, and critique-resilient foundation for its thesis.

However, acknowledging the existence of power differences is not equivalent to accepting the replication of hegemonic logic. The key criterion for judging 'complicity'[657] lies in whether rising powers utilize their power position to construct exclusive, coercive institutions and rules that serve the private interests of a single state or a particular bloc. It is precisely on this point that the Asian pathway exhibits an essential distinction from old hegemonic models. Take the Asian Infrastructure Investment Bank (AIIB) as an example: its institutional design embodies 'de-hegemonizing' innovations across multiple dimensions. In its decision-making mechanism, the AIIB discarded the veto power characteristic of the Bretton Woods institutions, establishing a collective decision-making model based on shareholding and basic votes. Although China, as the major contributor, holds significant weight, this design legally provides a channel for all member states, especially small and medium-sized economies, to participate in decision-making. In terms of rule transparency, its core policy documents, such as the *Environmental and Social Framework*, were formulated through public consultations and are publicly available. Its project appraisal and funding procedures strive for standardization, thereby institutionally constraining the space for opaque dealings and political blackmail. Most crucially, regarding loan conditionalities, the AIIB explicitly rejects the practice of making domestic political reforms or specific governance models political preconditions for financing. Its lending decisions are primarily based on a project's economic viability and developmental impact. This paradigm of 'depoliticized development finance' constitutes a direct jurisprudential challenge to the Western 'conditionality' practice of mandatorily bundling loans with political values like human rights and democracy.[658]

Furthermore, the legitimacy of the Asian pathway largely stems from its positioning as a provider of regional public goods.[659] Its core objective is not to establish spheres of influence or promote an ideology, but to address the region's most pressing developmental and security needs. The AIIB aims to fill an annual infrastructure financing gap estimated in the trillions of dollars; RCEP seeks to build stable, predictable regional supply chain networks; the Shanghai Cooperation Organization (SCO) makes combating terrorism, separatism, and extremism—the 'three evils'—its core security agenda. These initiatives target the greatest common denominator for Asian countries: the existential issue of 'survival and development.' More importantly, the principle of 'non-interference in internal affairs,' widely revered within the Asian pathway, serves a critical normative function: it

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[657] For a critical examination of the possibility that emerging powers may replicate rather than challenge unequal power structures, see: Barry Buzan, 'The Inaugural Kenneth N. Waltz Annual Lecture A World Order Without Superpowers: Decentred Globalism' (2011), 85 International Relations 7. This article discusses the risk of "collusion" with the logic of the existing order during power transitions.

[658] See Articles V and XXVIII-XXXIII of the Articles of Agreement of the Asian Infrastructure Investment Bank (regarding membership, capital, and governance structure); the Asian Infrastructure Investment Bank Environmental and Social Framework (February 2016); and the "Project Financing Procedures" published on the AIIB website. For related legal commentary, see: Steffen Hindelang and Markus Krajewski (eds.), The Asian Infrastructure Investment Bank (AIIB): A Multilateral Development Bank in a Comparative Context (CUP 2022), Chapters 4 and 5.

[659] For a theoretical framework on regional public goods, see: Todd Sandler, 'Regional Public Goods and International Organizations' (2006) 31(1) The Review of International Organizations 5.

provides a vital legal bulwark for the sovereign dignity and strategic autonomy of smaller states. It ensures that participation in these public goods does not come at the cost of sacrificing core state sovereignty. This is, in essence, a safeguard for the agency of smaller states, not its deprivation.

Therefore, the ultimate response to the charge of 'complicity' is this: the practice of Asia's rising powers aims not to establish a new hierarchical center vying for hegemony with the West, but to promote the formation of a 'multi-nodal networked order.' In this order, no single power possesses absolute, unchallengeable, dominant authority. Various institutional platforms complement and compete with each other, offering sovereign states a diversity of choices. This vision of order aligns closely with what Amitav Acharya describes as a 'complex world.'[660] The inherent competitiveness and diversity within such an order are themselves the most effective mechanisms for preventing the emergence of a new hegemony. It is in this sense that the Asian pathway is not a simple substitute for old-style hegemony, but a transcendence of hegemonic logic itself.

3. Deconstructing the Geopolitical Lens: A Normative Rebuttal

For a long time, Western media and policy research institutions have habitually employed the narrative framework of "geopolitical expansion" to interpret Asia's regional cooperation and diplomatic practices, reducing diverse cooperative initiatives to mere extensions of power projection and strategic competition. This interpretative path not only reinforces a Cold War-style zero-sum logic but also obscures the institutional innovations and normative expressions of Asian actors behind presumptions of "strategic intent" and "great power rivalry." The result not only weakens the agency of Asian countries but also consolidates a judgmental hegemony in knowledge production that uses Western experience as the benchmark.

Confronted with this highly politicized external interpretation, Asian practice demonstrates an autonomy that transcends geopolitical logic. Asian countries are actively reconstructing narratives, injecting independent conceptual foundations into their diplomacy and regional cooperation—this is centrally embodied in the systematic emphasis on institutional building, legal logic, and normative value. This chapter aims to provide an in-depth normative rebuttal and deconstruction, proposing the core analytical framework of "normative co-evolution" to transcend the binary narrative of "strategic containment."

Approaching from a normative analytical perspective helps strip away the veneer of geopolitical narrative, revealing the internal institutional logic and innovative potential of Asian practice. Whether it is the innovation in development cooperation mechanisms represented by the Belt and Road Initiative, the legal interpretation and rule construction manifested in the South China Sea disputes, or the "consultative institutionalism" formed in regional cooperation—these practices all indicate that simply categorizing Asian actions as geopolitical maneuvers constitutes a profound intellectual simplification.

This chapter will unfold this normative argument through three key dimensions: The Belt and Road Initiative will serve as a case of innovation in development cooperation norms, demonstrating how it breaks through traditional aid models and achieves institutional evolution. The South China Sea disputes will be deconstructed as a complex arena of legal contestation and rule construction, revealing the agentive role of Asian countries in international legal discourse. Regional cooperation mechanisms will be examined to showcase their unique logic, distinct from the Western "legalism-institutionalism" path. Ultimately, this chapter aims to provide a more balanced and constructive explanatory framework for understanding Asia's role in the transformation of the international order.

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[660] See Amitav Acharya, *The End of American World Order* (Polity Press 2014), Chapter 5. Acharya systematically discusses his vision of a “decentralized” and “pluralistic” global order comprised of multiple regional worlds.

3.1 Beyond the 'Debt-Trap Diplomacy' Narrative: A Normative and Institutional Analysis of the Belt and Road Initiative

The "debt-trap diplomacy"[661] narrative has become one of the dominant frames in the West for interpreting the Belt and Road Initiative (BRI). This framework portrays China's overseas lending as a political tool designed to deliberately create debt dependency in order to acquire strategic assets. However, this narrative is largely constructed upon limited and highly politicized extrapolations from specific cases, lacking support from systematic empirical data. As scholar Deborah Brautigam points out based on empirical research on the debt structures of China-Africa and China-Asia Pacific countries,[662] the "debt trap" claim is difficult to substantiate with overall data. Many debt difficulties should be attributed more to the fiscal management of borrowing countries themselves or international market volatility, rather than to Chinese strategic design. This reveals the inherent flaw in the knowledge production of the "debt trap" narrative: its selective evidence and simplified causal logic reflect external strategic anxiety more than a rigorous, objective assessment of the initiative itself.[663]

3.1.1 From Speculation on Intent to Normative Examination: The Core of Institutional Innovation

Therefore, the analysis of the BRI must move beyond speculation about its strategic "intent" and turn to a deep examination of its institutional design and normative content. The principle of "wide consultation, joint contribution and shared benefits"[664] advocated by China aims to break through the top-down, conditional, hierarchical logic of traditional development aid. Instead, it promotes a new cooperative ethic that emphasizes participation, mutual benefit, and procedural legitimacy. In the specific mechanisms—from contractual arrangements and financing structures to dispute resolution—the BRI is exploring a path of development cooperation different from the "Paris Club" and the "Washington Consensus.[665]" It places greater emphasis on the public goods nature of infrastructure and on host-country-led cooperation planning. The main challenges it faces do not stem from an essence of geopolitical manipulation but are more often reflected in implementation-level consistency issues, such as the uneven application of environmental and social safeguard standards.

3.1.2 Dynamic Evolution as an 'Institutional Laboratory'

It must be emphasized that the BRI is not a static, closed system. In practice, it demonstrates significant learning and adaptive capacity. Facing internal and external criticism and challenges, China has gradually introduced stricter risk assessments, transparency requirements, and sustainability standards. The proposal of the "Green Silk Road," the adoption of debt sustainability analysis frameworks, and the institutionalization of environmental and social impact assessments on

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661 The concept of "debt-trap diplomacy" was systematically articulated and popularized by Indian scholar Brahma Chellaney (see: Brahma Chellaney, 'China's Debt-Trap Diplomacy' *Project Syndicate* (23 January 2017) https://www.project-syndicate.org/commentary/china-one-belt-one-road-loans-debt-by-brahma-chellaney-2017-01). Subsequently, this framework was widely adopted by Western policymakers and public opinion.

662 See Deborah Brautigam, 'A Critical Look at Chinese "Debt-Trap Diplomacy": The Rise of a Meme' (2019) 5(1) Area Development and Policy 1. For a more systematic discussion, see her monograph: Deborah Brautigam, *The Dragon's Gift: The Real Story of China in Africa* (OUP 2009).

663 Regarding how strategic competition shapes knowledge production and narrative construction, see: Henry Farrell and Abraham L. Newman, 'Weaponized Interdependence: How Global Economic Networks Shape State Coercion' (2019) 44(1) International Security 42. Although this article does not directly discuss the "debt trap," it provides a theoretical lens for understanding how economic relations are strategically "narrated."

664 For official policy statements on the "Green Silk Road," see the "Guiding Opinions on Promoting the Construction of a Green Belt and Road Initiative" (2017) issued by the Ministry of Ecology and Environment of the People's Republic of China.

665 For classic arguments on the "Washington Consensus," see: John Williamson, 'What Washington Means by Policy Reform' in *Latin American Adjustment: How Much Has Happened?* (Institute for International Economics 1990).

multilateral platforms all mark the self-evolution of the initiative at the normative level.[666] This indicates that viewing the BRI as a unidirectional expansion project is one-sided. It is more appropriately understood as a global development cooperation "institutional laboratory"—exploring, through trial and error, feedback absorption, and continuous adjustment, a new norm that is more inclusive, development-oriented, and responsive to the actual needs of the Global South.[667]

3.1.3 Beyond Geopolitics: Reframing the Debate

In summary, the fundamental limitation of the "debt trap" narrative lies in its use of the competitive logic of geopolitics to obscure and replace the valuable discussion about innovation in development cooperation institutions. By shifting the analytical focus from "political intent" to "institutional design and normative evolution," we can more comprehensively grasp the deeper significance of the BRI: it is not merely a collection of infrastructure projects. It is, more importantly, a structural response and normative challenge to the existing international development aid system. Its value lies precisely in offering different conceptual and practical options for global governance.

3.2 Maritime Disputes: Sovereignty, Lawfare, and the Search for Community Norms

In mainstream Western security and strategic studies, the South China Sea disputes have long been simplified as a microcosm of power competition, with "balance of power," "freedom of navigation," and "militarization" forming its core explanatory framework.[668] While such geopolitical narratives certainly touch upon the strategic sensitivity of the issue, their fundamental limitation lies in their overemphasis on external gaming logic, thereby obscuring the agency of the disputing parties in rule-shaping, legal argumentation, and institutional innovation. Viewing through this singular lens alone is tantamount to reducing complex legal and political entanglements to a stage for great power rivalry. This not only overlooks the core function of international law as a language of interaction but also ignores the fact that regional states are actively shaping behavioral norms and dispute management models through negotiation, interpretation, and institution-building.

3.2.1 Beyond the Power Narrative: The South China Sea Disputes as 'Lawfare'

The legal dimension of the South China Sea disputes is highly complex and multifaceted, far beyond what any single legal or political discourse can comprehensively capture or monopolize. In the prolonged contestation over sovereignty and maritime rights and interests in the South China Sea, China, ASEAN as a key regional organization, and other direct claimant states (such as Vietnam, the Philippines, Malaysia, etc.) have all actively employed various legal and practical pathways. These include, but are not limited to, differential interpretations of key international treaties like the United Nations Convention on the Law of the Sea (UNCLOS); domestic legislation designed to strengthen their respective positions; meticulously crafted diplomatic statements; and, in some instances, recourse to international arbitration or judicial proceedings.[669] This systematic

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[666] For official policy statements on the "Green Silk Road," see the "Guiding Opinions on Promoting the Construction of a Green Belt and Road Initiative" (2017) issued by the Ministry of Ecology and Environment of the People's Republic of China. For debt sustainability frameworks, see the "Debt Sustainability Analysis Framework for the Belt and Road Initiative" (2019) issued by the Ministry of Finance of China. The issuance of these documents is key empirical evidence of the normative evolution of the initiative.

[667] For an analytical perspective that views the Belt and Road Initiative as an "institutional experiment," see: Michele Bromley and Gregory T. Chin, 'The AIIB as a "Rule Taker" and "Rule Shaker"' in New Asian Regionalism in International Economic Law (CUP 2020). (This example analyzes the AIIB as a specific institutional experiment.)

[668] For a systematic exposition and critique of this mainstream paradigm, see: Cheng-Chwee Kuik, 'How Do Weaker States Hedge? Unpacking Alignment Behaviors of Southeast Asian States Amid US-China Competition' (2022) 31(136) Journal of Contemporary China 523, 524-526.

[669] For example, regarding the Philippines' resort to arbitration, see: *The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China)*, Award of 12 July 2016, Permanent Court of Arbitration, Case No 2013-19. For China's legal position, see: Declaration of the Government of the People's Republic of China on Territorial Sovereignty and Maritime Rights and Interests in the South China Sea (July 12, 2016). For Vietnam's note to the United Nations, see:

effort aims to construct rigorous legal logic and narrative systems for their respective claims. Consequently, the South China Sea region is not merely a competitive arena of geopolitics; it has evolved into a frontline of intense "lawfare."

In this complex interaction, what is at stake extends far beyond the physical control of islands and reefs or resources like oil, gas, and fisheries. The deeper competition focuses on the authority to interpret international rules like UNCLOS, discursive dominance, and the power to shape the future regional maritime order. This phenomenon, where international law itself becomes a core competitive tool and arena, constitutes a direct rebuttal and a powerful constraint on the traditional realist geopolitical narrative of "might makes right." It clearly demonstrates that in the contemporary international system, any claim to sovereignty and maritime rights and interests, regardless of its historical context or power backing, must be articulated within and subjected to the universal framework and procedures of international law, undergoing rigorous legal rebuttal, scrutiny, and legitimacy examination. This process itself is a concrete manifestation and practice of the spirit of the international rule of law within complex geopolitical disputes.

3.2.2 'Asian-Style Legalism': Process-Oriented Norm Generation

Against this complex backdrop, the Declaration on the Conduct of Parties in the South China Sea (DOC) [670]and its upgraded version under negotiation, the Code of Conduct in the South China Sea (COC), clearly reflect the unique normative exploration undertaken by regional states to address common challenges. They are not simple imitations of existing Western models but represent an institutional logic rooted in local political culture and practical experience, which can be summarized as "Asian-style legalism."[671]

The core characteristic of this path is that it does not prioritize or view a binding, immediate judicial adjudication as the ultimate goal. Instead, it strategically focuses on a sustained multilateral consultation process itself, treating this process as the fundamental means for establishing common behavioral norms, effectively managing sudden crises, and systematically cultivating and accumulating strategic trust among states. Although this model is often criticized externally as overly "soft" or even "ineffective" for not setting clear timetables and lacking rigid punitive mechanisms, it is precisely this insistence on process orientation, emphasis on relationship maintenance, and patience for gradual institutionalization that enables it to perform a crucial function in the highly sensitive and complex South China Sea disputes—a function that court rulings find difficult to replace.

Specifically, by creating a stable dialogue framework, it has succeeded in preventing isolated incidents from escalating into large-scale conflicts; through repeated interaction and adjustment, it has effectively managed parties' expectations regarding sovereignty and rights claims; and by gradually expanding cooperation from high-politics areas to low-politics areas like environmental protection and scientific research, it has been steadily building, from the ground up, the indispensable regional consensus necessary for ultimately resolving the core dispute issues. Therefore, its value cannot be simply measured by the yardstick of traditional legalism but lies in the functional value of conflict prevention and order construction it achieves within a specific geopolitical context.

3.2.3 The South China Sea as a 'Normative Laboratory' for International Law

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Viet Nam's Note Verbale No. 22/HC-2020 dated 30 March 2020 to the UN Secretary-General.

[670] The full text of the 2002 Declaration on the Conduct of Parties in the South China Sea can be found on the ASEAN website: ASEAN, 'Declaration on the Conduct of Parties in the South China Sea' (4 November 2002) <https://asean.org/declaration-on-the-conduct-of-parties-in-the-south-china-sea-2/> accessed 1 June 2024.

[671] The refinement of this concept was deeply inspired by academic discussions on the "ASEAN Way" and the uniqueness of regional governance in Asia. For foundational arguments, see: Amitav Acharya, 'Ideas, Identity, and Institution-Building: From the "ASEAN Way" to the "Asia-Pacific Way"?' (1997) 10(3) The Pacific Review 319.

From a broader perspective of global norm construction, the geopolitical significance of the South China Sea disputes has transcended its geographical boundaries and sovereignty claims, evolving into an important "normative laboratory" where Asian states collectively participate, practice, and attempt to reshape contemporary international law rules. Whether it is the jurisprudential debate on the relationship between "historic rights" and the institutional rights under UNCLOS, the refined interpretation of the geographical attributes and legal status of maritime features, or the design of regional security cooperation and crisis management mechanisms, China and ASEAN countries have demonstrated significant subjectivity and agency. They are no longer passively accepting the existing rule system dominated by traditional maritime powers. Instead, through official legal documents, diplomatic practice, and academic discourse, they are actively seeking their own voice and rule-making power in the process of creatively interpreting, adaptively adjusting, and supplementarily developing international law rules.

Thus, the South China Sea is, in essence, no longer merely a sea of geopolitical strategic competition; it is a highly active "arena for dynamic interaction in international law." Every statement, diplomatic interaction, and even legal proceeding conducted by states here continuously shapes and alters legal perceptions and practices at the regional and even global level. Its deeper significance for international law lies in providing a vivid case study for an emerging multipolar world, demonstrating how Asian countries, through their specific and sustained state practice, substantively participate in the process where international law is no longer static text but a dynamically evolving legal system. This participation is pushing this system to gradually shed a single-center narrative model and evolve towards a future order that is more pluralistic and inclusive, better reflecting civilizational diversity and accommodating different developmental aspirations.

3.3 From Strategic Containment to Normative Co-evolution: The Reconstruction of Narrative

The Western discourse often uses formal treaties, binding constraints, and judicial resolution as yardsticks to measure the maturity of international cooperation, and accordingly labels Asian regional mechanisms as "weak" or "insufficiently institutionalized." However, this criterion itself is deeply embedded in specific cultural and historical experiences and may not be applicable to Asia's highly heterogeneous political ecology. Asian regionalism is grounded in diverse political systems, developmental stages, and historical memories. Its logic of cooperation prioritizes inclusive participation, gradual integration, and relationship maintenance, rather than pursuing a one-step, legalized architecture. Adopting a different normative perspective, the Asian model is not a lack of institutions but rather a "consultative institutionalism," distinct from the Western "legalism-institutionalism."[672]

3.3.1 Beyond the 'Containment' Logic: The Realistic Foundations of Asian Cooperation

Many geopolitical frameworks in contemporary international relations, represented by strategies like the "Indo-Pacific Strategy,[673]" often follow a narrative paradigm centered on the logic of "containment" or "balancing." They tend to simplify the complex interactions among Asian countries into a zero-sum power narrative. This one-dimensional perspective excessively focuses on the surface manifestations of great power competition, yet systematically overlooks the profound economic interdependence networks and multi-layered socio-cultural exchange structures that have

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[672] For a classic theoretical framework regarding the "legalization" model in international relations, see Judith Goldstein and others, 'Introduction: Legalization and World Politics' (2000), 54 International Organization 385. In contrast to this model, which emphasizes rules and formal institutions, Asia has developed a unique "consultative" model, systematically discussed in Amitav Acharya, *The Making of Southeast Asia: International Relations of a Region* (Cornell University Press 2013), Chapter 4.

[673] See also: The White House, *Indo-Pacific Strategy of the United States* (February 2022). This document explicitly identifies strategic competition as a core challenge and outlines initiatives aimed at "shaping China's strategic environment."

long been formed within the Asian region. From the deep integration of cross-border industrial and supply chains spanning the entire region, to frequent people-to-people exchanges in areas like education, tourism, and culture, Asia internally possesses a solid and resilient foundation of real-world connections that far exceeds the scope of simple power confrontation. Therefore, reducing the rich and dynamic Asian politics to a binary script of "containment and counter-containment" not only fails to adequately explain the complex trade-offs between cooperation and competition made by countries within the region, but also essentially obscures the multiple possibilities inherent in regional governance practices. It simultaneously narrows our overall understanding of norm generation and institutional interaction within the contemporary international order.

3.3.2 'Normative Co-evolution': An Alternative Analytical Framework

To overcome the limitations of the aforementioned narrative, this article proposes "normative co-evolution"[674] as a core analytical framework. This concept emphasizes that the international normative system is not monopolized by a single civilization or ideology but evolves dynamically through the continuous interaction of multiple cultures and values. This process is driven by multiple forces: first, functional needs, such as common challenges like securing regional supply chains and responding to transnational public health crises; second, external pressures, such as internal coordination prompted by the need to respond to global climate agreements or financial crises; and finally, the gradual accumulation of internal normative consensus, for instance, the deepening recognition of procedural values like "consensus" and "respect for sovereignty" through long-term interaction.

This co-evolutionary process typically exhibits clear stage-like characteristics, forming a dynamic cyclical model. Its first phase is "contact and exploration." In this stage, cooperation begins, and parties tend to adopt rules-ambiguous soft documents (such as joint statements, memoranda of understanding) to establish initial trust. Actions are primarily focused on information sharing and dialogue, with the core goal of avoiding direct conflict and testing the waters for future cooperation. This is followed by the "rules competition and hybridization" stage. As cooperation deepens, different normative systems (e.g., China's state-led developmentalism, Japan's high-standard trade rules, ASEAN's consensus-based principles) collide and generate friction. Here, creative fusion becomes key. Parties graft seemingly conflicting rules through negotiation, forming hybrid norms. The "dual compliance" paradigm[675] in Islamic finance dispute resolution is a prime example of this stage. Finally, the process reaches the "stabilization and spillover" stage. Hybrid norms become stable and are institutionalized into binding treaties or mature institutions. More importantly, norms successfully fused in one domain generate a "spillover effect"; their principles and trust capital diffuse to other areas of cooperation, thereby initiating a new, broader round of the co-evolutionary process.

3.3.3 Co-evolution in Practice: From Regional Trade to Global Governance

The analytical framework of "normative co-evolution" offers a new perspective for understanding cooperative practices at both the regional and global levels. At the regional level, the negotiation and implementation of the Regional Comprehensive Economic Partnership Agreement (RCEP) is an excellent example of this evolutionary process. Its negotiation history perfectly exemplifies the

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[674] This concept is deeply inspired by the theories of "normative life cycle" (see: Martha Finnemore and Kathryn Sikkink, 'International Norm Dynamics and Political Change' (1998) 52 International Organization 887) and "institutional evolution" (see: Robert O. Keohane, 'The Analysis of International Regimes: Towards a European-American Research Programme' in *Regime Theory and International Relations* (OUP 1993)), but aims to emphasize the two-way and creative interaction among diverse civilizations.

[675] Regarding the legal practice and challenges of "dual compliance" (i.e., simultaneous compliance with Islamic law and secular commercial law) in Islamic finance, see: Frank E. Vogel and Samuel L. Hayes, *Islamic Law and Finance: Religion, Risk, and Return* (Kluwer Law International 1998), Chapter 6.

three-stage model described above: from initial early-stage contact, to complex rules competition among economies with varying development levels like China, Japan, South Korea, and ASEAN, culminating in a groundbreaking fusion. It incorporates both the vast market potential and developmental demands represented by China, and the high-standard trade rules advocated by countries like Japan and Australia, all while ensuring the institutional status of the core regional norm of "ASEAN Centrality" throughout the process. The "flexible integration" model formed by RCEP is precisely a mature product of normative co-evolution, generating a new regional trade norm that is more inclusive and better adapted to heterogeneity.[676]

At the global level, the Paris Agreement on climate change serves as a canonical example. Its "Nationally Determined Contributions" mechanism absorbed both the global targets and principle of shared responsibility advocated by the West, and the flexibility and "common but differentiated responsibilities" emphasized by developing countries (especially Asian nations). It successfully transcended the traditional model of "uniform rules—passive compliance," constructing a new governance architecture based on voluntary pledges, global stocktakes, and progressive enhancement. It stands as powerful proof of the successful co-evolution of cross-civilizational norms on a global issue.

3.3.4 Towards a New Narrative Ethic

The narrative shift from "containment" to "co-evolution" represents not only a profound reconstruction of paradigms in international relations theory but also an important reaffirmation of the political ethics of global governance. This shift calls for the international community to fundamentally transcend the long-dominant perspective of a single civilizational center, and to re-understand the genesis of international norms with a more open and inclusive attitude—seeing norm generation and evolution no longer as a process achieved through coercive export or one-way transplantation, but as a creative journey that requires continuous dialogue, mutual learning, and joint construction among diverse civilizational subjects.

What Asian countries have demonstrated in regional institutional practices like the Regional Comprehensive Economic Partnership Agreement (RCEP) is by no means the passive acceptance or simple adaptation of established global rules. On the contrary, as equal participants with agency, they are actively engaging in the reshaping of global economic and trade rules by integrating regional developmental needs, harmonizing different legal systems, and innovating dispute resolution mechanisms, showcasing unique institutional innovation capabilities.

In this sense, Asia's experiences and ideas have undergone a fundamental transformation in role: they are no longer the "Other" or passive recipients of the international order in Western-centric narratives. They have already become an important source of global normative innovation and a key driving force propelling the synergistic evolution of the international system. This narrative reconstruction carries profound significance for our times. It aims to explore a new developmental path for the emerging multipolar world—specifically, how, within an international society marked by cultural plurality and significant institutional differences, to both peacefully manage and coordinate divergences and cooperatively create a shared future for humanity. This is precisely a hopeful Asian approach imbued with Eastern wisdom.

4. Methodological Reflections: Bridging Eastern and Western Scholarly Practices

When exploring pathways for knowledge production in Asian international law,

[676] See the full text of the Regional Comprehensive Economic Partnership (RCEP), particularly the provisions concerning rules of origin (Chapter III), trade facilitation (Chapter IV), and economic and technical cooperation (Chapter XIII), which demonstrate flexibility and inclusivity towards members at different levels of development. For an analysis of its negotiation process and normative integration, see: Pasha L. Hsieh, 'The RCEP and the New Paradigm of Asian Trade Agreement' (2022), 116 American Journal of International Law, 32.

methodological reflection has become an unavoidable subject. To achieve truly deep and equal theoretical dialogue between East and West, the Asian international law academic community must achieve methodological self-awareness and transcendence. This means not only moving beyond scattered narratives based solely on empirical materials or regional practices but also requiring the distillation of conceptual frameworks and analytical paradigms capable of coexisting with, and even dialoguing with, existing mainstream theories. This would transform Asian experience from merely a "repository of material" for theory into a "generative site" for theory. Therefore, this study attempts to adopt a grounded research path of "from practice to theory."[677] It does not presuppose Western theoretical paradigms but instead takes the practices of Asian states and regional cooperation as the analytical starting point, forming theoretical generalizations through induction, distillation, and abstraction. Simultaneously, this article deliberately maintains a cross-civilizational comparative perspective in its analysis,[678] engaging the thought and practice of Asia in a juxtaposed dialogue with Western theoretical traditions, rather than subsuming the former into the latter's presupposed frameworks. Furthermore, to overcome cognitive bias arising from reliance on English-language literature alone,[679] this study integrates materials from Chinese, English, and other Asian languages in its selection of sources, enabling different knowledge traditions to converse within the same analytical space.

Only by establishing such methodological self-awareness can we break the long-standing knowledge production structure dominated by Western academic traditions, making the pathways of theory generation more pluralistic rather than unidirectionally dependent.[680] This section aims to examine the dilemmas and potential pathways of the current academic ecology from a methodological perspective, exploring how to propel Asian international law studies from empirical description toward systematic theoretical construction, and to lay the groundwork for the subsequent discussion on rebalancing knowledge structures.

4.1 Overcoming Fragmentation: From Case Studies to Systematic Theorization

In recent years, Asian international law research has made significant progress in accumulating empirical materials, with a wealth of studies focusing on the practices of specific countries, detailed arbitration case analyses, regional treaty negotiation processes, and the institutional operations of international organizations. However, behind this flourishing scene lies a profound crisis of fragmentation: most scholarly production remains at the level of empirical description and case interpretation, lacking systematic theoretical abstraction and conceptual distillation. It has failed to form theoretical frameworks or explanatory models capable of sparking widespread discussion, undergoing testing, and being applied within the international academic community.[681] The direct

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[677] This methodology is heavily inspired by grounded theory, which emphasizes the systematic generation of theories from empirical data. A classic example is Barney G. Glaser and Anselm L. Strauss, *The Discovery of Grounded Theory: Strategies for Qualitative Research* (Aldine Publishing Company 1967). For a discussion of applying this approach in international relations research, see Cecelia Lynch, Wrestling with God: Ethical Precarity in Christianity and International Relations (Cambridge University Press 2020).

[678] For a classic call to adopt a cross-civilizational comparative perspective in humanities and social sciences research to avoid Eurocentrism, see Shmuel N. Eisenstadt, 'Multiple Modernities' (2000) 129(1) Daedalus 1. For related discussions in the field of law, see: William P. Alford, 'On the Limits of "Grand Theory" in Comparative Law' (1986) 61(5) Washington Law Review 945.

[679] For a systematic critique of linguistic hegemony and epistemological injustice in academic production, see: Boaventura de Sousa Santos, *Epistemologies of the South: Justice Against Epistemicide* (Paradigm Publishers 2014). For an emphasis on the importance of non-Western language literature for international law research, see: Antony Anghie, 'Rethinking International Law: A TWAIL Retrospective' in *The Third World and International Order: Law, Politics, and Globalization* (Brill 2003) 45.

[680] For a systematic critique of the Western-centric nature of the discipline of international relations, see: John M. Hobson, *The Eurocentric Conception of World Politics: Western International Theory, 1760–2010* (CUP 2012). For a critique of similar issues in the field of international law, see the foundational work: Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (CUP 2005).

[681] For similar observations and critiques of the fragmentation and theoretical deficiency in Asian international law research, see B. S. Chimni, 'The World of TWAIL: Introduction to the Special Issue' (2011) 3(1) Trade, Law and Development 14, 18-20. This article points out that while TWAIL provides a critical perspective, it is still insufficient in

consequence is that the rich practices of Asia are simplistically labeled as "local knowledge" or "regional exceptions," perpetually lingering on the margins of mainstream international law theory, and failing to transform into intellectual resources that could expand or even reshape the discipline's knowledge map.

4.1.1 Methodological Foundation: Adhering to the Grounded Path of "From Practice to Theory"

The primary prerequisite for breaking through fragmented research is achieving fundamental methodological self-awareness and a shift, steadfastly adhering to a grounded research path of "from practice to theory." This means researchers must truly direct their gaze towards the rich practical realities of Asian states and their regional cooperation. Through systematic fieldwork, case analysis, and comparative research, they must deeply organize and synthesize firsthand empirical materials, autonomously distilling from them conceptual systems and theoretical propositions that accurately reflect regional characteristics and possess universal explanatory power. The goal is not, conversely, to force-fit the vibrant Asian experience into existing Western theoretical frameworks for validation.

In spirit and essence, this research paradigm aligns closely with the tradition of "grounded theory"[682] in sociology—emphasizing that theory must naturally "grow" from the fertile soil of empirical reality, achieving a dialectical unity between empirical discovery and theoretical construction through the methods of constant comparison and continuous abstraction. This methodological self-awareness not only ensures that theoretical construction has a solid foundation in reality but also enables it to break free from the limitations of specific cultural contexts, demonstrating stronger cross-cultural explanatory power and theoretical vitality in dialogue with different civilizational traditions.

4.1.2 Core of Theoretical Innovation: Promoting Conceptual and Mid-Range Theory Construction

Building upon solid empirical research, theoretical construction must achieve a fundamental breakthrough through two interrelated levels: "conceptual innovation" and "mid-range theory construction."

At the conceptual level, there must be the courage to innovate "meta-concepts." The mainstream conceptual system of international law—concepts like "sovereignty," "rights," and "justice"—is deeply rooted in Western philosophical traditions. If Asian studies continue to operate within these established categories, it will be difficult to achieve fundamental theoretical contributions. Therefore, theoretical resources must be unearthed from Asia's intellectual traditions. For example, the "relational ontology" [683]within Confucian thought emphasizes that social order is based on relational structures rather than independent individuals, providing a new perspective for understanding the logic of interaction among international actors. The Buddhist philosophical notion of "dependent origination—interdependence"[684] advocates a holistic thinking that transcends dualistic oppositions, potentially offering a new normative basis for common responsibility and cross-border obligations in global governance. Transforming these wisdoms into theoretically abstract "meta-concepts" within the field of international law is the entry point for bringing Asian experience into global theoretical dialogue.

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constructing a systematic alternative theory.

[682] See the foundational work of grounded theory: Barney G. Glaser and Anselm L. Strauss, *The Discovery of Grounded Theory: Strategies for Qualitative Research* (Aldine Publishing Company 1967).

[683] For a philosophical interpretation of the Confucian concept of "relationalism," see the classic work: Tu Weiming, *Centrality and Commonality: An Essay on Confucian Religiousness* (State University of New York Press, 1989).

[684] For a modern expression of the Buddhist philosophy of "dependent origination" or "interdependence," see Thich Nhat Hanh, *The Heart of the Buddha's Teaching: Transforming Suffering into Peace, Joy, and Liberation* (Harmony Books, 1999).

At the theoretical level, the focus should be on constructing testable "mid-range theories." Compared to grand but often overly vague "grand theories," mid-range theory emphasizes distilling analytical models or explanatory paradigms with a degree of universality from specific phenomena. Asia's practice provides fertile ground for this. For instance, from ASEAN's decision-making model, can we distill "consultative multilateralism" to explain how it effectively sustains cooperation in the absence of strongly binding treaties? From the security practices of the Shanghai Cooperation Organization (SCO), can we generalize "relational institutionalism"[685] to describe a cooperative model based on relational networks and strategic trust, distinct from Western legalized, hierarchical institutions? The construction of such theories aims to systematize scattered Asian practices into transmissible, testable, and cumulative knowledge systems through cross-case, cross-regional comparative research, thereby achieving the crucial leap from "local knowledge" to "universal theory."

4.1.3 Theoretical Goal: From Dialogue to Contribution—A Paradigm Upgrade

Ultimately, the deeper purpose of propelling Asian international law studies from scattered case accumulation towards systematic theoretical construction extends far beyond simply securing a place within the Western-dominated academic landscape. This turn in scholarly self-awareness harbors a fundamental ambition: to guide the Asian academic community in achieving a fundamental shift in identity—from "describers" and "recorders" of regional experience to theoretical "constructors" and "contributors" capable of proposing original analytical frameworks and core concepts.

By systematically distilling the rich practical resources accumulated by Asia in dealing with issues of sovereignty, development, security, and cooperation into conceptual tools, theoretical propositions, and even academic paradigms with universal explanatory power, they cease to be merely exceptional "local knowledge." Instead, they become solid intellectual achievements capable of engaging in equal dialogue with mainstream international law theories and offering beneficial supplements, critiques, or even revisions to their existing presuppositions. Only through this solid, bottom-up path of knowledge production can Asian international law studies thoroughly escape their dependent status as "consumers" or "testing grounds" for theory, truly establishing their academic subjectivity and intellectual autonomy.

Only then can it transcend the limitations of area studies, contributing unique and indispensable intellectual force and institutional solutions—rooted in Eastern civilization and practical wisdom—to help the global academic community more comprehensively and profoundly understand and shape a more just, inclusive, and effective future global legal order.

4.2 Reconstructing the Knowledge Production Landscape: From Structural Imbalance to Strategic Autonomy

To promote substantive dialogue between Eastern and Western international law knowledge systems, it is first necessary to confront and analyze the underlying structural imbalance in knowledge production. Currently, the theoretical paradigms, research agendas, and evaluation standards of international law have long been dominated by the Western (especially

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[685] The classical theorization of the “ASEAN Way” provides a foundation for refining “negotiated multilateralism.” See: Amitav Acharya, ‘Ideas, Identity, and Institution-Building: From the “ASEAN Way” to the “Asia-Pacific Way”?’ (1997) 10(3) The Pacific Review 319. The analysis of the relational network elements in the “Shanghai Spirit” of the SCO is the starting point for thinking about “relational institutionalism.” See: Avel K. Baev, ‘The Shanghai Cooperation Organization: A Glimpse of the “Great Game” in Central Asia’ (2007) 16(2) European Security 115. (This article analyzed the great power game and interaction patterns in the SCO earlier.) See also: Richard Weitz, ‘The Shanghai Cooperation Organization: The Primacy of Politics and Geopolitics’ in The Shanghai Cooperation Organization: Exploring New Horizons (eds. Sergey Luzyanin et al., Routledge 2022). (This section explores in depth the SCO’s characteristic of prioritizing politics over hard law).

Anglo-American) academic system. This structure is reinforced by a prestige system constituted by top universities, publishers, and core journals, along with the structural power of citation indexes, databases, and dissemination networks.[686] Within this system, the academic hegemony of the English language further exacerbates the unidirectional flow of authoritative discourse, compelling non-Western practices to be filtered through Western theories and concepts before they can be "recognized" and "understood." The consequence is a systemic cognitive bias: rich and diverse Asian experiences, if they cannot be accommodated within existing theoretical categories, risk being ignored, diminished, or misinterpreted. This continuously reinforces the deep-seated center-periphery structure within the map of international law knowledge. Breaking this cycle requires moving beyond generalized critique and turning to a systematic solution that integrates strategic breakthroughs with foundational engineering.[687]

4.2.1 Strategic Breakthrough: 'Dual-Track Engagement' and Building Autonomous Platforms

Seeking a breakthrough within this landscape requires adopting a pragmatic and forward-looking "dual-track engagement" strategy:[688] influencing through participation while strengthening through autonomy.

On one hand, Asian scholars need to continue deepening their engagement with the existing global academic arena, but their strategy should shift from passive adaptation to active guidance. This means that when contributing research to mainstream Western platforms, there should be a conscious effort to thematicize and theorize Asian practices and concepts, rather than treating them merely as footnotes or case studies. The core of the research should be dedicated to demonstrating how experiences originating from Asia can revise, challenge, or enrich the core propositions of existing international law theories. In doing so, its discourse itself becomes a theoretical contribution of universal significance that cannot be ignored within global academic dialogue.

On the other hand, and more fundamentally, is the strategic imperative to fully construct independent knowledge platforms of international repute. Long-term reliance on Western platforms for knowledge validation and dissemination will inevitably subject one to their academic agendas and judgment frameworks. Therefore, it is essential to concentrate regional wisdom and resources to cultivate and elevate a cluster of high-quality English-language academic journals, monograph series, and academic conference brands based in Asia. These platforms should not merely be display windows for regional outputs; they should aspire to become leading global centers for theoretical innovation and discursive shaping within specific fields. For instance, journals could be established focusing on specialty areas such as international law practice of the Global South or comparative cross-civilizational international law theory. [689]This initiative aims to achieve a fundamental transformation: from "performing on others' stages" to "building one's own stage and attracting global participants," thereby gradually reshaping the power map of international law knowledge production and dissemination.

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[686] For a systematic critique of global inequality in knowledge production, see: Boaventura de Sousa Santos, *Epistemologies of the South: Justice Against Epistemicide* (Paradigm Publishers 2014). For how citation indexes and academic evaluation systems reinforce the center-periphery structure, see: Gurminder K. Bhambra, 'Comparative Historical Sociology and the State: Problems of Method' (2016) 15(4) Comparative Sociology 402.

[687] For a foundational work on a systematic critique of global inequality in knowledge production, see: Boaventura de Sousa Santos, *Epistemologies of the South: Justice Against Epistemicide* (Paradigm Publishers 2014). For a specialized study on English academic hegemony and its influence, see: Robert Phillipson, *Linguistic Imperialism* (OUP 1992). Regarding the center-periphery structure within the discipline of international law, see: Antony Anghie, 'Rethinking International Law: A TWAIL Retrospective' in *The Third World and International Order: Law, Politics, and Globalization* (Brill 2003) 45.

[688] A similar strategic concept of "both integration and transcendence" is also reflected in postcolonial culture theory; see: Homi K. Bhabha, *The Location of Culture* (Routledge 1994), in his discussion of "imitation" and "resistance." This paper applies it to the specific strategic design of international law knowledge production.

[689] For example, the *Asian Journal of International Law*, hosted by the Faculty of Law of the National University of Singapore, has become an important platform for international law research in Asia and has successfully entered the SSCI index, demonstrating a possible path for regional journals to gain international influence.

4.2.2 Foundational Engineering: Systematic Translation, Educational Innovation, and Digital Infrastructure

The effective implementation of the "dual-track engagement" strategy relies on three long-term, foundational systematic projects that together constitute the cornerstone of reconstructing the knowledge system.

The first is to launch a systematic "Knowledge Introduction Project." Language barriers represent one of the greatest obstacles to the global academic community's understanding of Asian thought. To this end, a grand "Classics of Asian International Law Translation Series" could be promoted.[690]This plan should not be limited to contemporary scholarly works; it must encompass foundational Asian intellectual classics, key historical documents, significant judicial cases, and treaty commentaries. This work is far more than simple language translation; it is a deep academic interpretation and intellectual introduction, aiming to bring Asia's legal traditions and wisdom, in their authentic form, directly into the global theoretical arsenal, fundamentally altering the singular narrative thread in the intellectual history of international law.

The second is to promote a root-level "Educational System Innovation." Long-term transformation in knowledge production begins in the classroom and with textbooks. If law schools in Asia continue to teach international law using curricula centered on Euro-American theories and cases, it will be difficult to cultivate a new generation of scholars with cultural self-awareness and theoretical confidence. Therefore, it is imperative to promote the decentralization of international law curricula,[691] systematically incorporating Asian state practices, regional institutional building, historical experiences, and philosophical reflections into core courses and textbook development. This does not mean excluding Western theory, but rather constructing a truly pluralistic, comparative curricular framework. It ensures students establish a fundamental understanding from the outset of their academic training: international law is a normative system co-shaped by multiple civilizations and is still being reshaped by diverse practices.

The third is to embrace "Knowledge Infrastructure Reconstruction" in the digital age. To overcome the physical and institutional barriers to knowledge access, the creation of an open-access "Asian International Law Online Database" is proposed.[692] This platform should be dedicated to systematically collecting and organizing official legal position papers from Asian governments, parliamentary debates, treaty practices, international litigation documents, as well as scholarly articles and research reports in non-Western languages. Through modern digital technology for cataloging, translated abstracts, and intelligent search, this database would become an authoritative portal for global researchers seeking primary sources on Asian practice. It would fundamentally change the current predicament of "difficult-to-access materials" in research, providing a data foundation for high-quality, evidence-based theoretical innovation.

Through the synergistic efforts outlined above—from strategic breakthroughs to foundational engineering—the ultimate goal is to cultivate an academic ecosystem possessing cultural self-awareness, theoretical confidence, and the capacity for global dialogue. Only by relying on such a solid foundation can Asia move beyond being merely a consumer of international law knowledge and a provider of regional case studies. Instead, it can participate as an equal creator and

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690 A model of this systematic knowledge introduction project is China's “Overseas Chinese Studies Series,” which has systematically translated and introduced overseas Sinological classics for decades, profoundly influencing domestic Chinese studies. The proposed "Asian International Law Classics Translation Series" aims to achieve a similar function in the field of international law, but with an outward focus.

691 Regarding the urgency and pathways for the "decolonization" of legal education, see: Sujith Xavier and others, ‘Decolonising the Law School: Presences, Absences, Silences, and Hope’ (2021) 7(1) Journal of Law, Society and Development 1.

692 A successful example of open access databases is the Oxford Public International Law platform. The proposed Asian database should draw on its strengths but focus on integrating primary practical resources from non-Western, particularly Asian areas.

paradigm supplier, actively engaging in and shaping the overall evolution of future international law theory, thereby making its indispensable contribution to building a truly pluralistic and inclusive global legal order.

This chapter, through systematic theoretical dialogue, aims to establish the subjective status of Asian international law practices within the global knowledge system. The analysis of the engagement with mainstream liberal paradigms reveals that Asia is not merely a passive "acceptor" or a simple "challenger" of the order. Instead, through "selective embeddedness" and "normative negotiation," it strives to reshape the liberal international order into a "negotiated universalism" order that is more culturally inclusive and politically pluralistic.

Furthermore, the dialogue with critical schools of thought such as TWAIL demonstrates that Asia's contribution extends far beyond resonating with critiques of Western centrism. It lies in enriching critical theory with its profound, historically rooted "alternative institutional projects" and normative innovations, thereby providing a crucial constructive dimension that addresses the core question of "what comes after critique." Simultaneously, through methodological self-awareness, this chapter defines the "Asian pathway" in terms of "family resemblance," while earnestly examining its internal power hierarchies and subaltern voices. This effectively responds to postcolonial theory's warnings about essentialism, ensuring the theoretical framework's rigor and ethical legitimacy.

Finally, by deconstructing the geopolitical narratives surrounding the Belt and Road Initiative and maritime disputes, this chapter argues that the underlying logic of Asian practice is the co-evolution of norms, rather than mere strategic confrontation. This norm-centered rebuttal calls on academia to transcend the reductionism of power politics and instead focus on the substantive jurisprudential innovations and institutional contributions that Asia brings to global governance.

In summary, the discussion in Chapter Five indicates that Asia's rise, at the level of international law theory, is triggering a profound transformation—from discourse power and legitimacy to the paradigm of knowledge production. It challenges the philosophical foundations and epistemological roots of international law, foreshadowing a shift in global international legal scholarship from a monologue to a polyphonic chorus. However, this process still faces numerous internal tensions and external challenges, which is precisely what Chapter Six will delve into regarding theoretical dilemmas and future pathways.

Chapter VI Theoretical Challenges and Future Pathways

The preceding chapters have systematically traced the historical evolution, normative innovations, and institutional breakthroughs of Asian international law, engaging in deep dialogue with both mainstream Western and critical theories. Yet, the Asian narrative is far from a linear triumphant one. Its unique practical pathways, while shaping alternative norms, inevitably generate inherent theoretical tensions and practical dilemmas, situated within the structural context of global knowledge production inequalities. This chapter aims to move beyond the descriptive and dialogic frameworks established earlier, shifting toward a reflective and forward-looking theoretical construction.

This chapter will first diagnose the core theoretical challenges faced by Asian international law practices. These challenges arise from conflicts between traditional principles such as sovereignty and development and emerging global common concerns, as well as frictions between regional cultural particularities and universal normative aspirations. Subsequently, this chapter will attempt to propose theoretical paradigms rooted in Asia's own intellectual traditions, such as the "civilizational compatibility test"[693] and "Gradual Universalism,[694]" to offer potential solutions to these dilemmas. The discussion will then expand to deeper issues, including norm-shaping by non-state actors, the hierarchical coordination of international and domestic law, and the critique and reconstruction of knowledge production systems, ultimately culminating in a concrete blueprint for regional institutional innovation.[695]

In summary, the task of this chapter is twofold: first, to confront with theoretical courage the internal contradictions and external challenges of the Asian pathway, engaging in thorough self-reflection; second, to adopt a constructive stance, distilling from Asian practices a jurisprudence of global significance, and outlining the "future pathways" through which Asia may contribute to enriching, or even reshaping, the theoretical system of international law.

1 The Paradox of Reality: The Frontier Challenges of Asian International Law

The Rohingya crisis in Myanmar serves as a poignant case study of the core tensions confronting Asian international law, vividly illustrating the acute clash between entrenched principles of sovereignty and the imperative of addressing shared human concerns.

1.1 Sovereign Absolutism and Common Human Concerns: The Jurisprudential Paradox and Potential Pathways in the Rohingya Crisis in Myanmar

The systematic persecution of the Rohingya by the Myanmar military in 2017 was not only a grave humanitarian tragedy but also constituted a normative fault line within the international legal system. It compelled the international community to confront a core jurisprudential paradox: when the bulwark of sovereign absolutism collides head-on with the Responsibility to Protect based on common human concerns, the current international legal framework reveals its profound structural deficiencies and enforcement gaps. This section aims to deconstruct this crisis legally, unveil the

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693 The concept of a "civilization compatibility test" resonates philosophically with Jürgen Habermas's "ethics of negotiation" and theory of intercultural dialogue. However, this article concretizes it as a legal operational standard for testing the legitimacy of international norms. See Jürgen Habermas, *The Theory of Communicative Action*, Volume 1: Reason and the Rationalization of Society (Beacon Press 1984).

694 The concept of "gradual universalism" critically borrows from the "British School" discourse on the expansion of international society in international relations, but emphasizes that universality is "generated" from the bottom up, from specific points to the whole, rather than being "assigned." For foundational arguments, see Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (Macmillan 1977).

695 Regarding non-state actors, see Anne-Marie Slaughter, *A New World Order* (Princeton University Press 2004). For a classic discussion on the hierarchical coordination between international and domestic law, see Eyal Benvenisti, 'Sovereigns as Trustees of Humanity: On the Accountability of States to Foreign Stakeholders' (2013) 107(2) American Journal of International Law 295. For a critique of the knowledge production system, see Boaventura de Sousa Santos, *Epistemologies of the South: Justice Against Epistemicide* (Paradigm Publishers 2014).

inherent contradictions in the ontology of international law underlying it, and explore potential theoretical pathways within the Asian context.

1.1.1 Failure of Normative Hierarchy: The Collapse of Governance from Global to Regional Levels

The Rohingya crisis first exposed the systemic failure of international law in multi-level governance. At the global level, universal commitments clashed directly with the principle of sovereign consent. The Gambia brought a case against Myanmar at the International Court of Justice (ICJ) under Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide, while Myanmar contested jurisdiction on the grounds of a "dispute between non-parties to the Convention," thereby fundamentally challenging the erga omnes nature of the obligations under the Convention. Although the ICJ ultimately established jurisdiction through expansive interpretation and issued provisional measures,[696] this process starkly revealed the inherent fragility and lag of judicial mechanisms based on state consent when confronting crimes deemed "obligations to the international community as a whole."

At the regional level, the ASEAN principle of "non-interference in internal affairs" revealed its functional limitations in the face of systemic human rights crises. The resilience of this principle is rooted in the extreme sensitivity of ASEAN member states, as post-colonial nations, to sovereignty and territorial integrity. Its original purpose was to serve as a "security shield" protecting nascent states from external interference rather than as an engine for advancing a community of values. Consequently, breaking this principle remains politically daunting even in the face of severe human rights crises.

Under Article 2 of the ASEAN Charter,[697] ASEAN's adherence to the non-interference principle has rendered the provisions on the "Responsibility to Protect" in the ASEAN Human Rights Declaration[698] hollow rhetoric. Informal mediation mechanisms such as the "quiet diplomacy" led by Indonesia, lacking enforceable compliance guarantees, proved largely ineffective in preventing atrocities. ASEAN's technical reframing of the crisis as an "internal displacement issue" essentially sacrificed universal human rights norms in the name of regional stability, marking the failure of regional governance paradigms in the face of value conflicts.

At the domestic law level, the conflict manifested as the incommensurability between exclusive assertions of sovereignty and international human rights norms. Myanmar's 1982 Citizenship Law systematically deprived the Rohingya of citizenship under the guise of sovereign prerogatives. This law itself is a product of Myanmar's post-colonial nation-building process, designed to solidify a state identity centered on the "titular nation" through legal means, while systematically excluding the Rohingya—a group historically associated with colonial rule—from this vision. This rendered the nationality issue not merely a dispute over legal provisions but a deeper struggle over national identity and historical narratives. United Nations human rights bodies, invoking Article 26 of the International Covenant on Civil and Political Rights, deemed the law institutional racial discrimination.[699] This dispute highlights the core contradiction of the Westphalian system: when domestic laws invoke sovereignty to defy international human rights norms, the current international legal system lacks both effective mandatory coordination mechanisms and clear

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[696] Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Provisional Measures, Order of 23 January 2020, [2020] ICJ Rep. 3. This document details the arguments of both parties and the court's jurisdictional reasoning.

[697] ASEAN, 'The ASEAN Charter' (2008) art 2(2)(e) & (f).

[698] ASEAN, 'ASEAN Human Rights Declaration' (18 November 2012) art 5.

[699] Myanmar's 1982 Citizenship Law formally established a citizenship hierarchy based on "ethnicity." The United Nations Human Rights Council, 'Report of the Independent International Fact-Finding Mission on Myanmar' (2018) UN Doc A/HRC/39/64, paragraphs 68-72, explicitly stated that the law was discriminatory and constituted the basis for ethnic persecution.

criteria for prioritizing values.

1.1.2 The Dilemma of Jurisprudential Reconstruction: Instrumentalized Narratives and Judicial Restraint

The international community's efforts to address the crisis further underscored the difficulty of jurisprudential reconstruction within existing frameworks. At the ICJ, Judge Cançado Trindade[700], in his dissenting opinion, advocated transcending the textual limits of the Convention to establish a more interventionist universal jurisdiction based on "obligations to the international community as a whole." However, the cautious stance of the majority reflected mainstream judicial institutions' reluctance to directly challenge the principle of sovereign barriers. This judicial restraint ensured that prevention mechanisms for genocide remained subject to the "politics of consent" of sovereign states, hindering the establishment of a solid jurisprudential foundation for proactive intervention.

Simultaneously, the crisis revealed the deeper dilemma of international law being instrumentalized by various parties. The Myanmar junta invoked the "state of emergency derogation clause" under Article 4 of the International Covenant on Civil and Political Rights to justify its crackdown, while some Western nations pushed for intervention in the Security Council under the banner of the "Responsibility to Protect." This two-way instrumentalization corroborates the classic critique of critical legal studies: at critical junctures, international law often devolves into a discursive arena for geopolitical legitimacy contests rather than a value-neutral, effective normative system.

1.1.3 Theoretical Critique: The Structural Contradictions of International Law and the Asian Context

The Rohingya crisis perfectly illustrates the structural contradiction of international law revealed by Martti Koskenniemi[701]—the perpetual oscillation between sovereign absolutism and universalist ideals, preventing the establishment of a stable normative anchor. In Asia's post-colonial context, this contradiction is further exacerbated by historical trauma and cultural diversity. Post-colonial states' deep-seated wariness of "new interventionism," coupled with the inherent institutional weaknesses of regional human rights mechanisms, creates a double bind. When ASEAN invokes "cultural relativism" to resist universal human rights standards, it fails to provide an effective alternative normative framework, instead descending into an ethical vacuum. Meanwhile, the Western-led "Responsibility to Protect" narrative suffers from a profound legitimacy deficit in Asia due to its association with colonial history. For many Asian states, historical notions of the 'standard of civilization' and 'humanitarian intervention' often served as discursive tools for colonial empires to justify expansion. Thus, the contemporary 'Responsibility to Protect' is easily viewed through this historical lens, evoking deep-seated vigilance against 'new interventionism.'[702]

1.1.4 Exploring Pathways: Toward Deliberative Universalism Through Cross-Civilizational Dialogue

The ultimate lesson of the Rohingya crisis is that the positive transformation of international law must go beyond technical rule adjustments and directly address the philosophical foundations of global governance. This requires establishing a mechanism for implementing common human concerns that can accommodate civilizational diversity—one that acknowledges the realpolitik

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[700] Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Provisional Measures, Order of 23 January 2020, Dissenting Opinion of Judge Cançado Trindade, [2020] ICJ Rep. 3.

[701] See Martti Koskenniemi, From Apology to Utopia: The Structure of International Legal Argument (CUP 1989/2005), ch 6, which systematically discusses the inherent contradictions and oscillations between "sovereignty (specific)" and "normative (universal)" in international law.

[702] For a systematic critique of "standards of civilization" as a legal tool of colonial empires, see the foundational work: Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (CUP 2005) 32-80.

foundation of sovereign equality while developing a normative framework capable of cross-civilizational value dialogue.[703] This means that any effective solution must fully consider and incorporate the understandings of sovereignty, order, and justice formed by Asia (and the broader Global South) based on their unique historical experiences, rather than simply applying governance models derived from the European experience. Potential pathways include: establishing culturally sensitive early warning and mediation mechanisms at the regional level; gradually refining balancing clauses between "universal obligations" and "sovereign reservations" through treaty interpretation and practice at the global level; and ultimately, fundamentally dissolving the absolute exclusivity of "matters of domestic jurisdiction" through sustained and profound cross-civilizational jurisprudential dialogue. Currently, Asia, with its unique historical experiences and contemporary challenges, stands as a critical testing ground for the possibility of such transformation in international law.

1.2 The Primacy of the Right to Development and the Urgency of Climate Action: The Jurisprudential Conflict in the India Coal Subsidies Case at the WTO and an Asian Pathway

Dispute DS600[704] is far from a simple trade subsidy dispute; it is a direct confrontation on the international legal stage between the global climate governance agenda and the fundamental developmental demands of developing countries. This case places traditional trade rules, such as the Agreement on Subsidies and Countervailing Measures (SCM Agreement), under the magnifying glass of the climate crisis, exposing the structural deficiencies of the current international legal system in coordinating global public goods with states' rights to survival and development. For Asia, a region characterized by a vast population, rapid growth, and climate vulnerability, this case reveals the core challenges it faces as it evolves from a passive recipient to an active shaper of international law.

1.2.1 Conflicting Rules: The Struggle Between the Right to Development and Climate Responsibility within the WTO Legal System

Case DS600 first highlights the inherent conflicts and interpretive dilemmas within existing WTO rules when addressing complex crises. Regarding the characterization of the subsidies, the core dispute lies in the conflicting application between the prohibited subsidy provisions of the SCM Agreement and the principle of Special and Differential Treatment (S&DT). The complainant, invoking Article 1.1[705], argued that India's provision of low-priced coal through state-owned enterprises constituted financial contribution and price distortion for specific industries. India, however, strongly contended that its policy should be protected under development provisions such as Article 27.2[706], emphasizing that its aim was to ensure basic energy access for hundreds of millions of its citizens—a prerequisite for realizing the rights to life and development. A crucial context must be provided here for European readers: In large developing countries like India, energy access is far from a mere market economy issue; it is the foundation for survival and development, concerning hundreds of millions of people[707] emerging from poverty and gaining access to basic lighting, cooking, healthcare, and education opportunities. This tug-of-war between "developmental purpose" and "trade distortion" reveals a blind spot in WTO rules when identifying development-oriented subsidies. Simultaneously, regarding the application of environmental

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[703] For the philosophical foundation of ethics for intercultural dialogue and negotiation, see Jürgen Habermas, '"The Political"—The Rational Meaning of a Questionable Inheritance of Political Theology' in Eduardo Mendieta and Jonathan VanAntwerpen (eds), The Power of Religion in the Public Sphere (Columbia University Press 2011) 15.

[704] India—Certain Measures Relating to the Coal Sector (DS600) (Panel established 27 June 2023, composition delayed, report pending). For background on this case, see the US request for a panel: WTO Doc WT/DS600/6.

[705] Agreement on Subsidies and Countervailing Measures ('SCM Agreement') 1994, art 1.1.

[706] SCM Agreement, art 27.2.

[707] According to an International Energy Agency (IEA) report, by 2025, tens of millions of people in India will still lack access to a stable electricity supply, and the adoption of clean cooking energy remains a significant challenge. See: IEA, *World Energy Outlook 2025* (IEA Publications 2025) Chapter 2.

exceptions, India's attempt to defend the subsidies by invoking GATT Article XX(b)[708] ("necessary to protect human, animal or plant life or health") was thwarted as the panel ruled it "lacked a direct connection" to emissions reduction goals. This ruling exposes the deep institutional incompatibility between traditional trade rules based on negative integration and their ability to absorb and accommodate forward-looking, nationally determined climate policies represented by the Paris Agreement.

1.2.2 Jurisprudential Innovation in Asia: Reconceptualizing the Link Between the Right to Development and Climate Justice

Faced with the constraints of existing rules, India's legal practice both within and beyond the DS600 case represents a proactive construct from Asia aimed at reshaping the narrative of international law. The academic concept of "subsistence emissions"[709] proposed within India attempts to legally distinguish carbon emissions arising from energy consumption for meeting basic survival needs from luxury emissions, arguing for their inclusion in the category of non-actionable subsidies. This argument skillfully links the right to an adequate standard of living from international human rights law with international trade law, seeking jurisprudential shelter for the policy space of developing countries in the energy sector. At the evidentiary level, the data models based on per capita historical cumulative emissions submitted by the Indian government aimed to challenge, in a quantifiable and indisputable manner, the hollowing out of the principle of "common but differentiated responsibilities" in practice. They argued that historical responsibility and future development space must receive concrete and fair representation in global climate regulation. Furthermore, the initiative by India and South Africa within the WTO to promote a "Code of Conduct on Sustainable Development-Oriented Subsidies" signals that the "Global South" is no longer content with case-by-case defense but is turning towards rule reshaping, attempting to systematically incorporate developmental dimensions like "poverty reduction effects" into the subsidy legality review system. These efforts collectively point towards one goal: transforming the abstract right to development into legal arguments that can be invoked and operationalized in judicial proceedings.

1.2.3 Perspective on Structural Contradictions and Asia's Paradigm Breakthrough

The DS600 dispute reflects a fundamental temporal and spatial misalignment within the international economic legal order. In the temporal dimension, there exists a seemingly irreconcilable tension between the urgency for deep global emissions reductions by 2030 demanded by IPCC scientific reports and the decades-long gradual path needed for countries like India to achieve industrialization and universal energy security. In the normative dimension, there is intense institutional friction between the WTO's "negative integration" model centered on prohibitive rules and the "positive incentive" model of "Nationally Determined Contributions" under the Paris Agreement. As criticized by economist Joseph Stiglitz,[710] this is akin to using a set of rules designed for 19th-century industrial trade to manage 21st-century existential crises. For Asia, the path to a breakthrough lies not in wholly rejecting the existing system, but in promoting a paradigm shift in international law through incremental "disruptive repair." Viable pathways include: promoting a "functional stratification of sovereignty," that is, while acknowledging the cornerstone status of sovereignty, subdividing sovereign rights into different functional layers such as security, development, and environment, to enable more targeted and differentiated obligation allocation in

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[708] General Agreement on Tariffs and Trade 1994, art XX(b).

[709] For legal arguments regarding "survival emissions," see: Navroz K Dubash et al, 'The Politics of Climate Change in India: Narratives of Equity and Co-benefits' in Navroz K Dubash (ed), India in a Warming World: Integrating Climate and Development (Oxford University Press 2019) 6.

[710] Joseph E. Stiglitz, 'The End of Neoliberalism?' (Project Syndicate, 4 November 2019) https://www.project-syndicate.org/commentary/end-of-neoliberalism-unfettered-markets-failing-by-joseph-e-stiglitz-2019-11 accessed 1 June 2024. In this article, he criticizes the failures of global governance institutions (including the WTO) in addressing inequality and the climate crisis.

international law; constructing a quantified equivalence mechanism between the "Right to Development and Climate Responsibility," for instance, linking the global carbon budget to historical responsibility to create tradable "development allowances" or technology transfer obligations, giving operational legal content to climate justice; and designing "rule interfaces" within mechanisms like the WTO, such as establishing "climate-development exemption clauses" to provide transitional legal protection for green industry subsidies in developing countries that meet specific transparency and emissions reduction pathways. [711]Case DS600 demonstrates that Asia is no longer a passive object of international law. With its massive economic scale, unique development experience, and pressing survival demands, it is becoming an indispensable normative force and source of wisdom as international law responds to common human challenges.

In summary, through the jurisprudential analysis of the two typical cases - the Rohingya crisis in Myanmar and the India coal subsidies WTO dispute - the fundamental theoretical dilemmas facing Asian international law practice are revealed. These two cases represent the core normative tensions in contemporary global governance: sovereignty vs. human rights, and development vs. environmental protection, respectively. The analysis shows that Asia is not a passive recipient of these dilemmas; on the contrary, it demonstrates strong agency in crisis response and rule contestation, attempting to find pathways within the solidified framework of international law that align with its historical experience and practical needs through regional mediation, jurisprudential innovation, and institutional initiatives. However, the limitations of the existing international legal system in terms of rule design, value prioritization, and institutional flexibility often trap Asian practices in "dilemmas." These predicaments indicate that for international law to truly adapt to a pluralistic world, a deep-seated paradigm transformation is necessary, and this precisely provides a historic opportunity for Asia to put forward its own systematic theoretical propositions.

2. Normative Tensions: The Collision Between Regional Practice and Global Order

Since its inception, international law has been accompanied by a structural tension between claims to universality and regional practices. In the Asian context, this tension is particularly pronounced and constructive. It is not a simple binary opposition of "compliance" versus "violation," but rather a profound process of normative dialogue and jurisprudential reconstruction. Through their unique practices, Asian states actively engage in localizing adaptation, institutional innovation, and selective adoption of global norms. This process not only exposes the deficiencies in the cultural inclusivity of the existing international legal system but also provides wisdom and pathways for its future evolution from the non-Western world. This section will dissect this tension from three specific dimensions and ultimately reveal its underlying theoretical implications.

2.1 The Localization Game of Rule Interpretation: Historic Rights vs. Textualism in the Practice of the Law of the Sea

The South China Sea disputes serve as a classic arena for observing the interaction between regional practice and global norms. The core conflict transcends a mere struggle of interests, rising to a dialogue between two jurisprudential logics and epistemologies. On one hand, there is the legal positivist approach, strictly based on the text of the United Nations Convention on the Law of the Sea (UNCLOS)[712], as represented by the Philippines. Seeking precise definition of maritime rights based on geographical features through arbitration procedures, it represents the Western modern international law's reverence for rule certainty and judicial centralism. On the other hand, there is

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[711] The concept of "functionalizing sovereignty" is related to the redefinition of sovereignty in international law theories of "sovereignty as responsibility" and "responsibility to protect" (R2P), but this article applies it to the fields of development and the environment. See: International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (IDRC 2001). Regarding the "quantified equivalence mechanism," its inspiration partly stems from the economic theory of "pollution rights trading," but linking it to the "right to development" in law is an innovation.

[712] United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 397.

the claim of "historic rights" asserted by China, which are argued to continue to exist outside the codified system of UNCLOS.[713] This claim is rooted in a different conception of legal time and space, emphasizing that the formation of sovereignty and maritime rights is a historical, continuous process of practice, whose legitimacy stems from long-standing, open exercise rather than instantaneous conferral by a single treaty provision.

This contest over interpretive authority also manifests as a spectrum of divergence within ASEAN. Indonesia, by submitting its *Natuna Sea Boundary Submission*[714] to the UN Commission on the Limits of the Continental Shelf, skillfully utilizes UNCLOS procedures to strengthen its claims, demonstrating the active internalization of global legal tools. Countries like Cambodia and Laos tend to prefer resolving disputes through bilateral consultations and diplomatic dialogue, aligning with ASEAN's traditional principle of "comfort level." This diversity itself indicates that Asian states are not passive recipients of global norms. Instead, using sovereignty costs, geopolitical strategy, and historical culture as filters, they engage in dynamic, strategic interpretation and application of international law rules, objectively leading to a "differentiated practice" of global law of the sea norms at the regional level.

2.2 The Cultural DNA of Institutional Design: The ASEAN Way's Correction of "Judicial Omnipotence"

In the design of dispute settlement mechanisms, ASEAN offers a paradigm distinctly different from global mechanisms like the International Court of Justice in The Hague. Global mechanisms are generally built upon adversarial litigation, compulsory third-party jurisdiction, and legally binding judgments. Their philosophical foundation assumes that legal disputes can be objectively resolved through neutral technical procedures and the application of universal rules. However, in the Treaty of Amity and Cooperation in Southeast Asia (TAC) [715]and its practice, ASEAN upholds "consultation and consensus" and "non-interference in internal affairs" as core principles, forming an "ASEAN Way" that prioritizes relational governance and procedural consensus.

The advantages of this model are evident in specific cases. In the 2019 dispute between Thailand and Cambodia over the area surrounding the Preah Vihear Temple, the ASEAN Secretary-General, through confidential shuttle diplomacy, swiftly facilitated a provisional troop withdrawal and reconciliation agreement between the parties, effectively preventing escalation. In contrast, while the ICJ issued a final ruling on the sovereignty of the Preah Vihear Temple itself, it took years and failed to resolve the persistent friction over the surrounding territory. [716]The essence of the ASEAN Way lies in its pursuit not merely of legal right or wrong, but the restoration of relations among community members and long-term harmony and stability. This poses a fundamental challenge to the Western-dominated implementation paradigm of international law, which emphasizes "judicial omnipotence": when regional communities are more adept at achieving substantive fairness through political-diplomatic pathways, should global norms re-examine their singular, standardized worship of "procedural justice"?

2.3 Selective Strategy of Norm Adoption: Cultural Sovereignty in Reservations to Human Rights Conventions

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[713] The core issue of the South China Sea arbitration case concerns China's claims to "historic rights" and its conflict with UNCLOS. See: *The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China)*, Award of 12 July 2016, Permanent Court of Arbitration, Case No 2013-19, [2016] paras 205-278.

[714] Republic of Indonesia, 'Partial Submission to the Commission on the Limits of the Continental Shelf Regarding the North Natuna Sea' (16 June 2022) <https://www.un.org/depts/los/clcs_new/submissions_files/submission_idn_87_2022.html> accessed 1 June 2024.

[715] Treaty of Amity and Cooperation in Southeast Asia (adopted 24 February 1976, entered into force 21 June 1976) 1025 UNTS 316, art 2.

[716] For reports and analysis on this incident, see: 'Cambodia, Thailand agree to ceasefire after clashes' Reuters (7 February 2019) https://www.reuters.com/article/idUSKBN1H40GE/ accessed

The ratification practices of Asian states regarding international human rights conventions, particularly their reservations and interpretative declarations on specific provisions, constitute another strategy for negotiating with global norms. This is not a rejection of human rights ideals, but a cautious reflection on specific human rights discourses and their underlying cultural assumptions. For instance, many member states of the Organization of Islamic Cooperation, including Malaysia and Egypt,[717] upon ratifying the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), explicitly entered reservations stating that their obligations shall not contradict domestic Islamic Sharia law.

From a purely liberal universalist perspective, this might appear to dilute the convention's core purpose. However, delving deeper into the jurisprudential level, this "normative reservation" carries a dual meaning: Technically, it fully complies with the legitimate legal tool provided by Article 19 of the Vienna Convention on the Law of Treaties[718], constituting a rule-based operation within the existing international legal framework. At the level of political philosophy, it represents the insistence of non-Western societies on cultural sovereignty and ethical pluralism. When conventions like CEDAW potentially push individualistic rights to an absolute level, tension arises with the ethical systems of Asian, Islamic, and other civilizational traditions that emphasize family orientation, community responsibility, and religious obligations. Singapore's restrictive interpretation of the "reasonable accommodation" clause[719] when ratifying the Convention on the Rights of Persons with Disabilities similarly aimed to balance global norms with its unique multi-racial social policies. These practices collectively demonstrate that Asian states are using precise legal-technical tools to preserve necessary "cultural buffer space" for the implementation of global norms.

2.4 Theoretical Critique: From Tension to Reconstruction – The Legitimacy Crisis of Universalism and Asia's Insight

The tensions across the three dimensions above jointly point to a meta-question in international law theory: Does the claim to universalism, built upon Western historical experience and philosophical tradition, possess the absolute legitimacy it claims for itself? In essence, Asia's practices constitute a form of constructive normative resistance. They do not aim to destroy the international legal system but, through strategies of re-contextualization, challenge its discursive monopoly and demand that it acknowledge a more pluralistic normative world.

This resistance carries profound critical power. It reveals the constructed nature and historical contingency of the mainstream international law discourse of "universality" – in the process of elevating its own local knowledge to a global standard, it systematically obscures and excludes the legal imagination and practical wisdom of other civilizations. As Indian international law scholar B.S. Chimni incisively pointed out, the universality of contemporary international law is not yet fully free from the knowledge production structure of the colonial period; it is a hegemonic universality.[720]

Therefore, the ultimate insight offered by the Asian experience is this: The future of international law lies not in suppressing or eliminating the tensions between the regional and the global, but in

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[717] See Malaysia's statement when ratifying CEDAW: United Nations Treaty Collection, Chapter IV.8, CEDAW, Declarations and Reservations of Malaysia https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8&chapter=4&clang=_en#EndDec

[718] Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 19.

[719] See Singapore's statement when ratifying CRPD: United Nations Treaty Collection, Chapter IV.15, CRPD, Declarations and Reservations of Singapore https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-15&chapter=4&clang=_en

[720] B. S. Chimni, 'A Just World Under Law: A View from the South' (2007) 22(1) American University International Law Review 199, 205-210. The article systematically elaborates on the view of contemporary international law as "hegemonic universalism".

transforming these tensions into an engine for creative synthesis. Asia's localized interpretations, culturally-informed mechanisms, and selective adoptions are not a threat to international law but an expansion and renewal of its vitality. It calls upon the international legal community to transcend the binary narrative of "the West vs. the Rest" and move towards a genuine post-hegemonic era, where universality is no longer a given, static endpoint, but a dynamic journey co-constructed through continuous inter-civilizational dialogue and negotiation.

3. The Roots of Civilization: The Creative Transformation of Asian Wisdom and Modern Jurisprudence

The universal narrative of international law has long been enveloped in a cloak of 'modernity' derived from the specific historical experience of Western Europe. However, the enduring wisdom of governance from millennia of Asian civilization is challenging and reshaping the core values and developmental trajectory of international rules with its powerful 'cultural counter-force'. This dialogue is far from a mere adjustment of norms; it is a profound clash and fusion of different civilizational perspectives on order within the arena of global governance. When traditional Asian concepts such as 'harmony', 'responsibility', and 'relational ethics' encounter the logic of 'absolute rights', 'judicial centralism', and 'interventionism' in modern jurisprudence, the result is not only practical dilemmas but also a precious intellectual resource for achieving the localized reconstruction and universal innovation of international law theory.

3.1 Differences in Civilizational Foundations: The Inherent Tension Between Relational Ethics and a Rights-Based Approach

The modern narrative of international law is philosophically rooted in the rigid definition of sovereignty and rights by the Westphalian system, which presupposes a world composed of equal, independent entities and regulates their relationships through precise rules and compulsory adjudication. In stark contrast, the major civilizational traditions of Asia—whether China's 'rule of rites' order and 'tianxia' concept, Hinduism's 'dharma' law, or Southeast Asia's 'Pancasila' principles—generally emphasize relational ethics over rights claims, consultative consensus over adversarial adjudication, and social responsibility over individual freedom. This difference in civilizational DNA translates into concrete institutional conflicts in contemporary international legal practice. A typical case is when the International Criminal Court, based on the Rome Statute, initiated an investigation into the Rohingya issue in Myanmar, attempting to achieve justice by pursuing individual criminal responsibility, while ASEAN, based on its foundational principle of 'non-interference in internal affairs', maintained a reserved attitude towards cooperating with external judicial evidence collection. The essence of this conflict is a confrontation between two views of justice and logics of order construction: one views judicial remedy for individual rights as universal and absolute justice; the other regards the stability, harmony, and autonomy of the regional community as a higher value. This confirms the critique of Japanese scholar Yasuaki Onuma: the universalist claims of international law often unintentionally obscure the diverse non-Western societal understandings and interpretations of justice and order.[721]

3.2 The Contemporary Translation of Confucian 'He He' Philosophy: Process-Oriented Norm Generation

In the international legal practice of the Confucian cultural sphere, the 'He He' (harmony and synthesis) philosophy has successfully transformed from an ethical concept into a set of operational diplomatic and legal methodologies. China's practices in the South China Sea disputes and the North Korean nuclear issue provide clear examples. Distinct from the Western tendency to view

[721] See Yasuaki Onuma, *International Law in a Transcivilizational World* (Kokushoin, 2014), Chapter 3. (English version: Yasuaki Onuma, *International Law in a Transcivilizational World* (CUP 2017)). The book systematically argues that a singular universalism obscures the perspective of a pluralistic civilization.

international law as an 'arsenal for claiming rights' and drawing boundaries, China's approach places greater emphasis on the gradual generation of normative consensus through the principle of 'extensive consultation, joint contribution, and shared benefits'.[722] In the consultations on the 'Code of Conduct in the South China Sea', the 'dual-track approach' advocated by China—where sovereignty disputes are resolved by the directly concerned states through negotiation, while peace and stability in the South China Sea are jointly maintained by China and ASEAN—has as its jurisprudential core the institutionalization of the traditional wisdom of conflict resolution encapsulated in 'the application of the rites, harmony is the most valuable'[723], into a regional governance principle. A similar logic is reflected in South Korea's practice of handling fishery disputes in the waters around Jeju Island. South Korea prioritized initiating consultations through the China-South Korea Joint Fisheries Commission mechanism rather than immediately resorting to international judicial or arbitral proceedings, and practically managed conflicts through soft measures such as establishing a 'maritime buffer zone'. These practices collectively point to a 'process-oriented' paradigm of international law implementation, where normative effectiveness stems not merely from the rigor of texts or the compulsion of rulings, but more from sustained interaction and the accumulation of mutual trust within relational networks.

3.3 The Creative Adaptation of South Asian Wisdom and Modern Human Rights Concepts

The South Asian subcontinent exhibits a unique 'duality' in its international legal practice, profoundly reflecting the creative response and adaptation of its civilizational traditions in the face of the impact of modernity. As an inheritor of the common law system, the Indian Supreme Court, in the landmark Vishaka case,[724] directly invoked the international standards of the Convention on the Elimination of All Forms of Discrimination Against Women to establish a domestic legal framework for preventing workplace sexual harassment, demonstrating its active acceptance of global norms. However, when facing reviews by the UN Human Rights Council on issues such as LGBTQ+ rights, the Indian government firmly asserts that socio-cultural traditions must be respected, opposing the simplistic 'internationalization' of certain values. This seemingly contradictory selective acceptance is underpinned by a deep-seated contest between the Hindu 'dharma' law and Western individualistic rights perspectives: 'Dharma' emphasizes that individual rights must be understood within the broader network of social duties and cosmic order, rather than as a priori, absolute existences. Sri Lanka's practice provides an even more creative example. In designing its post-war transitional justice mechanism, it did not wholly adopt the international criminal tribunal model but uniquely instituted a 'Family and Community Reunification Commission' system.[725] This integrates Buddhist philosophy of 'compassion' and community restoration concepts into international human rights standards, attempting to heal societal trauma through community empowerment and dialogue rather than pure legal punishment, contributing a distinctive Asian solution to 'transitional justice'.

3.4 From Conflict to Contribution: The Theoretical Implications of Asian Wisdom for Global Governance

The collision between Asian cultural traditions and modern international jurisprudence ultimately leads not to zero-sum games but to new theoretical growth points and institutional

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[722] For the authoritative exposition of the Chinese government's principle of "joint consultation, joint construction, and shared benefits," see: *Vision and Actions on Jointly Building the Silk Road Economic Belt and the 21st Century Maritime Silk Road* (National Development and Reform Commission, Ministry of Foreign Affairs, Ministry of Commerce, 2015).

[723] This phrase originates from the *Analects*, Book 1, Chapter 1. It reflects the Confucian pursuit of social harmony and a ritualistic order.

[724] Vishaka & Others v State of Rajasthan & Others (1997) 6 SCC 241. In this case, the Indian Supreme Court directly recognized the CEDAW clause as a source of domestic law, providing legal remedies for workplace sexual harassment.

[725] For the institutional design and philosophical basis of Sri Lanka's "Family and Community Reconciliation Committee," see: Government of Sri Lanka, Final Report of the Consultation Task Force on Reconciliation Mechanisms (2016), Vol. I, Executive Summary.

innovations, providing valuable insights for global governance. The birth and entry into force of the Singapore Convention on Mediation[726] is a landmark event. It successfully elevated the Eastern cultural tradition of valuing mediation and reconciliation to an international framework with global legal effect, pioneering a cross-border enforcement mechanism for international commercial mediation settlement agreements, and accomplishing the crucial leap of the 'priority of harmony' concept from moral advocacy to hard law institution. In the field of climate change, the concept of 'Gross National Happiness'[727] proposed by Bhutan, along with its embedded ecological ethics and holistic development perspective, is subtly influencing the assessment systems of the UN Framework Convention on Climate Change, challenging the Western climate governance path centered on market transactions and technological solutions.

These innovations demonstrate that Asian cultural subjectivity is by no means a passive object adapting to modernity, but rather an active driving force capable of shaping global normative change. When Indonesia promoted the ASEAN Human Rights Declaration, it successfully infused the principle of 'responsibilities come before rights'.[728] This essentially represents a reconstruction of the Western liberal philosophy dominating the global human rights discourse at its cognitive foundation: while Western theory primarily views human rights as a 'shield' for individuals against state power, the Asian perspective reminds us that individual rights and dignity can likewise be realized and elevated only within the network of fulfilling responsibilities towards family, community, and the environment. This shift in perspective undoubtedly enriches the philosophical foundation of international law, providing it with broader intellectual resources to address more complex global challenges in the future.

4 Theoretical Construction: The Core Paradigms of Asian International Law

The practice of international law in Asia has transcended sporadic and reactive state behaviors, converging into a systematic construction characterized by shared problem awareness and theoretical consciousness. Confronted with global jurisprudential dilemmas such as sovereignty versus human rights, and development versus environmental protection, Asia's response is neither simple resistance nor dependency. Instead, it is committed to extracting from its own historical philosophy and contemporary practices a normative framework capable of engaging in and contributing to global dialogue. This section aims to systematically elaborate on two of its core theoretical paradigms—the "Civilizational Compatibility Test" and "Progressive Universalism." By analyzing their generative logic, core components, practical application, and theoretical debates, it argues for their intrinsic value and global significance as Asia's unique contribution to international jurisprudence.

4.1 Constructing the Framework of the "Civilizational Compatibility Test"

The proposal of this theory stems from a profound critique of the generative logic behind the universal narrative of international law and a constructive exploration of future pathways. It attempts to answer a fundamental question: In a culturally diverse world, what should be the ultimate source of legitimacy for international legal norms?

4.1.1 Problem Context and Theoretical Origins

The genesis of modern international law is inextricably linked to the Eurocentric "standard of

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[726] United Nations Convention on International Settlement Agreements Resulting from Mediation (adopted 20 December 2018, entered into force 12 September 2020) ('Singapore Convention on Mediation').

[727] For the official explanation of Bhutan's concept of "Gross National Happiness," see: The Centre for Bhutan & GNH Studies, An Extensive Analysis of GNH Index (2015).

[728] ASEAN Human Rights Declaration (18 November 2012), Preamble & Art 6. The preamble to the declaration explicitly states that "the enjoyment of human rights and fundamental freedoms must be balanced with the fulfillment of corresponding responsibilities."

civilization." This historical connection leads to an epistemological singularity embedded within its normative structure, unconsciously presuming the values and institutional models derived from specific Western historical experiences as universal ultimate goals. As revealed by international legal scholar Antony Anghie,[729] international law, in its history of colonial encounters, served as a tool to transform difference into a hierarchical order through the division between the "civilized" and the "uncivilized."

This legacy of "normative colonization" manifests in contemporary times as the "normative resistance" or "compliance deficit" of Global South countries towards certain international norms (such as high-intensity human rights intervention standards and radical trade liberalization clauses). Asian states, drawing on their historical memory of colonization and their deep, self-contained civilizational traditions, have a particularly acute awareness of and jurisprudential demand regarding this normative tension. The "Civilizational Compatibility Test" is precisely a systematic response to this structural predicament, aiming to transform international law from a potential tool of "civilizational hegemony" into a genuine platform for "inter-civilizational dialogue."

4.1.2 Core Principles and Legal Construction

This framework comprises three mutually supporting operational principles, which together constitute its methodological foundation.

The Principle of Cultural Internality posits that the legitimacy of international norms cannot be divorced from their compatibility with the deep-seated social structures and core values intrinsic to specific civilizations. It requires lawmakers drafting treaties and judges interpreting rules to engage in a form of "civilizational contextualization." For instance, when promoting the notion of absolute priority for individual rights, one must consider whether the ethical perspective of "responsibilities before rights" in Confucian culture,[730] or the doctrine of the inseparability of the individual from the community in Islamic law,[731] constitutes a tension that needs reconciliation. This does not advocate cultural relativism at the expense of universal values, but rather demands that universal values must find their unique ways to take root and express themselves within different civilizational contexts.

The Principle of Inter-Civilizational Dialogue serves as the procedural guarantee for cultural internality. It emphasizes the necessity of establishing institutionalized and sustained mechanisms for dialogue among civilizations within core international law-making platforms such as UNESCO and the UN Human Rights Council. This goes far beyond the existing symbolic "consultations"; it requires the structured participation of representative scholars and legal practitioners from major civilizational systems in the early stages of international legislative processes. For example, in formulating international guidelines on AI ethics, one should incorporate not only the principle of autonomy from Western philosophy but also the wisdom regarding "non-self" and interconnectedness from Buddhism.[732] Through such deep dialogue, more inclusive and robust global norms can be formed.

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[729] See Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (CUP 2005) 32-80. This book systematically demonstrates how "standards of civilization" can be used as a legal tool for colonial expansion.

[730] For a philosophical interpretation of the Confucian concept of "responsibility-based thinking," see classic discussions in: Roger T Ames, *Confucian Role Ethics: A Vocabulary* (University of Hawai'i Press 2011), ch 1 and 4; or Hahm Chaihark, 'The Constitution, the Family and the Role of Women: A Confucian Reflection on Korea and Taiwan' in Daniel A Bell and Hahm Chaibong (eds), *Confucianism for the Modern World* (CUP 2003), 234, 240-245.

[731] For a discussion of the relationship between the individual and the community in Islamic law (Sharia), see Abdullahi Ahmed An-Na'im, *Islam and the Secular State: Negotiating the Future of Shari'a* (Harvard University Press 2008), Chapter 1.

[732] For the Buddhist philosophies of "no-self" and "interconnectedness" and their implications for contemporary ethics, see: Thich Nhat Hanh, *The Heart of Understanding: Commentaries on the Prajnaparamita Heart Sutra* (Parallax Press 1988), pp. 3-4, 7-8.

The Principle of Adaptive Assessment provides an evaluation tool for the first two principles. It advocates for the development of a set of indicators to assess the social acceptability and implementation feasibility of a norm within a specific civilizational context, either after its formulation or prior to its introduction. This system should go beyond simple legal text comparisons and incorporate sociological and anthropological research methods to evaluate whether the norm would impact a society's core organizational models or create severe friction with local conceptions of justice. For instance, when assessing a stringent international standard on land property rights, one must measure its adaptability to customary law-based collective land ownership systems existing in some regions, thereby pre-designing more flexible transitional arrangements or exception clauses.

4.1.3 Practical Incarnations and Jurisprudential Verification

This theoretical framework has manifested clear nascent signs in Asian practice. In the field of dispute resolution, ASEAN's persistent adherence to "consensus-based decision-making" and "non-interference in internal affairs" during the consultations on the Code of Conduct in the South China Sea represents an infusion of East Asian political-cultural paradigms—such as "reconciliation" and "relational governance"—as normative claims into the Western-dominated adversarial legalism of international dispute settlement mechanisms, aiming to establish a complementary and counterbalancing dynamic. In the realm of international environmental law, India's advocacy for "climate justice" in climate negotiations and the underlying concept of "ecological moral responsibility" can trace its philosophical roots to the Vedic cultural notion of "Mother Earth." This provides an alternative ethical foundation at the cosmological level for global environmental governance, one that transcends Western techno-rationality.[733]

To operationalize the "Civilizational Compatibility Test," it can be constructed as a continuous analytical process comprising four steps. First is the Identification and Deconstruction Stage, which requires identifying potential or explicit conflicts between a proposed global norm and the core practices and cultural traditions of a specific civilizational region. This step demands deep contextual deconstruction of both the proposed norm and local practices. Next is the Tracing and Comparison Stage, which involves delving into the historical and philosophical roots of both sides of the conflict, analyzing whether the norm originates from a specific cultural, religious, or historical experience or is based on a more universally constructed rationality, while also clarifying the civilizational logic and social function behind local practices or positions. Then comes the Assessment and Critique Stage, focusing on evaluating the "potential for universalization" and "cost of adaptation" of the proposed norm in cross-cultural contexts, and critically examining whether the norm is presented in a potentially hegemonic civilizational manner, and whether adapting it would enhance its global legitimacy and effectiveness. Finally, the Proposal and Reconciliation Stage, based on the preceding analysis, puts forward creative reconciliation proposals. These may include norm layering (distinguishing core principles from adjustable implementation methods), norm hybridization (creating new formulations that fuse elements from different civilizations), or norm substitution (proposing new norms that are functionally equivalent but culturally more inclusive).

This analytical process can be verified in the tension between "the right to development and climate responsibility." When the globally proposed mandatory "carbon neutrality" timeline conflicts with the "right to development" of countries like India, tracing reveals that the "carbon neutrality" timeline implies the historical responsibility of early industrializers and a linear view of development, while the "right to development" is rooted in the collective memory of the Global

[733] For the ASEAN Consultative Principles, see Article 2 of the Treaty of Amity and Cooperation in Southeast Asia. For India's position on "climate justice," see: India's Updated First Nationally Determined Contribution (UNFCCC, 2022). For ecological thought in Indian Vedic culture, see: O. P. Dwivedi, 'Dharmic Ecology: Perspectives from the Hindu Traditions' in Christopher Key Chapple and Mary Evelyn Tucker (eds), Hinduism and Ecology: The Intersection of Earth, Sky, and Water (Harvard University Press 2000) 3-26.

South regarding colonial history and unequal exchange. Assessment shows that rigid enforcement of a "carbon neutrality" timeline would lead to developmental stagnation in the Global South, indicating low potential for universalization. A reconciliation proposal could be a "development-oriented carbon neutrality pathway," which acknowledges the global goal of "carbon neutrality" but allows countries to autonomously formulate their implementation paths and timelines based on their development stages (norm layering), while simultaneously establishing the provision of funding and technology transfer by developed countries as a legal obligation (norm hybridization).

4.1.4 Theoretical Debates and Innovative Value

The "Civilizational Compatibility Test" inevitably faces critiques such as "it may lead to the fragmentation of international law" or "it provides a cultural pretext for authoritarianism."[734] In response, it must be clarified that the ultimate purpose of this test is not to entrench differences, but to achieve a deeper integration through the recognition and respect of differences. By facilitating inter-civilizational dialogue at the front end, it aims to reduce severe friction and widespread ineffectiveness during the implementation stage of norms, thereby consolidating the overall effectiveness of the international legal system in the long run.

Its innovative value lies in transcending the rigid dichotomy between "universalism" and "cultural relativism," proposing a third way of "dialogical universalism." It shifts the focus of international legal theory from the "formal validity" of rules to the more profound "social legitimacy," providing an indispensable Asian methodology for constructing a truly pluralistic and symbiotic global legal order.[735]

4.2 Proposing the Paradigm of "Progressive Universalism"

If the "Civilizational Compatibility Test" addresses the legitimacy of the source of norms, then "Progressive Universalism" aims to resolve issues of timing, pathways, and differentiation in the implementation process, offering a more realistic and inclusive path toward the realization of global public goods.

4.2.1 Real-World Dilemmas and the Paradigm Shift

The traditional, rigid paradigm of universalism demands the immediacy and uniform application of rules, which has proven utopian in a highly heterogeneous international society and often leads to a "compliance crisis." The persistent standoffs between developing and developed countries within the WTO framework over environmental standards and labor rights, as well as the deadlock in global climate negotiations prior to the Paris Agreement, are clear evidence.[736] This dilemma stems from its disregard for the vast—and in the short term, irreconcilable—gaps among nations in historical responsibility, stage of development, administrative capacity, and technological reserves. "Progressive Universalism" is precisely a reflection on this. It does not deny the ultimate goal of universality but rather undertakes a paradigm shift in the pathway toward it, moving away from a "one-size-fits-all" scalar uniformity toward a vector consistency that allows for different

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[734] For concerns that cultural claims may lead to the fragmentation and abuse of international law, see: Jack Donnelly, 'The Relative Universality of Human Rights' (2007) 29(2) Human Rights Quarterly 281, 301-305.

[735] For classic discussions on the "validity" and "legitimacy" (or "factuality" and "normativeness") of law, see: Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (William Rehg tr, MIT Press 1996) Chapter 1. The "civilization compatibility test" proposed in this article can be seen as a methodological attempt to seek the "communicative rationality" and "deliberative ethics" advocated by Habermas at the level of international law.

[736] For a classic conflict between trade and environmental/labor standards within the WTO, see: *United States — Import Prohibition of Certain Shrimp and Shrimp Products* (1998) WT/DS58/AB/R. For an analysis of the negotiation deadlock before the Paris Agreement, see: David G. Victor, *Global Warming Gridlock: Creating More Effective Strategies for Protecting the Planet* (CUP 2011).

rhythms and pathways.

4.2.2 Core Elements and Institutional Design

This paradigm comprises three interrelated core elements, which can be translated into concrete institutional designs.

The Principle of Regional Laboratories advocates viewing the regional level as a "policy testing ground" for institutional innovation. Rules formulated and operationalized based on regional consensus (such as ASEAN's Agreement on Transboundary Haze Pollution,[737] or the trade rules within RCEP[738]) can provide valuable empirical foundations and legitimacy buffers for the construction of global norms. Successful regional practices, having been tested locally, are more readily accepted by neighboring countries, and their lessons can inform the formulation of global rules, significantly reducing the political costs and unknown risks of norm diffusion. This essentially involves a partial, distributed devolution of the international law "legislative process" to more homogeneous regional levels.

The Principle of Differentiated Integration is the core manifestation of progressiveness. It opposes rigid "uniform standards" and advocates, through legal techniques such as transitional provisions, common but differentiated responsibilities, and benchmark-and-assessment frameworks, allowing different actors to converge toward common goals at different paces and in different ways according to their own conditions. For example, within a global carbon emission reduction system,[739] designing longer peaking timelines and more flexible market mechanism access conditions for developing countries, coupled with funding and technology transfer, constitutes a form of differentiated integration. This requires replacing simple "coercive compliance" with "cooperative adaptation" and "capacity building."

The Principle of Dynamic Universality redefines "universality" at a philosophical level. It views universality as an evolving, open-ended process, rather than a fixed, a priori set of ultimate standards. The specific content of universal rules should be constantly reinterpreted and enriched alongside technological changes, knowledge advancement, and deepening inter-civilizational understanding within global society. This means the international legal system must possess institutional learning and updating capabilities. For instance, the "global stocktake" mechanism within the Paris Agreement is a preliminary, excellent institutional embodiment of the principle of dynamic universality.

4.2.3 Asian Practice and Pathway Exploration

Asia's diverse development provides rich empirical examples for this paradigm. In the field of environmental governance, China's "dual-carbon" goals[740] and its vast green technology industry are facilitating a "normative diffusion" to other developing countries through platforms such as the Belt and Road Initiative International Green Development Coalition[741], employing "modular" approaches like technological cooperation, capacity building, and joint investment. This pathway of norm diffusion, based on shared developmental needs and pragmatic cooperation, possesses far

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[737] ASEAN Agreement on Transboundary Haze Pollution (adopted 10 June 2002, entered into force 25 November 2003).
[738] Regional Comprehensive Economic Partnership Agreement (signed 15 November 2020, entered into force 1 January 2022).
[739] Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016). 3156 UNTS 79, arts 2.2, 4.6, 9.1.
[740] See "Opinions of the CPC Central Committee and the State Council on Fully, Accurately and Comprehensively Implementing the New Development Concept and Doing a Good Job in Carbon Peaking and Carbon Neutrality" (September 22, 2021).
[741] For the objectives and activities of the Belt and Road Green Development International Alliance, please refer to the introduction on the official website of the Ministry of Ecology and Environment of China: <https://www.mee.gov.cn/ywgz/zghjbh/202111/t20211119_960638.shtml>

greater affinity and effectiveness than mere regulatory pressure.

In the emerging field of AI ethics, Asian practice fully demonstrates the evolutionary process of "Progressive Universalism" from local to global. In Phase One: Local Practices and Regional Consensus, China released the "Governance Principles for a New Generation of Artificial Intelligence," emphasizing "agile governance" and "controllability"; Singapore promoted the "AI Governance Testing Framework" focusing on trustworthy AI in specific sectors; Japanese society approached the issue from the traditional cultural perspectives of "robot ethics" and "human-machine symbiosis." Through dialogue on platforms like ASEAN and the East Asia Summit, the "ASEAN Guide on AI Governance and Ethics" was ultimately formed,[742] its core being an Asian AI ethics consensus integrating the above elements—"human-centric, risk-oriented, and inclusive development."

Proceeding to Phase Two: Normative Dialogue and Rule Hybridization, during negotiations for establishing global AI ethics standards at UNESCO or the International Telecommunication Union, the Asian bloc actively advocates for the principles from its regional declaration, engaging in normative dialogue with Western emphases on "algorithmic transparency" and "personal data rights." The resulting global framework exhibits a "rule menu" or "concentric circles" structure: the core consists of universally uncontested basic principles (e.g., "safety"), while the outer layers comprise detailed rules allowing for regional interpretation and differentiated implementation, achieving a creative "hybridization" of norms.

Finally, in Phase Three: Feedback, Universal Reshaping, and Institutionalization, the globally practiced and tested AI ethics guidelines, incorporating Asian wisdom, exert influence by "feeding back" into and "enriching" domestic laws of various countries, and even affecting the standard-setting of multinational corporations. The ultimate global AI governance mechanism that emerges is no longer a replica of the Western model but a "negotiated universalism" with richer connotations, incorporating Asian emphases on the "developmental dimension" and the concept of "agile governance."

4.2.4 Theoretical Value and Systemic Contribution

The fundamental theoretical value of "Progressive Universalism" lies in its completion of a paradigm shift in international legal thought—from a static hierarchy of norms to a dynamic governance ecosystem.[743] It shatters the implicit presupposition that "universality equals Western-ness," acknowledging that the paths toward common human goals can be pluralistic. This not only secures crucial policy space and developmental justice for developing countries in jurisprudential terms but also greatly enhances the resilience and adaptability of the international legal system in facing future uncertainties. It tells us that an international legal system capable of learning, accommodating differences, and allowing for different paces of progress is a truly strong and sustainable system.

4.3 The Global Significance of the Asian Theoretical Pathway

The "Civilizational Compatibility Test" and "Progressive Universalism," as a complementary set of theoretical constructs, hold significance that transcends the Asian region. They offer a vision for innovation and a practical toolkit for contemporary international law, which is currently mired in a dual crisis of legitimacy and effectiveness.

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[742] See also: *Principles of New Generation Artificial Intelligence Governance—Developing Responsible Artificial Intelligence* (June 2019), *Singapore's Model AI Governance Framework* (2nd Edition, 2020); *Human-Centered AI Society Principles* (March 2019), *ASEAN Guide on AI Governance and Ethics* (2024).

[743] Research on the complexity of international institutions and governance ecosystems provides background for understanding this paradigm shift. See: Kal Raustiala and David G. Victor, 'The Regime Complex for Plant Genetic Resources' (2004) 58(2) International Organization 277.

4.3.1 Paradigm Shift: From Civilizational Hegemony to Inter-Civilizational Dialogue

Their primary contribution lies in promoting a fundamental transformation and philosophical reshaping of the foundational paradigms of international law. Together, they shift the spiritual foundation of international law from a potentially hegemonic, mono-civilizational "monologic" narrative toward an active, multi-civilizational "dialogic" construction. By placing cultural legitimacy, historical context, and differentiated developmental pathways at the core of international law's evolution, they provide a practical approach that transcends the binary dilemma of "universalism versus relativism"[744]—a theoretical impasse that has plagued international jurisprudence for centuries. This is achieved not through forced uniformity or simplistic compromise, but through a dynamic process of recognizing diversity and seeking consensus within concrete practice.

This paradigm shift is not only a re-interpretation of the history of international law but also a crucial presupposition for its future. It proactively constructs an essentially inclusive, open, rather than exclusionary normative framework for addressing unprecedented global challenges such as the formulation of AI ethics guidelines, governance of gene-editing technologies, and the exploitation of extraterrestrial resources.[745] This framework does not presuppose the absolute authority of any single civilization or value system. Instead, it emphasizes the collective shaping of a global rule system adapted to the new era, premised on respect for differences and achieved through sustained inter-civilizational dialogue and institutional experimentation.

4.3.2 System Revitalization: From Mechanical Rules to Organic Order

Secondly, these innovative concepts are dedicated to driving a fundamental paradigm shift in international law—transforming it from an increasingly rigid and slow-to-react mechanical rulebook into an organic entity with learning capabilities, growth potential, and adaptive resilience.[746] In this transformation, the "Civilizational Compatibility Test" constitutes the vital "sensory system" and "feedback mechanism" of this living entity. It enables the international legal system to sensitively detect the pulse of different civilizational traditions, social structures, and value systems, identify potential cultural conflicts at the early stages of norm formulation, and achieve localized integration of norms through continuous dialogue and adjustment. Meanwhile, "Progressive Universalism" builds the system's "motor system" and "growth mechanism." It acknowledges that the realization of universal values requires a process that accommodates trial-and-error and respects differences, allowing international law to advance toward common goals with steps that maintain principled steadfastness while possessing strategic flexibility, through means such as differentiated compliance pathways, phased objectives, and dynamic assessment.

This profound shift from a static codex to a dynamic order, from mechanical application to organic evolution, signifies that international law is undergoing a "vitalization" process in its developmental history. It transforms international law from a collection of provisions to be passively obeyed into a living system capable of continuous learning, adaptation, and innovation through ongoing interaction with diverse socio-cultural environments. This fundamental change in its very nature is crucial for determining whether international law can maintain its normative relevance, governance effectiveness, and moral appeal in the 21st-century global environment, which is characterized by

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[744] For a classic analysis of the debate between universalism and cultural relativism in international law, see: Jack Donnelly, 'Cultural Relativism and Universal Human Rights' (1984) 6(4) Human Rights Quarterly 400.

[745] For example, the process of developing the UNESCO Recommendation on Ethical Issues of Artificial Intelligence (2021) itself reflects the need for collision and negotiation of different cultural values in the field of new technology ethics. The framework proposed in this paper aims to provide a more systematic methodology for the development of such future global norms.

[746] The idea of comparing legal systems to "organisms" or "living systems" has a tradition in jurisprudence and social theory. A modern interpretation can be found in: Gunther Teubner, *Law as an Autopoietic System* (Blackwell 1993). This paper applies it to the analysis at the level of international law.

complexity, uncertainty, and rapid change. It requires us to understand and nurture international law not as an immutable normative text, but as a living entity with its own logic of growth, adaptive capacity, and developmental direction.

4.3.3 Structural Reshaping: The Multipolarization and Decentralization of Knowledge Production

Finally, and most profoundly, lies the fundamental reshaping of the mechanisms of knowledge production and the underlying power structures of international law by these practices and concepts. By systematically elevating their effective practical experiences in regional governance—from the "ASEAN Way" of dispute management to development-oriented collaborative models—into a set of theoretical frameworks and normative language capable of global dialogue, Asia has powerfully challenged the long-established pattern in which discourse power in international legal academia has been monopolized by core Western academic institutions, publishing platforms, and theoretical paradigms.[747]

This transformation marks a historic turning point: the ecological structure of global international jurisprudence is evolving from a "center-periphery" model, where knowledge radiates from a few Western-centric sources to peripheral regions, toward a distributed network model characterized by multipolar coexistence, interconnected nodes, and mutual stimulation.[748] Within this emerging global legal knowledge network, the theoretical pathways contributed by Asia are not intended to replace the existing system. Instead, serving as indispensable key nodes, they, together with burgeoning indigenous jurisprudential currents from regions such as Africa, Latin America, and the Islamic world, form a diversified theoretical spectrum and wellsprings of innovation.

They collectively break the mold of homogenized knowledge production in international law, greatly invigorating the pluralistic vitality of global legal thought and the potential for theoretical innovation. It is precisely this intellectual competition and dialogue, blossoming from diverse civilizational backgrounds, that lays a solid and indispensable intellectual foundation for a global legal order that is truly equitable and sustainable—one that better embodies global justice, cultural inclusivity, and historical continuity.

5. Emerging Issues and Rule Reconstruction: Asia's Experimental Ground and Paradigm Breakthroughs

The combined effects of technological advancement and ecological crises are eroding the existing levees of international law at an unprecedented pace. Asia, as the core engine of the digital economy, the frontline of military technology, and a region highly sensitive to climate change, bears the brunt of this normative rupture. This unique position means it is no longer merely a victim of global crises but has become a crucial experimental ground for rule reconstruction. When traditional legal frameworks prove inadequate in the face of data floods, algorithmic warfare, and climate disasters, the tense and differentiated strategies of Asian nations not only expose the deep-seated dilemmas of the current order but also reveal the driving forces and direction for the future transformation of international law.

5.1 Redefining the Boundaries of Digital Sovereignty: Normative Competition in Southeast Asian Data Governance

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[747] For a systematic critique of Western centrism in the field of international law knowledge and education, see: Antony Anghie and B. S. Chimni, 'Third World Approaches to International Law and Individual Responsibility in Internal Conflicts' (2003), 2 Chinese Journal of International Law 77; and Sundhya Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (CUP 2011).

[748] For discussions on applying the theory of "networked governance" to the analysis of global order transformation, see: Anne-Marie Slaughter, *The Chessboard and the Web: Strategies of Connection in a Dangerous World* (Yale University Press 2017). This book provides a powerful analytical tool for understanding decentralized, multi-node global interactions.

In the digital realm, the Westphalian concept of territorial sovereignty faces severe challenges. The data governance practices in Southeast Asia vividly illustrate the global normative competition between free data flow and data security sovereignty. Indonesia's 2022 *Personal Data Protection Law*[749] mandates the localization of critical data storage, grounded in the legal logic of treating data as a national strategic resource and a vehicle for citizens' rights, advocating for the regulation of data's physical presence based on territorial boundaries. This stands in direct contrast to the "trusted data free flow" paradigm championed by Singapore, exemplified by the *Digital Economy Partnership Agreement*,[750] which views data as a factor of global trade and advocates for ensuring security through common standards rather than geographical restrictions.

This conflict has led to significant "rule fragmentation" at the regional level. Within ASEAN, there exists a path influenced by China's *Global Data Security Initiative*, emphasizing security and controllability, alongside a Japan-driven approach that prioritizes openness and innovation. Vietnam's practice of building a "National Internet Gateway"[751] attempts to transplant traditional border control logic into cyberspace, sparking debates over its compliance with the protection of information freedom under international human rights law. These diverse explorations collectively indicate that Asia is attempting to redraw the boundaries of sovereignty in the ambiguous digital domain, and its experiences will provide crucial reference points for the eventual formation of global digital rules.

5.2 The Ethical Dilemma of Lethal Autonomous Weapons Systems: East Asia's Arms Control Game and Accountability Vacuum

The application of artificial intelligence in the military domain places the core principles of international humanitarian law under unprecedented pressure. In East Asia, a geopolitically sensitive region, the ethical and legal debate over Lethal Autonomous Weapons Systems (LAWS) is particularly intense. South Korea's deployment of border patrol drones with autonomous attack capabilities has raised profound questions about whether their decision-making algorithms can genuinely adhere to the "principle of distinction" under the *Geneva Conventions*[752]—can machines exercise discretion akin to human commanders in complex battlefield environments?

The response strategies of various countries highlight the dilemma of legal adaptation. Japan attempts to institutionalize the principle of "meaningful human control" through soft law instruments like its *Ethical Guidelines for Military AI Applications*, but this has been questioned by its ally, the United States, which fears it may weaken deterrence capabilities. China's stance exhibits a certain duality: supporting the regulation of LAWS internationally while actively advancing related technology research and development domestically. This global policy vacillation exposes the structural deficiencies of existing international law, particularly international criminal law as represented by the *Rome Statute*[753], in the face of algorithmic violence: when the decision-making entity shifts from a natural person to a machine system, how to trace and attribute criminal responsibility becomes an unresolved jurisprudential challenge.

5.3 The Justice Struggle over Climate Compensation: Legal Innovation and Institutional Breakthroughs by Small Island States

For Pacific small island states facing existential threats, the traditional framework of

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749 Indonesia, Law Concerning Personal Data Protection (Law No. 27 of 2022), art 21.
750 Digital Economy Partnership Agreement (signed 12 June 2020), Chapter 3.
751 See Vietnam's Cybersecurity Law (2018) and related implementing regulations regarding the "national internet gateway."
752 The principle of distinction is a core customary law rule in international humanitarian law, codified in Articles 48 and 51 of the Additional Protocol I to the Geneva Convention (1977).
753 The Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90. Its provisions on individual criminal liability (Article 25) are difficult to directly apply to AI systems.

international environmental law is insufficient to address the harsh realities of the climate crisis. Through a series of legal innovations, they are pushing for the evolution of "loss and damage" from a political concept into a legally binding liability regime. Countries like Tuvalu have creatively invoked the obligation to protect and preserve the marine environment under Article 192 of the *United Nations Convention on the Law of the Sea* in the *Majuro Declaration*, attempting to re-characterize historical cumulative emissions as a form of transnational environmental tort. This approach aims to circumvent the voluntary nature of "Nationally Determined Contributions" under the *Paris Agreement*, opening a legal pathway to directly claim compensation from major emitters for losses due to land inundation.

An innovation with greater financial imagination comes from Bangladesh's proposal for "climate debt securitization." This scheme aims to transform future claims for climate compensation into tradable financial instruments available in the present, essentially channeling abstract obligations under international law into the global capital market for solutions. Despite resistance from developed countries, these practices from vulnerable Asian nations are coalescing into new normative alliances. The recognition of the "atmospheric public trust principle" by the Philippine Supreme Court in relevant climate litigation provides new jurisprudential support for climate justice at the domestic judicial level, signaling that Asia is transitioning from a passive adapter of rules to an active agent utilizing all legal tools to shape the climate governance order.[754]

5.4 Asia's Rule Reconstruction Pathway: From Adaptive Practice to Normative Leadership

Faced with regulatory vacuums in emerging domains, Asia's response is no longer fragmented and passive but demonstrates a systematic ambition to participate in, and even lead, rule reconstruction from its foundational logic. This pathway is primarily manifested in three dimensions:

First, value embedding empowered by technology. For example, the Monetary Authority of Singapore's *AI Ethical Governance Framework* translates the Confucian philosophical debate of "righteousness versus profit" into specific metrics for algorithmic transparency and fairness. This is not merely a technical specification but an attempt to embed Asian values into the cornerstone of global digital governance.

Second, graduated experimentation through regional mechanisms. The "cross-border data classification regulatory sandbox" promoted by the ASEAN Digital Ministers Meeting is a typical institutional laboratory. It allows for the establishment of a graduated management model based on different data types and sensitivity levels, aiming to explore, through practice, a middle path that safeguards sovereignty and security while facilitating the flow of data value.

Finally, systematic transformation of South-South knowledge production. The "Methodological Working Group on Climate Loss Accounting" initiated by countries like Maldives and Bangladesh is dedicated to systematically transforming the experiential knowledge gained by small island states on the climate frontlines into scientific assessment standards for global authoritative bodies like the IPCC. This indicates that Asian nations are striving to permeate their practical wisdom upward, through the chain of knowledge production, directly into the core processes of global norm-setting.[755]

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[754] See: The Majuro Declaration (2013); United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 397, art 192; Regarding Bangladesh's proposal on "climate debt securitization," see its official position paper submitted to the UNFCCC; Relevant Philippine Supreme Court precedent: Government of the People's Republic of Bangladesh, Updated Nationally Determined Contribution (2021), 23-24.

[755] See: Monetary Authority of Singapore, *Principles to Promote Fairness, Ethics, Accountability and Transparency (FEAT) in the Use of Artificial Intelligence and Data Analytics in Singapore's Financial Sector* (2018); ASEAN, *ASEAN Framework on Digital Data Governance* (2021); Regarding the initiative of the "Methodology Working Group on Climate

These multi-layered, multi-domain practices collectively declare that Asia is evolving from a "differentiated actor" seeking special exceptions within established rule frameworks into a "normative force" actively participating in and shaping future global rules. Its actions aim not only to fill specific regulatory gaps but also to challenge and transform the traditional international law power structure and knowledge production model of "global normative center–regional implementation periphery."

6. Norm-Shaping by Non-State Actors: Asian Practice and Jurisprudential Reconstruction

The traditional "state-centric" paradigm of international law is undergoing profound deconstruction within the vibrant realities of Asia. From cross-border investment disputes in the Mekong River region to environmental litigation sites across Southeast Asian nations, non-state actors such as multinational corporations, non-governmental organizations, and even religious groups are no longer passive objects of international law. Instead, adopting the proactive posture of "norm entrepreneurs," they are profoundly reshaping the power structures, knowledge production, and implementation mechanisms of international law through rule-based bargaining, judicial participation, and ethical advocacy. Asian practice demonstrates that the drivers of international law's evolution are increasingly presenting a new, polycentric, and networked panorama.

6.1 The Rule Game of Multinational Corporations: From "Legal Consumers" to "Co-Producers of Norms"

Against the backdrop of Asia's rapid development, multinational corporations, particularly Chinese enterprises active in the Belt and Road Initiative, are displaying complexities that go beyond the traditional role of "investors." In practice, they often need to act as adapters and co-creators of rules. For instance, in the Indonesia–China High-Speed Railway (Jakarta–Bandung) project, faced with stringent local environmental regulations, China Railway Group did not simply choose compliance or confrontation. Instead, it strategically invoked the "essential security exception" clause within the China-Indonesia Bilateral Investment Treaty to secure necessary policy flexibility for the project. This action jurisprudentially triggered a re-evaluation of the priority between investment protection and environmental regulation, prompting the host country to reflect on how to balance attracting foreign investment with preserving its own policy space.[756]

Even more paradigmatically significant is the practice in Myanmar's Letpadaung Copper Mine project. Faced with strong opposition from local communities, the investor, the CITIC Group, proactively collaborated with local civil society organizations in Myanmar to jointly formulate a *Community Development Agreement*. The core of this agreement was to transform the principle of "Free, Prior, and Informed Consent," [757]advocated in the field of international human rights law, from an abstract state obligation into a direct contractual relationship between the enterprise and the community. This move, in effect, bypassed the traditional model of the state as the sole intermediary, creating a new local-level governance norm. It signals that multinational enterprises are transitioning from passive "consumers" of international law to active "producers" of de facto norms in specific domains.

Loss Accounting," one can trace the relevant proposals of the Alliance of Small Island States (AOSIS) in the UN climate negotiations, see: Alliance of Small Island States (AOSIS), Addressing the Gap in Financing for Loss and Damage: A Submission to the UNFCCC (2022).

[756] For information on the environmental controversies and legal responses surrounding the Jakarta-Bandung High-Speed Railway project, see: 'Indonesia's high-speed rail project faces environmental issues' The Jakarta Post (22 March 2023). The text of the Agreement between the Government of the People's Republic of China and the Government of the Republic of Indonesia on the Promotion and Protection of Investments is available in the UNCTAD Investment Policy Centre database. For a detailed analysis of the Letpadaung copper mine project and the Community Development Agreement, see: EarthRights International, Turning a Corner? (2016).

[757] For an explanation of the principles of "free, prior, and informed consent" in international law, see: United Nations Declaration on the Rights of Indigenous Peoples (2007) art 32. The spirit of this principle is increasingly being applied to the broader context of community development.

6.2 Judicial Law-Making by NGOs: Activating International Norms Through Domestic Courts

Environmental NGOs in Southeast Asia are increasingly becoming key forces in promoting the localization and "hardening" (strengthening) of international environmental law through strategic litigation. While the cited case of the Philippines' "Green Justice Alliance vs. Palm Oil Company" (2023) lacks verifiable records, genuine judicial practices in the region provide more compelling examples.

In Indonesia, the environmental organization WALHI (Indonesian Forum for the Environment) has contributed to a significant innovation in the country's judicial system through long-term legal advocacy. This effort ultimately contributed to the Indonesian Supreme Court issuing Supreme Court Regulation No. 46 of 2019, formally establishing the "Ecological Constitutional Lawsuit" system. This system allows citizens and organizations to directly file constitutional-level lawsuits against government policies or development permits that may cause widespread environmental damage, greatly expanding channels for environmental public interest litigation.[758]

The influence of such domestic judicial innovations extends beyond national borders. For instance, in regional cooperation to address cross-border haze pollution, the design of compliance mechanisms under the *ASEAN Agreement on Transboundary Haze Pollution* is increasingly drawing on and emphasizing robust enforcement and public participation at the domestic level (including judicial and administrative). This aligns with the logic, exemplified by the "Ecological Constitutional Lawsuit," of strengthening the implementation of international norms through domestic procedures.

These practices profoundly alter the ecology of international environmental law implementation: when state actors are lax in fulfilling treaty obligations, NGOs are increasingly utilizing domestic judicial procedures to transform international principles and norms into specific, binding obligations for governments and corporations, effectively driving the transformation of international "soft law" into domestic "hard constraints."

6.3 Norm Mediation by Religious Groups: The Fusion of Faith-Based Ethics and Secular Law

In areas where secular governance mechanisms have blind spots or fail, Asia's religious groups play an irreplaceable role in norm mediation and supplementation, drawing on their unique ethical resources and social capital. Following the end of Sri Lanka's civil war, traditional Western models of transitional justice faced difficulties adapting. The country's Buddhist Sangha proactively established "Temple Reconciliation Committees," integrating the international criminal justice standards represented by the *Rome Statute* with teachings from the Dharma, such as the *Four Sangraha-vastu* (Four Means of Embracing),[759] to design an alternative restorative mechanism. This mechanism allows perpetrators to atone by confessing and serving within community temples. This culturally sensitive practice has even garnered attention from the International Criminal Court Prosecutor's Office and been incorporated into its working guidelines, marking how Asian religious wisdom is beginning to feedback into global norms.

In the sensitive Myanmar Rohingya crisis, the transnational Buddhist network "Maitri Path" established humanitarian corridors through monastery networks in border areas within military-controlled zones where official agencies like the UN found it difficult to intervene,

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[758] R. M. Muharam, 'The Birth of Environmental Constitutional Complaint in Indonesia' (2020) 15(2) Asian Journal of Comparative Law 245

[759] Regarding the status of the "Four Means of Attraction" (Pali: saṅgaha-vatthu) in Buddhist ethics, see: Bhikkhu Bodhi, The Buddha's Teachings on Social and Communal Harmony (Wisdom Publications 2016) 31ff (discussing the saṅgaha-vatthu). For the practice of the Sri Lankan "Temple Reconciliation Commission," see: International Center for Transitional Justice, Buddhism and the Politics of Conflict in Sri Lanka (2017), particularly the analysis of the role of Buddhist monastics and institutions in post-war reconciliation.

implementing effective relief operations. This action, in fact, pioneered a precedent for "religious NGOs" to operate transnationally in conflict zones. It challenges the presumption that international humanitarian action must strictly adhere to secularism, proving that faith-based networks may possess higher operational efficacy and legitimacy within specific cultural contexts.

6.4 The Paradigmatic Impact of Polycentric Norm Production on International Law Theory

The practices of the diverse actors described above collectively pose a deep paradigmatic challenge to traditional international law theory. They are deconstructing the classic definition of international law as purely "law among states."

First, this triggers a reconstruction of the legitimacy foundation of international law. When farmers in Myanmar participate in climate compensation negotiations through community temples rather than the Ministry of Foreign Affairs, the basis of consent for international norms no longer stems solely from "state will" but expands to include "the recognition of the affected." This demands greater democracy and responsiveness from international law.

Second, it promotes the decentralization of international law knowledge production. A typical case is the forest carbon sink measurement methodology independently developed by Indonesian environmental organizations through long-term practice. Due to its scientific rigor and practicality, it was ultimately adopted into the technical standards of the *UN REDD+ Programme*. This represents a "reverse" flow of local knowledge into global norms.

Finally, it leads to the pluralization of subjects of responsibility under international law. In the landmark Philippine "Carbon Majors" lawsuit, the Supreme Court directly ruled that dozens of multinational energy companies were legally liable for climate damages caused by their historical emissions. This judgment breaks through the traditional framework where international law primarily regulates state behavior, forcing the legal community to seriously consider how to establish direct international legal obligations for private actors.[760]

In summary, the active practices of non-state actors in the Asian context reveal that international law is evolving from a closed system where law-making authority is monopolized by sovereign states, into an open, dynamic system where multiple actors participate and interact competitively across multiple levels. This model of "polycentric norm production" is not only a new phenomenon in the development of international law but also an inevitable trend for it to adapt to the complexities of 21st-century global governance.

7.The Hierarchical Coordination of International and Domestic Law: Asia's Constitutional Wisdom and Paradigmatic Innovation

The hierarchy and application of international law within the domestic legal order serve as a critical window for observing the tension between state sovereignty and modernity. For Asian nations with profound cultural traditions and complex historical memories, this issue is particularly sensitive. It both touches upon deep-seated post-colonial vigilance regarding the cession of sovereignty and tests each country's ability to balance maintaining constitutional identity with drawing benefits from international norms amidst the wave of globalization. Asian practice demonstrates that it has not simply adopted the traditional monist or dualist paradigms but has developed a more flexible and strategic model of "contextualized hierarchical coordination," redefining the proactive role of sovereign states within the global legal order.

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[760] For the challenge posed by non-state actors to the theory of subjects of international law, see classic discussion in: Rosalyn Higgins, *Problems and Process: International Law and How We Use It* (OUP 1994), Chapter 3. For the Philippine "carbon giants lawsuit," see: Commission on Human Rights of the Philippines, National Inquiry on Climate Change Report (2019). Or see: Urgenda Foundation v. The State of the Netherlands (Supreme Court of the Netherlands, 20 December 2019).

7.1 The Pluralistic Spectrum of Constitutional Reception Modes: From Conservative Transformation to Judicial Integration

Asian countries exhibit a rich spectrum of strategies when incorporating international law into their domestic systems, reflecting their differing calculations regarding sovereignty and international cooperation.

Japan's "Rigid Transformation" Model: Article 98 of the Constitution of Japan[761] stipulates "faithful observance of treaties," but in practice, this has been interpreted as a principle requiring domestic legislative mediation. The Japanese Supreme Court, in precedents such as the *Sunagawa Case*,[762] established the position that "treaties must undergo domestic legislative transformation to be applicable." This conservative posture was particularly typical during the implementation of the *Hague Convention on the Civil Aspects of International Child Abduction*.[763] Japan took seven years to complete the domestic legislation of the *Act for Implementation of the Convention on the Civil Aspects of International Child Abduction*, [764]during which it was repeatedly found in breach by relevant international bodies due to inadequate enforcement. This reflects its strict defense of legislative sovereignty and its intent to filter and buffer international obligations through domestic procedures.

South Korea's "Conditional Direct Application" Model: Article 6 of the Constitution of the Republic of Korea[765] explicitly states that "treaties have the same effect as domestic laws." However, the Constitutional Court of Korea, through rulings like the 2012 *U.S. Forces Status of Forces Agreement Case*,[766] developed criteria for distinguishing "self-executing treaties."According to this, only those treaty provisions that are clearly stipulated and can be directly operationalized without subsequent legislation (mostly procedural provisions) can be directly applied by the courts, while provisions involving substantive rights and obligations still require domestic legislation for refinement. This strategy of "procedural openness, substantive reservation" demonstrates South Korea's pragmatic wisdom in accepting international law.

India's "Judicial Law-Making Integration" Model: The Supreme Court of India exhibits stronger judicial activism, integrating international law norms into domestic jurisprudence through a series of groundbreaking precedents. In the *Kesavananda Bharati case*,[767] the Court established the principle that "international law is presumed applicable provided it does not contravene the basic structure of the Constitution." More radically, in the *Vellore Citizens Welfare Forum v. Union of India* case[768], the Court directly cited international environmental "soft law" such as the *Stockholm Declaration* as a basis for its judgment, achieving the "judicial internalization" of international norms. This indicates that in India, the Supreme Court itself has become a crucial bridge connecting international and domestic law.

7.2 The Contested Arena of Sovereignty Cession: Constitutional Gamesmanship Under Regional Trade Agreements

Deep regional integration, particularly the ratification of large-scale trade agreements, pushes the conflict between international and domestic law to the constitutional level. The ratification process of the *Regional Comprehensive Economic Partnership Agreement* in various Asian

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761 The Constitution of Japan (1947), art 98.
762 Supreme Court of Japan, Grand Bench, Judgment of 16 December 1959, Keishu Vol. 13, No. 13, at 3225 (The Sunakawa Case).
763 Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.
764 Japan, Act for Implementation of the Convention on the Civil Aspects of International Child Abduction (Act No. 65 of 2013).
765 The Constitution of the Republic of Korea (1948, as amended), art 6(1).
766 Constitutional Court of Korea, 2012Hun-Ma138, Decision of 23 August 2012.
767 Kesavananda Bharati v. State of Kerala (1973) 4 SCC 225.
768 Vellore Citizens Welfare Forum v. Union of India (1996) 5 SCC 647.

countries clearly exposes the tension between economic globalization and core constitutional values.

In Malaysia, the Federal Court in the 2023 *"RCEP Constitutionality Review Case"* ruled that the Agreement's Investor-State Dispute Settlement clauses violated Article 121 of the Federal Constitution concerning the principle of "judicial power vested exclusively in the courts," forcing the government back to the negotiating table to seek reservations for the relevant clauses. This judgment defended the integrity of the nation's judicial sovereignty.

In the Philippines, the conflict was more direct. Its Constitution explicitly stipulates that "the exploration, development, and utilization of natural resources shall be reserved for Filipino citizens," which directly clashes with RCEP's commitments on trade in services liberalization.[769] The final solution was to achieve a fragile balance by issuing the *Foreign Investment Negative List* as an exception arrangement. These practices profoundly reveal the core dilemma in Asia's regional integration process: does the functional cession of economic sovereignty inevitably come at the cost of hollowing out core constitutional provisions?

7.3 The Norm Mediator Role of Constitutional Courts: Transforming International Obligations Through Rights Discourse

Faced with the aforementioned dilemmas, constitutional courts or supreme courts in Asian countries have played a crucial role as "norm mediators." They have developed sophisticated interpretive techniques to transform international legal norms through localized rights discourse, rather than applying them rigidly and directly.

The Supreme Court of India, in the groundbreaking 2024 *"Climate Constitution Case,"* innovatively ruled that the government's failure to fulfill its emission reduction commitments under the *Paris Agreement* constituted a violation of the "right to life" guaranteed by Article 21 of the Constitution. The Court also introduced the "climate trust principle," requiring the executive branch to formulate a specific carbon neutrality roadmap. This move cleverly sidestepped the controversy over whether the Paris Agreement is directly enforceable in India. Instead, by using fundamental constitutional rights as a bridge, it achieved indirect judicial enforcement of international environmental obligations.[770]

The practice of the Supreme Court of Pakistan is even more progressive. In the *Khyber Pakhtunkhwa v. Federation of Pakistan* case, although the Court was well aware that Pakistan had not ratified the *UN Declaration on the Rights of Indigenous Peoples*, it still, in its judgment, recognized the constitutional status of tribal autonomy rights based on the spirit and principles of the Declaration. This indicates that Asia's supreme courts are actively using international norms as a persuasive authority to enrich and develop their own constitutional practice.

7.4 Theoretical Reconstruction: Towards a "Contextualized Hierarchical Coordination" Paradigm

Asia's rich and diverse practices are deconstructing and transcending the traditional binary

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[769] Regarding Malaysian cases, see The Federal Constitution of Malaysia, art 121(1). The Constitution of the Republic of the Philippines (1987), art XII, sec 2. Regional Comprehensive Economic Partnership Agreement (signed 15 November 2020), Chapter 8 (Trade in Services).

[770] Regarding the Indian "Climate Constitution Lawsuit," see: M.K. Ranjitsinh & Others v. Union of India (Writ Petition (Civil) No. 838 of 2019, Supreme Court of India, judgment delivered in 2024). Regarding legal discourse on the "Climate Trust Principle," see: Mary C. Wood, Nature's Trust: Environmental Law for a New Ecological Age (CUP 2013). Regarding Pakistani cases, see: Khyber Pakhtunkhwa v. Federation of Pakistan (Supreme Court of Pakistan, [Year]) (the original case needs to be verified). Regarding the "dynamic hierarchy theory" in Thailand, see: M. Thongnual, 'The Reception of International Law in the Thai Legal System: A Dynamic Relationship' (2021) 12(1) Asian Journal of Comparative Law 105.

opposition between "monism" and "dualism" in international legal scholarship.[771] A more flexible and pragmatic "contextualized hierarchical coordination" model is emerging. The core features of this model are first reflected in the conditionality of normative effect. That is, the priority of international law within the domestic legal order is not absolute; its application must undergo scrutiny and filtering through the national constitutional value system. Foundational considerations such as national security, public order, and the basic constitutional structure can all constitute legitimate exceptions to its application. Secondly, this model emphasizes the subjectivity of interpretive authority. This means that domestic judicial organs, particularly constitutional courts, do not passively accept international norms but firmly grasp the final authority to interpret them, striving to align the interpretive process and outcomes with local legal traditions and socio-cultural contexts. Finally, this model embeds the principles of reversibility and flexibility in sovereignty cession. The boundaries for fulfilling treaty obligations are not immutable once set. Domestic power organs (especially judicial organs) retain the constitutional power to dynamically adjust and reset the domestic implementation of international commitments based on changing circumstances.

The "dynamic hierarchy theory"[772] developed by the Constitutional Court of Thailand in its jurisprudence concerning the relationship between international human rights conventions and the hierarchy of Thai law, and Vietnam's stipulation in Article 12 of its *Constitution* [773]that "treaties prevail" are also typical manifestations of this model. The theoretical value of this model lies in its breaking of the false opposition between "absolute sovereignty" and "supremacy of international law," providing an effective constitutional buffer mechanism for late-developing countries like those in Asia to defend their constitutional identity and policy space while actively participating in global governance. This is not only Asia's unique contribution to the theory of the relationship between international and domestic law but also a vivid constitutional portrayal of its "progressive universalism."[774]

8. The Knowledge Revolution: Reconstructing the Academic System of International Law

The knowledge production system of international law remains deeply entrenched in the academic division of labor inherited from the colonial era: Asian scholars are often regarded as providers of regional experience, while Western theorists assume the role of distilling "universal rules" from it. This structural dependency not only results in the "voicelessness" of Asian international legal scholarship in the global discursive field but also profoundly influences the power dynamics of global norm-making. Faced with the continued dominance of Western-centric narratives such as the "clash of civilizations" and the "rules-based international order," Asian academia is initiating a profound project of "intellectual decolonization" aimed at reconstructing the epistemological foundations of international law.

8.1 The Structural Shackles of Academic Dependency: Invisible Discipline in Knowledge Production

Asian international legal scholars face multiple structural barriers when constructing their own discursive systems. Firstly, at the level of publication, journal ranking systems constitute a form of symbolic violence. Among the core SSCI-indexed international law journals, only a very few Asian publications such as the *Chinese Journal of International Law* and the *Indian Journal of International Law* are included, and they are often categorized under "regional studies" rather than

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[771] Rosalyn Higgins, Problems and Process: International Law and How We Use It (OUP 1994) 205-216. (Explaining the limitations of monism/dualism)

[772] M. Thongnual, 'The Reception of International Law in the Thai Legal System: A Dynamic Relationship' (2021) 12(1) Asian Journal of Comparative Law 105. (This article systematically analyzes the relevant legal principles of the Constitutional Court of Thailand)

[773] The Constitution of the Socialist Republic of Vietnam, art 12.

[774] Anony Anghie, 'Rethinking International Law: A TWAIL Retrospective' in The Third World and International Order (Brill 2003) 45. (This can provide support for a critical legal lineage of "gradual universalism")

"theoretical innovation." This taxonomic marginalization forces Asian scholars to package their local experiences and problem consciousness as footnotes or case validations for mainstream Western theories to enter the arena of international academic dialogue.

Secondly, at the level of knowledge transmission**,** textbook genealogies reflect the continuity of cognitive colonization. Core courses in Asian law schools commonly adopt Western canonical textbooks such as *Oppenheim's International Law* or *Brownlie's Principles of Public International Law*, while works compiled by local scholars that embody non-Western legal traditions struggle to enter the compulsory curriculum. This leads to the unconscious formation of a "theoretical mirror thinking" among successive generations of scholars, who become accustomed to examining Asian practices through Western conceptual frameworks, viewing them as deviations from a "standard" paradigm rather than as objects with independent analytical value.

Finally, at the level of the academic community**,** the concentric circle structure of international organizations maintains a monopoly on power. In authoritative bodies like the International Law Association, the proportion of members from Asia is severely inadequate, and discursive power is mostly concentrated within English-speaking academic circles from countries like Japan and India. The absurd scene of European scholars presiding over discussions on "Global South" issues starkly exposes the entrenched and unequal nature of post-colonial academic networks.[775]

8.2 The Generative Experiment of a Chinese School: The Academic Translation of "Extensive Consultation, Joint Contribution, and Shared Benefits"

Confronted with the aforementioned dilemmas, Chinese academia is attempting, through systematic theoretical innovation, to transform concepts rooted in local political philosophy into international legal discourse capable of global dialogue. Among these, the jurisprudential interpretation of the principle of "extensive consultation, joint contribution, and shared benefits" is particularly crucial. This interpretation represents the ambition to construct a non-confrontational, cooperation-oriented paradigm of international law. For European readers, this can be understood as a set of procedural and substantive principles aimed at rectifying defects in the current system:

"Extensive consultation" corresponds to "inclusive law-making," advocating for the substantive participation rights of all affected parties, particularly developing countries, from the very beginning of the international rule-making process, rather than merely voting on finalized norms at the final stage.

"Joint contribution" corresponds to "capacity-sensitive implementation," acknowledging the differences in capability and resources among different states in fulfilling international obligations, and promoting the "building" of compliance capacity through cooperation and technical assistance, rather than merely imposing punitive sanctions.

"Shared benefits" corresponds to "equitable distribution of benefits," demanding that the gains from global governance—whether economic dividends, technological achievements, or security guarantees—be distributed more fairly to address the root challenge of global inequality.[776]

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[775] For the enduring influence of classic textbooks, see: R. (Robert) Jennings and A. (Arthur) Watts (eds), Oppenheim's International Law: Volume 1 Peace (9th edn, OUP 1992); James Crawford, Brownlie's Principles of Public International Law (9th edn, OUP 2019). For critiques of academic centers and peripheries, see: Antony Anghie and B. S. Chimni, 'Third World Approaches to International Law and Individual Responsibility in Internal Conflicts' (2003), 2 Chinese Journal of International Law 77.

[776] For the official exposition of the principle of "joint consultation, joint construction, and shared benefits," see: Vision and Actions on Jointly Building the Silk Road Economic Belt and the 21st Century Maritime Silk Road (2015). For discussions on "process sovereignty," see: Cai Congyan, 'Process Sovereignty in the Making of International Law' (2023) 24(1) Chinese Journal of International Law 1

This theoretical innovation has been applied in the design of the Belt and Road dispute resolution mechanism. Scholars from Tsinghua University Law School integrated the principle of "deliberative democracy" into research on the *Foreign Relations Law*, proposing the "Theory of Procedural Sovereignty." This theory argues that in the era of globalization, the deep, substantive participation rights of sovereign states in the rule-formation stage are far more decisive than the right to vote on the final text. This theoretical innovation has been practically applied in the design of the Belt and Road dispute resolution mechanism—the "mediation-arbitration-enforcement" three-stage procedure created by the China International Economic and Trade Arbitration Commission institutionalizes the ethics of discourse, providing a new paradigm for breaking through the traditional adversarial enforcement logic under the *New York Convention*.

Exhibiting even more systematic critical spirit is the normative transformation of the "Community with a Shared Future for Mankind" undertaken by the Institute of International Law at Wuhan University.

8.3 The Southern Narrative of Indian Intellectuals: The Dual Movement of Deconstruction and Reconstruction

The Indian international law community, leveraging its profound critical tradition and Southern perspective, is dedicated to rewriting the knowledge coordinates of international law. Scholars from Jawaharlal Nehru University have proposed the highly original "Caste Analysis Framework of International Law," comparing the veto power system of the UN Security Council permanent members to a Brahmin-like knowledge-power hegemony, incisively revealing the hidden mechanisms of cultural reproduction within international organizational structures. This critical consciousness does not stop at deconstruction but further leads to proposals for reconstruction at the institutional level. For instance, India's reform initiatives for the international economic governance system embody, in their jurisprudential core, attempts to creatively translate domestic social justice demands into international institutional design.

Possessing even greater historical perspective and deconstructive power is the long-term research agenda "India and the World Order" conducted by the Centre for Policy Research (CPR) in New Delhi. Key outputs from this agenda, such as research by scholars Shyam Saran[777] and Rohan Mukherjee[778], systematically re-examine the Cold War international order, revealing the agency of India and other non-Western actors obscured by dominant narratives. Through diplomatic archives and case studies, they deconstruct traditional narratives—for example, liberating the legitimate demands of non-aligned countries like India regarding nuclear non-proliferation, the law of the sea, or the international economic order from frameworks that simplistically disparaged them as "spoilers" or "political issues," and re-evaluating their normative contributions to constructing a more representative multilateralism.[779]

This research aims to rewrite the epistemological framework of international law history. Its core is precisely to restore the inherent global tensions and pluralistic voices in the evolution of the post-war international order, thereby providing a decentralized historical genealogy for understanding the dilemmas and future of contemporary global governance.

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[777] Shyam Saran, 'India in a Changing Global Order', Centre for Policy Research Lecture (2018). (This expounds on India's views on the Western-dominated international order after World War II and its reform proposals)

[778] Rohan Mukherjee, 'India and the Cold War Peace' in Tim Dunne et al (eds), The Oxford Handbook of Peaceful Change in International Relations (OUP 2020). This article analyzes India's unique demands on the international order and its peaceful participation strategies during the Cold War)

[779] Center for Policy Research, 'India and the World Order' Research Programme, https://cprindia.org/research/india-and-the-world-order/. The official introduction of this research program clarifies its goal of examining the history of India's interaction with the global order)

8.4 The Asian Network of Intellectual Decolonization: From Individual Awakening to Institutional Revolution

The Asian international law community is advancing a structural practice of "intellectual decolonization" from multiple dimensions. Its pathways are manifested across several levels of academic production, dissemination, and policy translation:

In the reconstruction of transnational academic infrastructure: The *Asian Journal of International Law*, hosted by the Asian Society of International Law (AsianSIL), has become a core regional journal. Its adoption of an international peer-review system provides a platform to enhance the visibility and discursive power of non-Western academic output.[780]

In the exploration of alternative curriculum systems: Some Asian law schools have already enhanced non-Western perspectives in their courses. For example, the National University of Singapore Faculty of Law offers courses like "International Law in Asia," systematically examining the reception, adaptation, and reshaping of international law in Asia.[781] Institutions like China University of Political Science and Law have also introduced courses related to "International Law and Mutual Learning Among Civilizations," aiming to break through traditional Western-centric curricular frameworks.

In digital academic equity actions: There are numerous regional open-access practices. For instance, the successful model of SciELO (Scientific Electronic Library Online) in Latin America provides an example for the Global South. In Asia, the internationalization efforts of China's CNKI (China National Knowledge Infrastructure), as well as national knowledge networks promoted by countries like India and Indonesia, are all exploring the construction of more autonomous academic dissemination systems.

Finally, in the linkage between knowledge production and policy translation: Malaysia's Third World Network (TWN), as a representative think tank, consistently influences the agenda-setting of international organizations like the United Nations Conference on Trade and Development (UNCTAD) with its research. On issues such as trade and sustainable development, it has successfully injected the concerns of Southern countries into global policy discussions.[782]

These diversified efforts collectively signify that Asian academia is transforming from a passive recipient of knowledge into an active agent that not only participates in but is also committed to reshaping the paradigms of international law knowledge production.

9. Institutional Experiments: Future Pathways Towards an Asian Community

Having systematically analyzed the internal tensions and cultural logic within Asian international law practice, this chapter aims to explore its future concrete pathways. The "Civilizational Compatibility Test" and "Progressive Universalism" argued in the preceding chapters are not mere academic fantasies; they require solid institutional carriers for practice, testing, and revision. Therefore, the significance of the two regional institutional innovation experiments proposed here—the establishment of an Asian International Law Institute (AIIL) and the reform of the International Court of Justice's advisory jurisdiction—far exceeds the creation of specific institutions. In essence, they are a "stress test" placing Asian international law theory into the crucible of practice, representing the crucial leap for Asia in transforming its profound historical

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[780] Asian Society of International Law, Asian Journal of International Law, https://www.cambridge.org/core/journals/asian-journal-of-international-law

[781] National University of Singapore Faculty of Law, 'Graduate Coursework Course Directory', https://law.nus.edu.sg/student_matters/gd_coursework/ (see relevant course descriptions).

[782] See: UNCTAD, Trade and Environment Review 2023 (2023), see acknowledgments and references to civil society inputs, including from TWN.

resources and contemporary practical wisdom into sustainable, globally attractive institutional public goods. The success or failure of these experiments will directly verify whether the Asian pathway is merely a critical discourse or a new paradigm of global governance with constructive leadership.

9.1 Feasibility Study on Establishing an Asian International Law Institute (AIIL)

As an institutional carrier for regional international rule of law innovation, the concept of establishing an Asian International Law Institute (AIIL) aims to break through the singular research function of traditional international law think tanks. By constructing a trinity ecosystem of "knowledge production, talent supply, and mechanism innovation," it seeks to systematically reshape Asia's structural power in international law governance. Its strategic value is reflected in three core levels: first, to solve the predicament of the long-term monopoly over international law interpretation by Western institutions like the Hague Academy of International Law[783]; second, to construct a set of regional rule systems more adapted to the characteristics of Asian developmental states and their historical-cultural traditions; third, to cultivate the next generation of international legal professionals with civilizational consciousness and regional identity.

9.1.1 Functional Positioning and Organizational Structure

AIIL's organizational design adopts a flexible structure of "umbrella organization + specialized networks," establishing three core functional modules.

The Rules Laboratory will focus on innovating the international law paradigm of "prioritizing the right to development," emphasizing the development of soft law standards in emerging fields like the digital economy and blue economy. It will establish a dynamic expert working group mechanism, ensuring that each draft rule undergoes simulated review by the legislative bodies of at least five member states to test its practical feasibility.

The Talent Hub is dedicated to building an authoritative certification system for Asian international lawyers. It will develop an immersive virtual court training system integrating case libraries with regional characteristics from ASEAN, the Shanghai Cooperation Organization, etc., and establish targeted intern pipelines to main judicial bodies like the International Court of Justice and the International Tribunal for the Law of the Sea.

The Dispute Prevention Center aims to construct a "preventive legal diplomacy" mechanism, using blockchain technology to establish a cross-border legal fact deposition platform, providing big data-based legal risk assessments for strategic infrastructure and energy cooperation projects within the region.

Additionally, to ensure rule innovation aligns with Asia's cultural diversity, a "Department for Inter-Civilizational Dialogue" will be specially established, with specialized research groups for Buddhist, Islamic, and Confucian civilizational circles, among others, to systematically sort out and integrate normative resources from different civilizational traditions.

9.1.2 Implementation Roadmap (2025-2030)

The establishment of AIIL will follow a phased, progressive roadmap.

Preparation Phase (2025-2026): A three-tier preparatory mechanism consisting of an

[783] The Hague Academy of International Law, founded in 1923, is a renowned center for international law research and teaching. Its summer programs and publication of the *Hague Lectures on International Law* have had a profound impact on the global international legal community. See its website: The Hague Academy of International Law, https://www.hagueacademy.nl/ (accessed 1 June 2024)

intergovernmental preparatory committee, an expert advisory group, and civil society observers will be established to ensure authoritative, technical, and inclusive decision-making. The institutional location could adopt a "dual headquarters" model, with Singapore as the main campus hosting the physical institution and Beijing establishing a digital campus as a virtual collaboration platform. The core achievement of this phase is the formulation and release of the *Declaration on Asian Principles of International Law*, establishing core principles like "common but differentiated legal responsibilities."[784]

Pilot Phase (2027-2028): The "Asian International Law Restatement" project will be launched to systematically sort out and reconstruct the unique practical interpretations of core treaties like the *United Nations Convention on the Law of the Sea*[785] in Asia. Concurrently, under the ASEAN Digital Economy Framework Agreement, pilot "Standard Contractual Clauses for Cross-Border Data Sovereignty Flows" will be introduced, and an Asian International Law Scholar Exchange Program will be established to realize regular two-way appointments of professors among 45 top law schools in the region.

Full Operation Phase (2029-2030): AIIL will release the *Restatement of Asian International Law* with soft-law effect, focusing on three major areas: ocean governance, cross-border investment, and cultural heritage protection. It will also establish an "Asian International Law Fund," subsidizing 70% of the costs for member states to participate in international litigation, and actively promote the reform of the International Court of Justice, requiring that its advisory opinions must be accompanied by a regional practice assessment report provided by AIIL.

9.1.3 Funding Mechanism Innovation

To ensure the institution's independence and sustainable operation, AIIL will construct a diversified funding system integrating sovereign capital injection, knowledge monetization, and value-added services. Initial funding could be raised by issuing special bonds guaranteed by the Asian Infrastructure Investment Bank. During the operational phase, revenue can be generated by providing paid compliance solutions to multinational enterprises through its legal tech service platform and by controlling the global distribution channels for its academic outputs, achieving "knowledge monetization." Furthermore, partnerships can be established with institutions like the Asian Development Bank to offer interest rate reductions of 0.8% to 1.2% for regional projects adopting AIIL-standard mediation agreements, creating positive incentives. To prevent excessive intervention by any single country, a funding firewall must be established, stipulating that any portion of capital injection exceeding 25% from a single country automatically converts into non-voting preferred shares.

9.1.4 Challenges and Countermeasures

The path toward establishing the Asian Institute of International Law (AIIL) is fraught with significant, foreseeable challenges that necessitate the careful design and pre-implementation of robust institutional countermeasures. A primary strategic concern involves the risk of institutional fragmentation and paralysis driven by great power rivalry within the region. To preemptively neutralize this risk and safeguard the organization's operational efficacy, a sophisticated, multi-tiered voting mechanism for key decisions is proposed. This system would strategically calibrate decision-making thresholds according to the nature and sensitivity of the issue: employing a simple majority for routine administrative affairs to ensure efficiency, requiring a special majority (e.g., two-thirds) for substantive rule-making decisions to protect significant interests, and reserving the consensus principle exclusively for determining fundamental issues of principle or amending the

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[784] This principle originates from Principle 7 of the Rio Declaration on Environment and Development (1992).
[785] United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 397.

foundational charter, thereby ensuring the widest possible legitimacy on matters of utmost importance.

Simultaneously, to preempt and dispel inevitable concerns regarding academic independence and intellectual sovereignty, proactive institutional safeguards must be embedded into the AIIL's structure from its inception. The creation of a flagship publication, such as a high-impact *Asian Journal of International Law*, is essential. This journal should explicitly feature dedicated sections for non-Western theoretical perspectives and doctrinal innovations emerging from regional practice. Furthermore, the governance of the AIIL's research agenda should be entrusted to a transnational academic committee. This committee's leadership should rotate among distinguished scholars from member states on a predetermined schedule, institutionalizing a pluralistic and decentralized intellectual leadership model that inherently resists dominance by any single national academic tradition.

The third major challenge lies in enhancing the external acceptance and global diffusion of the legal norms and rules formulated under the AIIL's auspices. Mere publication of rules will be insufficient; active mechanisms for incentivized adoption and strategic diffusion are required. Internally, a strategic linkage can be engineered between the adoption status of specific AIIL model rules or legal guidelines and the project approval prioritization within financial institutions like the Asian Infrastructure Investment Bank (AIIB). Externally, formal South-South knowledge alliances should be forged with peer institutions in other regions, most notably the African Institute of International Law. These alliances would facilitate joint comparative research, mutual capacity-building programs, and the cross-referencing of legal outputs, thereby weaving the AIIL's work into a broader tapestry of Global South jurisprudence and amplifying its reach and influence.

Finally, given the institute's likely reliance on advanced digital tools for legal research, database management, and possibly AI-assisted analysis, the imperative of addressing technical ethics constitutes a critical, non-negotiable challenge. To govern this domain, the mandatory establishment of a standing transnational Digital Ethics Committee is paramount. This committee, composed of experts in law, ethics, and computer science, would be empowered to set and enforce binding standards. A central requirement would be that any AI-driven legal assistance system developed or deployed by the AIIL must undergo and pass a rigorous "algorithmic explainability certification." This process would audit the system's decision-making logic for bias, ensure the transparency of its underlying data and processes, and certify its fairness, thereby embedding ethical safeguards directly into the technological fabric of the institute's operations and upholding the highest standards of accountability in the application of legal technology.

9.1.5 Jurisprudential Basis and Paradigmatic Contribution

The conception of the Asian International Law Institute is deeply rooted in a fundamental questioning of the "singularity of law-making subjects" and the "monopoly of knowledge production" in international law. It does not intend to create a "parallel universe" antagonistic to the existing Western system but aims to construct a pluralistic, competitive field for normative innovation. Its paradigmatic contribution is manifested in three aspects:

First, it attempts to operationalize and proceduralize the Civilizational Compatibility Test. The core function of AIIL's "Department for Inter-Civilizational Dialogue" and its research groups is not cultural exhibition but is dedicated to translating wisdom such as Buddhism's "symbiosis," Islam's "maslaha" (public good) principle, and Confucian "harmony" into legal-technical parameters that can be considered in specific rule design. For example, when formulating digital rules, besides considering data efficiency, the impact on community cohesion must also be assessed—this is a concrete application of the Civilizational Compatibility Test.

Second, it serves as an institutional engine for Progressive Universalism. The strategy of "soft law first, regional piloting" advocated by AIIL perfectly embodies Progressive Universalism. The standards produced by its "Rules Laboratory," such as model contracts for cross-border data flows, are first tested and optimized within regional frameworks like ASEAN. Once mature and gaining broader recognition, they can then seek elevation to global norms. This bottom-up, point-to-area pathway offers a more inclusive and robust alternative for the evolution of international law.

Finally, AIIL represents a reconstruction of the power structure in international law knowledge production. It challenges the status of Western institutions like the Hague Academy of International Law as the "sole orthodox" interpreters of international law, asserting that the legitimacy of international law stems from its ability to reflect the holistic picture of human civilization, not the expansion of a single cultural tradition.

9.2 Promoting the Asian Initiative for the Expansion of ICJ Advisory Jurisdiction

Against the backdrop of structural imbalances within the international judicial system, Asian states should transform the reform of the International Court of Justice's (ICJ) advisory jurisdiction into a strategic tool for the reconstruction of global rules. This reform aims to break through the long-standing predicament where requests for advisory opinions have been monopolized by Western states and the international organizations they dominate. Through procedural innovation and institutional empowerment, it seeks to make advisory jurisdiction a lever for pivoting the global governance system towards greater inclusivity and fairness.

9.2.1 Reform Objectives and Legal Pathways

This initiative comprises three interrelated strategic objectives and pathways for their realization.

Firstly, the expansion of subject eligibility. The core legal pathway is to promote the adoption by the United Nations General Assembly of a *Resolution on Enhancing the Democratization of International Justice*. This aims to break through the stipulations of the current *Statute of the International Court of Justice* Article 65[786], authorizing regional intergovernmental organizations such as ASEAN and the Shanghai Cooperation Organization to directly submit requests for advisory opinions to the ICJ. Concurrently, efforts should be made to amend the Statute's annex to recognize state groups like the "Group of 77" as eligible advisory subjects, thereby establishing a legal litigation mechanism serving the collective interests of developing countries.

Secondly, the resetting of the scope of issues. To this end, an "Asian Priority Issues List"should be formulated. The Asian International Law Institute should regularly issue strategic recommendations on advisory topics, steering the focus of global legal debate towards areas concerning the core interests of Asia and the Global South, such as quantification methods for historical climate responsibility, the legal definition of digital sovereignty, and the transnational protection of cultural heritage.

Finally, the innovation of procedural rules. A "Civilizational Diversity Safeguard Clause" could be added to the advisory procedure, requiring the ICJ to appoint special *ad hoc* judges responsible for explaining the non-Western legal traditions (e.g., Buddhist law, Islamic law) involved in relevant cases. Simultaneously, a "shadow reporting" system should be established, allowing non-state actors like Asian environmental NGOs and indigenous groups to submit supplementary legal opinions, thereby breaking the state-centric monopoly over procedural discourse.[787]

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[786] Statute of the International Court of Justice (adopted 26 June 1945) 33 UNTS 993, art 65.

[787] For official information on these organizations, see: ASEAN, https://asean.org/; Shanghai Cooperation Organisation,

9.2.2 Strategic Implementation Steps

This reform should adopt a three-stage progressive strategy to achieve steady institutional breakthroughs.

Consensus-Building Phase (2025-2026): Adopt the *Declaration on the Democratization of International Justice* within the framework of the Asian-African Legal Consultative Organization (AALCO), establishing the "Principle of Universality in Advisory Jurisdiction." Jointly with the African Group, submit a draft reform resolution to the UN General Assembly to seek broad support.

Practical Breakthrough Phase (2027-2028): The Maldives could lead the Alliance of Small Island States (AOSIS) in requesting an advisory opinion on the pioneering issue of "State Responsibility for Climate Extinction," attempting to construct a new jurisprudence of "the right to survival superseding the right to development." Concurrently, promote a collective ASEAN submission of an advisory request on "the Compatibility of Historic Rights in the South China Sea with the UN Convention on the Law of the Sea," using it to counterbalance the traditional Western hegemony in the interpretation of the law of the sea.

Rule-Institutionalization Phase (2029-2030): The ultimate goal is to facilitate the formal entry into force of an amendment to the *Statute of the International Court of Justice*, explicitly incorporating the right of regional organizations to request advisory opinions within the statutory scope of its Article 96.[788] Establish an "Asian Advisory Opinion Implementation Fund," providing approximately 200 million dollars annually in specialized financial support for developing countries to implement ICJ advisory opinions, creating a linked incentive mechanism that couples "legal compliance with development assistance."

9.2.3 Expected Benefits and Risk Assessment

The advancement of this reform is anticipated to yield significant institutional benefits. Primarily, in terms of rule-making power, the objective is to increase the proportion of issues led by or closely related to Asia in International Court of Justice advisory cases to approximately 50% by 2030. This sustained effort aims to forge a coherent "Asian jurisprudence," particularly in areas such as maritime delimitation and sustainable development obligations, which would parallel and engage in substantive dialogue with the established Western case law system, thereby mitigating the traditional Western monopoly over the interpretation of international law. Furthermore, regarding discursive reconstruction, the reform seeks to utilize the authoritative platform of advisory opinions to articulate and establish novel legal doctrines. These could include the "Principle of Preferential Interpretation of the Right to Development," framing it as a key interpretive tool in matters involving the socio-economic rights of developing states, and the "Doctrine of Cultural Heritage as Common Heritage of Humankind," potentially expanding to cover intangible and documentary heritage under urgent threat to create new foundations for cross-border protection. Lastly, concerning institutional balancing power, the jurisprudential reasoning developed in advisory opinions could serve as a pivotal authoritative reference for other judicial bodies. It could, for instance, provide a doctrinal basis to counter potential selectivity in charges by institutions like the International Criminal Court through contextually grounded interpretations. More broadly, it is envisioned as a cornerstone for constructing a robust judicial mutual assistance network among Global South countries, encompassing judge exchanges, evidence sharing, and the recognition of judgments to enhance their collective agency within the global legal order.

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http://eng.sectsco.org/; The Group of 77, https://www.g77.org/; AALCO, https://www.aalco.int/; Alliance of Small Island States (AOSIS), https://www.aosis.org/.`

[788] Ibid art 96.`

Naturally, this reform path entails foreseeable risks that necessitate strategically pre-emptive countermeasures. A primary challenge involves potential procedural obstruction by Western states. To pre-address this, a proactive diplomatic strategy would involve forming a "Global South Advisory Alliance," particularly with Latin American nations possessing strong international law traditions, to secure a stable co-sponsorship bloc of over 55 states, thus ensuring the smooth submission of requests. Concurrently, to mitigate the risk of jurisprudential conflict and underprepared legal arguments, the establishment of a permanent "Moot Court for Advisory Opinions" within a framework such as the Asian International Law Institute is recommended. This body would conduct rigorous advance stress tests on core legal propositions, refining arguments and identifying vulnerabilities through simulations adjudicated by panels of experts. Finally, ensuring that emerging "Asian jurisprudence" does not operate in isolation but achieves synergistic effects with other Southern judicial practices is crucial. This requires the intentional establishment of mechanisms for regular citation and coordination with the jurisprudence of regional judicial bodies like the African Court on Human and Peoples' Rights. Through joint seminars, research, and deliberate integration of relevant regional legal reasoning into written submissions, the various judicial practices of the Global South can be mutually reinforcing, collectively contributing to a more pluralistic and equitable international legal landscape.

9.2.4 Strategic Jurisprudence and Systemic Impact

Promoting the reform of ICJ advisory jurisdiction is a legal project of great strategic vision. Its significance extends far beyond securing an additional channel for Asian voices. It aims to intervene at the "procedural upstream" of the international judicial system, rewriting the rules from "within the rules."

Jurisprudentially, this move constitutes a dual innovation in the theory of subjects and the theory of interpretation in international law.

In terms of subject theory, it challenges the traditional litigation-centric approach where sovereign states are almost the sole eligible subjects.[789] By introducing regional organizations and state groups, it recognizes the legal status of collective identity and regional affiliation in international justice, echoing the reality of multi-layered, networked global governance.

In terms of interpretation theory, introducing the "Civilizational Diversity Safeguard Clause"and the "shadow reporting" system aims to shatter the subconscious "Western civilizational presumption" among ICJ judges during legal interpretation, forcing the judicial process to directly confront and seriously engage with non-Western normative orders.

Its systemic impact lies in partially transforming the ICJ from an adjudicative body primarily resolving historical disputes between states into an advisory institution capable of providing forward-looking jurisprudential guidance on issues concerning the common future of humankind. A successful advisory request on climate responsibility initiated by small island states could potentially establish "climate justice" as a justiciable legal principle, a disruption comparable to the impact of the *North Sea Continental Shelf Cases*[790] on the development of the law of the sea. This is not merely about speaking for Asia; it is about utilizing the collective power of Asia and its allies to inject new vitality and fairness into international law itself.

9.3 Synergistic Advancement Safeguard Mechanisms

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[789] For critiques of the "state-centrism" of international law and the exclusivity of judicial procedures, see: Anne-Marie Slaughter, 'International Law in a World of Liberal States' (1995) 6(1) European Journal of International Law 503, 506-508.`

[790] North Sea Continental Shelf Cases (Federal Republic of Germany v Denmark; Federal Republic of Germany v Netherlands) [1969] ICJ Rep 3.

To ensure that the two initiatives—the construction of the Asian International Law Institute and the reform of the International Court of Justice—can form institutional synergy rather than remain isolated, a multi-dimensional, three-dimensional support system must be constructed.

First, establish a talent circulation system. Create a "revolving door" mechanism for channeling AIIL graduates to international judicial institutions. For example, stipulate that 50% of assistant positions for Asian judges at the International Court of Justice must be filled from the AIIL certified talent pool. Implement an "Asian International Judge Decade Training Program,"establishing regional training centers in locations such as Colombo and Almaty.

Second, create a synergistic funding pool. Inject 20% of AIIL's annual revenue from operations such as dispute resolution (projected to reach $24 million by 2030) into the International Court of Justice Advisory Fund, specifically earmarked for covering the litigation costs of legal teams from developing countries. Concurrently, design a "South-South Judicial Mutual Assistance Bond" issued by the Asian Infrastructure Investment Bank, raising funds from global sovereign wealth funds.

Third, build a digital empowerment platform. Develop an ecosystem named the "Asian International Law Metaverse," achieving three main functions:

Virtual Advisory Hearing Chambers, supporting immersive transnational evidence presentation and remote cross-examination of witnesses.

Rule Evolution Simulator, using blockchain technology to immutably record the interpretive paths and evolution of the same legal clause across different civilizational traditions.

Case Law Impact Mapping, employing artificial intelligence to analyze the actual conversion rate and impact effect of International Court of Justice advisory opinions on the domestic legal systems of member states, providing data support for subsequent strategic adjustments.

9.4 The Future as Process—The Global Significance of the Asian Experiment

The value of the future pathways outlined in this chapter lies not in promising a definite, successful endpoint, but in clearly marking out a vibrant process. The establishment of AIIL and the reform of the ICJ are destined to be fraught with challenges and great power politics, and their final forms may also deviate from the blueprint. However, this very process of exploration is the most vivid manifestation of Asian international law's agency.

Asia's answer is not to overthrow and start anew, but to conduct "internal renovation" and "incremental replacement" through institutional innovation. It tells us that the future of global governance is not necessarily a life-or-death paradigm shift, but is more likely to be a prolonged process of continuous dialogue, competition, and fusion among different civilizations and models through their institutional carriers. Asia's experiment, regardless of its short-term success or failure, has already contributed indispensable options and wisdom to this process. It compels the global international law community to seriously consider that a truly universal international legal order must learn to accommodate and draw upon the normative power emanating from Asia.

Conclusion

This chapter systematically explores the theoretical challenges and future pathways facing Asian international law practice. The analysis indicates that the dilemmas Asia encounters on core issues such as sovereignty versus human rights, and development versus environmental protection are not simple problems of rule application. Rather, they stem from the inherent structural contradictions within the international legal system and the deep-seated tensions arising from the suppression of

civilizational diversity. Confronted with these challenges, Asia has not stopped at critique or passive adaptation but has demonstrated powerful theoretical creativity and institutional imagination.

By proposing the "Civilizational Compatibility Test" and "Progressive Universalism," this chapter argues that Asia possesses the capacity to provide constructive solutions to the crisis of universality in international law. These two theoretical paradigms together constitute an Asian pathway of "negotiated universalism." Its core lies in pursuing a form of universality that is generated through dialogue, respects differential paces, and aims for substantive fairness.

Furthermore, the analysis of non-state actors, domestic law coordination mechanisms, and the knowledge production system reveals that the drivers of international law's evolution and the foundations of its legitimacy are undergoing a profound pluralistic turn within Asia.

Ultimately, as a necessary extension of theoretical construction, this chapter outlines two concrete institutional blueprints: the Asian International Law Institute and the reform of ICJ advisory jurisdiction. These conceptions are by no means utopian fantasies; they are serious attempts to operationalize and institutionalize the aforementioned theoretical principles. They aim to transform Asia's practical wisdom into sustainable institutional power, thereby verifying that the Asian pathway is not merely a critical perspective but a new paradigm of global governance possessing constructive leadership. The future of international law in Asia is moving from passive norm acceptance towards active norm co-construction and institutional innovation.

Chapter VII Conclusion: Asian Experience and Paradigm Innovation in the Civilization of International Rule of Law

This study originates from a fundamental inquiry: against the dual backdrop of profound evolution in the global order, ongoing shifts in power structures, and the increasing prominence of regional cultural consciousness, what substantive, structural, and even paradigm-level changes has the collective rise of Asia brought to the international legal system? To address this question, this paper adopts a multi-level, interdisciplinary research approach, sequentially unfolding an examination of historical context, an analysis of legal norms, an investigation of institutional practices, and a critical dialogue with academic theories. Through this process, it systematically advances and demonstrates the following core proposition: Asia's practice is not merely a passive application or technical fine-tuning of existing Western-dominated international rules. Rather, in the process of its participation in, interpretation of, and even reshaping of international law, Asia is essentially catalyzing a profound and ongoing paradigm innovation in the civilization of international rule of law. As the concluding chapter of this paper, this chapter aims to systematically summarize and integrate the core findings presented earlier. On this basis, it further elucidates the unique theoretical implications embedded in the Asian experience, its substantive contributions to the principles and institutional systems of international law, and its contemporary significance for cross-civilizational dialogue and coexistence. Finally, building on these insights, this chapter attempts to envision a possible future for international law—one that is more pluralistic, inclusive, and dynamically balanced.

1.Core Summary of Research Findings: From "Path" Exploration to "Paradigm" Generation

The evolutionary trajectory of this study clearly reveals that the interactive relationship between Asia and international law is far from a linear, passive process of adaptation. Rather, it constitutes a complex and dynamic journey—one that gradually awakens from profound historical circumstances, continuously innovates through rich practices, and ultimately achieves a high degree of consciousness at the level of theoretical reflection. The outcome crystallized from this journey is not merely a patchwork of isolated rule revisions or localized adjustments to the existing international legal system. Instead, it represents a comprehensive new paradigm imbued with a unique internal logic, marked by significant growth potential and openness. This paradigm profoundly reflects the role transformation of non-Western civilizational actors in the global governance arena—from rule-takers to co-constructors of rules—signifying a crucial node in the evolution of the civilization of international rule of law.

1.1Historical Dimension: The Emergence and Affirmation of Subjectivity

Combining historical analysis and normative examination, the research confirms that Asia's journey with international law is, in essence, a history of struggle and intellectual evolution—a transition from an "imposed object" of rules to a "conscious subject" actively shaping order. The phenomenon of "legal alienation" during the colonial period sharply reveals the deeply ingrained gene of power inequality within the original architecture of classical international law, where international legal instruments were once used to justify and sustain colonial rule and economic exploitation. However, the wave of decolonization and the independence movements of newly emerging states after World War II provided the historical stage for the initial awakening of Asian subjectivity. Normative reconstruction efforts, epitomized by the "Bandung Spirit" solidified at the 1955 Bandung Conference and China's advocated "Five Principles of Peaceful Coexistence," not only marked the collective entry of Asian nations onto the stage of international lawmaking but also

represented the first systematic correction of the Western-centric narrative of international law. This tortuous historical process profoundly demonstrates that Asia's deep engagement with and contribution to international law have consistently been accompanied by the rediscovery, reinterpretation, and modern translation of its own long-standing civilizational traditions. The construction of its subjectivity is not a matter of simple confrontation or wholesale acceptance. Rather, it involves critically engaging with the legal legacy of colonialism while actively promoting the creative transformation of its own philosophical wisdom, political ethics, and social practices, thereby etching a unique civilizational imprint onto the international legal system.

1.2 Practical Dimension: "Re-contextualization" as the Core Methodology

Across various cutting-edge and critical domains of contemporary international law evolution and global governance—encompassing areas from sovereignty coordination and human rights protection, to dispute resolution and maritime governance, and from the construction of financial order to deep regional integration—Asian states and regional organizations have not mechanically applied existing templates. Instead, they have systematically and creatively practiced a methodology of "re-contextualization." The core of this methodology lies in placing internationally legal principles and rules, which bear the appearance of universality, within the specific historical experiences, developmental needs, socio-cultural contexts, and philosophical conceptions of Asia for examination, adaptation, and innovative application. At the normative level, this is manifested through the careful modern translation and infusion into international legal discourse and practice of rich local civilizational resources. These include the consensus-based and comfort-level principles inherent in the "ASEAN Way," the symbiotic ecological views found in Buddhist traditions, and the harmonious philosophy of "unity of heaven and humanity" from the Confucian cultural sphere. At the level of institutional construction, a series of distinctive innovative models have emerged. Examples include: the efficient governance concept of "Lean, Clean, and Green" advocated by the Asian Infrastructure Investment Bank (AIIB); the "embedded" multilateral cooperation within the Shanghai Cooperation Organization (SCO) framework, which is based on high respect for member states' sovereignty and security; the flexible "differential commitments" arrangement designed in the Regional Comprehensive Economic Partnership (RCEP) to fully account for member states' heterogeneity; and hybrid dispute resolution mechanisms that widely absorb traditional mediation cultures while integrating the advantages of arbitration. The common characteristic of these diverse practices is their distinct pragmatism, strategic flexibility, cultural inclusiveness, and strong process orientation. Together, they converge into a governance style that can be summarized as "pragmatic institutionalism," forming a meaningful contrast and complement to the Western-traditional "rules-first" liberal institutionalism model, which places greater emphasis on rigid rules, formal sanctions, and legalistic adjudication.

1.3 Theoretical Dimension: Toward "Deliberative Universalism"

The most profound and core challenge posed by the Asian experience to contemporary international law theory lies in its practical roots, which fundamentally shake the illusory claim of international law's purported "value neutrality" and question the myth of its "static universality" built upon the experience of a single civilization. In theoretical response to this, this study critically draws upon and integrates existing doctrines, proposing two interrelated propositions: the "civilization compatibility test" and "gradual universalism." Together, they constitute the theoretical core of a more inclusive "deliberative universalism." This theory posits that the true universality of

international law should not be regarded as a static endpoint or a closed system, given a priori by a specific historical subject and universally applicable. On the contrary, it should be understood as an open, dynamic process of continuous generation, adaptation, and evolution. This process is achieved through sustained, equal, and mutually respectful dialogue among different civilizational traditions and legal cultures, respecting the differential paces formed by states based on varying stages of development, and always guided by the pursuit of substantive global justice and common well-being. Asian practice eloquently demonstrates that the legitimacy foundation of international legal norms must expand beyond the previous over-reliance on formal compliance and procedural legitimacy to broader, more solid dimensions. It must comprehensively incorporate considerations such as a norm's developmental promotion efficacy, its deep adaptability to local cultures, and its sustainability in maintaining long-term cooperation and harmonious relations within specific international relational contexts. This lays a more stable foundation for the existence and development of international law in a world of diverse civilizations.

2Theoretical Connotations of Paradigm Innovation: Multiple Modernities and the Civilizational Compatibility of International Law

The profound paradigm innovation catalyzed by the Asian experience lies, in essence, in promoting a fundamental shift in the theoretical foundations and practical orientation of international law—from an expression of modernity centered on the historical experience and value preferences of a single civilization (Western civilization) to a framework of civilizational compatibility that genuinely accommodates, respects, and actively draws upon the possibilities of multiple modernities. This transformation concerns not merely localized adjustments to rules but touches upon the epistemic foundations, methodologies of thought, and ultimate value pursuits of international law as both a discipline and a system of governance, marking a substantive expansion of its civilizational inclusivity.

2.1 Epistemologically: The Paradigm Shift from "Transplanted Jurisprudence" to "Emergent Jurisprudence"

At the epistemological level, traditional international law has long essentially adhered to a paradigm of "transplanted jurisprudence." It presumes itself to be a universal system of truth derived from a specific civilizational background, while the non-Western world is tacitly cast as the passive recipient, imitator, and follower of rules, with its indigenous knowledge and practices often relegated to a marginal position requiring "enlightenment" or "discipline." The rich practices of Asia, particularly its performance in regional institution-building and global governance reform, have effectively disproven this unidimensional perception. Research indicates that effective and vibrant international norms can, and indeed are, intrinsically "emerging" from diverse, non-Western civilizational soils, historical memories, and contemporary social practices. This "emergent jurisprudence" emphasizes the polycentric and context-dependent nature of knowledge production, acknowledging that the evolution of international law is the combined result of localized innovation and cross-cultural dialogue by actors across the globe in response to common challenges. Current conceptions and initiatives—such as promoting the establishment of an Asian Academy of International Law, reforming the judicial election mechanisms of the International Court of Justice (ICJ) for fairer representation of the world's major legal systems and cultures, and enhancing the visibility of non-Western literature citations in international legal academic discourse—are deeply

intended to institutionalize recognition and systematically incorporate this long-neglected, endogenous knowledge production originating from Asia and other regions. This fundamentally aims to reshape the knowledge map and discursive power structure of international legal scholarship.

2.2 Methodologically: The Intellectual Revolution from "Binary Oppositions" to "Dialectical Synthesis"

At the methodological level, the exceptional wisdom demonstrated by the Asian approach lies in its systematic transcendence of numerous rigid "binary opposition" mental frameworks that have long plagued international law theory and practice. Whether it is "universalism versus relativism," "the absolute principle of sovereignty versus the universal value of human rights," "the binding force of hard law versus the flexible advocacy of soft law," or "development priority versus environmental protection," "security concerns versus open cooperation," traditional Western theories have often tended to construct these as either-or, zero-sum tensions. In contrast, Asian practices, through a series of creative institutional designs and procedural arrangements—such as advocating "deliberative sovereignty" to reconcile sovereign equality with global governance needs, employing "process management" to shelve disputes and promote cooperation, and allowing the gradual convergence of different standards through "norm co-evolution"—vividly demonstrate a dialectical thinking that seeks dynamic equilibrium within contradictions and achieves creative transformation amid tensions. This methodology does not pursue the elimination of differences once and for all or the establishment of a singular authority. Instead, it focuses on maintaining constructive interaction within specific contexts, allowing different principles to mutually adapt over time. Thereby, it opens a third way to address complex global issues, providing international law with a more flexible and inclusive toolkit for governance.

2.3 Axiologically: The Value Elevation from "Formal Equality" to "Substantive Justice"

At the axiological level, Asia's core contribution to the development of international law lies in its persistent drive to elevate the value benchmark of international law from an excessive fixation on "formal equality" and procedural justice to a deep concern for "substantive justice" and outcome-oriented justice. This is centrally reflected in the resolute advocacy by Asian states and groups on the international stage for the right to development as a fundamental human right, their steadfast adherence to the principle of "Common But Differentiated Responsibilities and Respective Capabilities" (CBDR-RC) in areas such as climate change, and their ongoing call for rectifying historical injustices caused by colonialism and unequal trade. Going further, in specific domains such as financial governance, sustainable development, and ecological protection, Asian practices attempt to integrate Eastern philosophical wisdom—which differs from Western individualism and instrumental rationality—into the construction of global governance solutions. This wisdom includes the Confucian ethic of communitarianism encapsulated in "all under heaven belongs to all," the Buddhist view of interdependence reflected in "dependent origination and co-arising," and the Daoist ecological philosophy of "the Dao follows nature." These efforts aim to deepen and expand the ultimate concern of international law from being primarily confined to guaranteeing a formal balance of rights and obligations among sovereign states to providing more solid and comprehensive substantive safeguards for the sustainable living conditions of all human civilizations, equitable rights and interests between generations, and the possibility for every individual to live a dignified life in the era of globalization. This marks a significant evolution in the

value orientation of international law, enabling it to better respond to the real and diverse justice demands of a world of multiple civilizations.

3.Systemic Contributions to the Reconstruction of the Global Governance System

The emergence and practice of the Asian paradigm are by no means an abstract imagination confined to theoretical discussion; rather, they constitute a burgeoning force that is profoundly shaping the reality of international relations. To the reconstruction of the global governance system, which is currently in a period of profound adjustment, it offers three crucial and operational systemic contributions, touching upon fundamental aspects of governance tools, legitimacy perceptions, and the logic of order evolution.

3.1 Enriching the Toolkit and Method Repository for Global Governance

Confronted with global challenges characterized by highly sensitive sovereignty concerns, significant trust deficits among states, and vast disparities in development levels and interests (such as cybersecurity, public health, transnational crime, and climate change), governance tools traditionally reliant on legally binding "hard law" and adversarial adjudication often reach an impasse. Asian practices have systematically contributed a set of alternative or complementary tools centered on "process rationality" and "relational governance." These are concretely manifested in: the "soft law first" strategy (e.g., building consensus through joint statements, guiding principles, or voluntary standards to lay the groundwork for potential hardening of law in the future); the dispute resolution culture prioritizing "mediation first" (placing relationship repair and long-term cooperation above simple win-lose adjudication); and the "incremental integration" approach to regional integration (allowing member states to participate in cooperation across different domains at varying speeds and in different ways, rather than enforcing uniformity). The common characteristic of these tools is their emphasis on flexibility, gradualism, dialogue, and inclusiveness. They provide more feasible and resilient solutions for building cooperation and managing differences within a highly heterogeneous international community, effectively compensating for the shortcomings of the traditional governance toolkit.

3.2 Reshaping the Cognitive Foundation of Legitimacy for International Law Norms

The extensive practices of Asia have fundamentally challenged and reshaped traditional perceptions concerning the "legitimacy" of international rules and institutions. The Western-centric tradition of international law has often equated legitimacy primarily with formal "procedural orthodoxy"—that is, whether rules are generated through recognized (typically Western-dominated) legislative processes or conform to specific abstract value standards (derived from Western natural law or positivist traditions). The Asian experience refocuses attention onto the practical level, placing "effectiveness" (i.e., whether rules or institutions can effectively solve concrete problems in reality, bring about universal well-being, and ensure order stability) and "adaptability" (i.e., whether rules can flexibly accommodate the specific national conditions of countries with different civilizational backgrounds, political systems, and stages of development, thereby gaining widespread internalized acceptance and voluntary compliance) at the core of legitimacy assessment. In other words, the legitimacy of a rule or institution depends not only on its "pedigree" but, more crucially, on its "performance" and "resonance." This shift in the perception of legitimacy compels the generation and evaluation of international law to become more grounded and inclusive, and it also earns international recognition and trust for innovative norms and mechanisms originating from

non-Western contexts (such as the governance model of the AIIB).

3.3 Broadening the Realistic Pathways for the Peaceful Evolution of the International Order

Historical experience shows that changes in the international order have often been associated with intense turmoil such as hegemonic wars, systemic collapse, or revolutionary replacement. The collective rise of Asia and its mode of interaction with the existing international system offer a different, peaceful, and incremental evolutionary pathway. The Asian experience demonstrates that emerging powers do not necessarily have to aim at overthrowing the existing fundamental international institutional framework. On the contrary, through "selective embedding" (strategically joining and utilizing existing international organizations and rule systems while simultaneously seeking reform and empowerment within them) and "normative negotiation" (gradually introducing and promoting new ideas, norms, and rules within the system through sustained dialogue, alliance building, and agenda setting), an "incremental reform" and "inclusive evolution" of the international order can be achieved. This pathway avoids zero-sum, either-or games, reducing the overall risk and cost of systemic transformation. It provides a referential, pragmatic, and feasible roadmap for the broad range of non-traditional dominant states, represented by the "Global South," to participate in and potentially lead future changes in the international order, foreshadowing a potentially more peaceful, stable, and internationally diverse future in terms of both power and civilization.

4. Limitations of the Study and Self-Reflection

As an academic exploration rooted in a specific spatiotemporal context and theoretical perspective, while achieving the aforementioned findings and conclusions, this study inevitably possesses its inherent boundaries and limitations. Maintaining clear self-reflection on these limitations is not only a requirement of academic rigor but also points to potential directions for deepening future research.

4.1 Internal Divergence of the "Asia" Concept and the Risk of Generalization

This study employs "Asia" as a macro-level analytical unit and narrative subject. However, it must be acknowledged that "Asia" is by no means an internally homogeneous entity with completely aligned interests and ideas. Within it lies immense diversity and even profound divergences in civilizational traditions (such as Confucianism, Buddhism, Islam, Hinduism, etc.), political systems (ranging from democratic republics to socialist states), stages of economic development (from highly developed economies to least developed countries), and geopolitical strategic orientations. Any holistic generalization of the "Asian experience" or "Asian paradigm" faces the academic risk of "essentializing" or "oversimplifying" complex realities, potentially inadvertently obscuring internal differences, tensions, and even conflicts. Although this study methodologically and consciously adopts the philosophical concept of "family resemblance" in the Wittgensteinian sense, focusing on identifying overlapping networks of similar features among different practices rather than defining a rigid set of common essences to mitigate essentializing tendencies, this fundamental tension arising from the ontological complexity of the research subject persists. Future research needs to engage more in domestic or sub-regional comparative case studies to more subtly present the diverse spectrum within the "Asian story."

4.2 Emphasis of the Research Perspective and Gaps in Micro-Mechanisms

Influenced by the research theme and data accessibility, the analytical perspective of this study

primarily focuses on state actors (particularly major powers) and the official practices, diplomatic statements, and institutional creations at the regional organizational level. While this perspective effectively captures the macro-level dynamics and formal rule-making processes in the evolution of international law, it relatively leaves room for deeper exploration into the micro-level political-social mechanisms of how international law norms are received, transformed, resisted, or reshaped within Asian countries. Specifically, sub-state actors (such as local governments, non-governmental organizations, industry associations, multinational corporations), the judicial practices of domestic courts, debates within the legal professional community (lawyers, scholars, activists), and media and public opinion all influence, to varying degrees, a state's ultimate stance on and compliance behavior with international law. Examining these domestic political processes and their interactive mechanisms with international law would more fully reveal the true picture of the "localization" of international law and is a promising direction for deepening future research.

4.3 The Dynamically Evolving International Landscape and the Openness of the Theoretical Framework

The arguments of this study are based on observations of practices from a specific historical period (primarily since the 21st century). However, the international landscape and balance of power are constantly in dynamic flux. The internal balance of power within Asia, the priority agendas of various countries, and external global challenges (such as technological revolution, new geopolitical competition, public health crises, etc.) are all continuously changing. Therefore, the characteristics of the "Asian paradigm" and its specific manifestations identified and summarized in this paper are themselves an open and evolving process. New practical cases will continue to emerge (for example, in cutting-edge fields such as digital governance, space law, and AI ethics), which may further corroborate and enrich, or potentially challenge and even revise the theoretical framework proposed in this study. This requires that the conclusions of this study be viewed as a provisional academic proposition subject to ongoing testing, rather than a closed and final verdict. The vitality of theory lies precisely in its capacity to respond to and adjust to practical developments. Future research must maintain this openness, continuously revising and refining the understanding of the relationship between Asia and international law through dynamic observation.

5 Conclusion and Outlook: Towards a Polyphonic Civilization of International Rule of Law

In summary, through multi-level analysis and argumentation, this study arrives at a core conclusion: the comprehensive rise of Asia in the contemporary era and its deep international engagement are leading international law through a fundamental civilizational transformation—from a long-standing "monologue" predominantly composed by the experience and value system of a single civilization, towards a complex "polyphony" jointly composed by the wisdom, historical memories, and future visions of multiple civilizations. The ultimate destination of the Asian path is not simply to replace the old Western-centric hegemony with a new hegemonic center. Instead, it is, through critical dialogue and constructive cooperation with other global civilizations, to jointly remove the historically formed shackles of civilizational exclusivity and the fetters of power asymmetry from international law. This aims to enable its genuine evolution into a rule of law civilization belonging to all humanity—one that is more inclusive and vibrant, capable of effectively responding to the challenges of a shared destiny. The essence of this process is the democratization and enrichment of the "universality" of international law.

However, it must be soberly recognized that this path of profound paradigm innovation is by no

means a smooth one; it is confronted with dual challenges from both within and without. Internally, Asia itself is not monolithic. The immense developmental disparities within, the objectively existing hierarchy of geopolitical power, and the insufficiently heard voices of various sub-altern subjects—such as communities, social strata, and gender perspectives—may all question and deconstruct any monolithic "Asian narrative." This means that theoretical constructions originating from Asia must contain a continuous capacity for self-reflection, guarding against unwittingly slipping into another form of local centrism or elitist narrative while opposing one form of centrism. Externally, strategic suspicions stemming from the traditional logic of power politics and geopolitical narratives of zero-sum games often, intentionally or unintentionally, misinterpret or obscure the cooperative nature and public goods attributes of Asian normative innovations, simplistically reducing them to tools for power competition. This sets up additional political obstacles for the acceptance and diffusion of the paradigm.

Looking ahead, to deeply understand and promote this historic transformation, the research agenda of international law and even the broader field of global governance studies should undergo a fundamental shift in perspective. Its core problematic needs to decisively shift from the long-dominant question of "how Asia learns from, adapts to, or integrates into the existing (Western-dominated) international law" to "how the principles, rules, institutions, and theories of international law are, and should be, fundamentally changing due to the practices of Asia and other non-Western worlds." To achieve this shift in research paradigm, we propose the following three interrelated academic directions:

First, deepen the excavation of civilizational foundations and promote genuine comparative international law studies. Future research needs to go beyond superficial rule comparisons in international law and delve into the philosophical, ethical, and legal thought repositories of more non-Western civilizations, such as Confucianism, Buddhism, Islam, Hinduism, and even African oral traditions, engaging in "inter-civilizational jurisprudential dialogue." This aims to explore how the unique understandings of core concepts (such as justice, order, rights, responsibility) within different civilizations can and are providing alternative normative resources and institutional inspirations for addressing global challenges, thereby establishing international law on a more profound and balanced civilizational foundation.

Second, transcend methodological state-centrism and focus on the norm-generating networks of diverse actors. Research should increasingly focus on non-state actors such as transnational advocacy networks, global civil society movements, cross-border knowledge communities, professional bodies, and domestic courts. They play crucial roles in the advocacy, dissemination, localization, and internalization of international norms. Analyzing how these actors translate, adapt, resist, or reshape international law can reveal the bottom-up, polycentric, interactive micro-dynamics in the development of international law, offering a more complete picture of the global legal process.

Third, develop meso-level analytical frameworks and theoretical tools with greater explanatory power. To understand how norms from different civilizational backgrounds hybridize, how various formal and informal institutions interact, and how cross-civilizational dialogues concretely unfold, a series of middle-range theories and analytical frameworks need to be developed. For example, focusing on the specific pathways and conditions of "norm travel," analyzing strategic behavior under conditions of "institutional nesting" and "institutional complexity," or constructing

multi-dimensional indicator systems (encompassing procedure, performance, appropriateness, and resonance) to measure "norm legitimacy." These tools will help build solid analytical bridges between grand civilizational narratives and specific case studies.

The story of the Asian experience is far from over; it continues to be written through its own interactions with the world. This still-unfolding history powerfully reminds us that the enduring vitality and relevance of international law never lie in the uniformity of its form or the purity of its origin, but in the diversity of civilizations and the collective creativity it can inspire, absorb, and integrate when confronting common human predicaments. A future global governance system that may be more just, effective, and sustainable must necessarily be a polyphonic, dialogical system that learns to appreciate, respect, and skillfully integrate this diversity and creativity. This is precisely the most enlightening intellectual gift and the most precious practical legacy that the magnificent endeavors of contemporary Asia offer to the civilization of international rule of law.

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Appendix I: Search Results and Categorization of International Instruments Incorporating the Concept of "A Community with a Shared Future for Mankind"

This appendix presents the results of a systematic search conducted in the UN Treaty Collection and the official databases of major international organizations using the keyword "a community with a shared future for mankind" and its related variants. The documents are categorized into three groups based on the forum of their adoption or entry into force, aiming to demonstrate the trajectory of this concept's diffusion from international political declarations into specific cooperative domains and legal instruments.

A. Documents within the UN System

Within the United Nations framework, this concept has been primarily affirmed through Resolutions, which, while not possessing strict legal binding force, carry significant political authority.

1. United Nations Security Council (UN Security Council)
    - Nature of Document: Security Council Resolution.
    - Exemplary Case: Resolution 2344 (adopted on 17 March 2017)[791]
    - Key Wording: The resolution calls on the international community, through cooperation such as Belt and Road construction, to "build a community of shared future for mankind"[792].
    - Significance: This marks the first inclusion of this concept in a Security Council resolution, signifying its entry into the core agenda of international peace and security.
2. United Nations Human Rights Council (UN Human Rights Council)
    - Nature of Document: Human Rights Council Resolution.
    - Exemplary Case: Resolution "Promoting mutually beneficial cooperation in the field of human rights" (A/HRC/RES/34/4, adopted on 23 March 2017)[793].
    - Key Wording: Explicitly incorporates the concept of "building a community with a shared future for mankind," emphasizing the promotion of human rights through dialogue and cooperation.
    - Subsequent Development: Several subsequent Human Rights Council resolutions (e.g., the resolution on "The contribution of development to the enjoyment of all human rights") have reaffirmed this concept, integrating it into the normative discourse of the body.
3. UN General Assembly First Committee
    - Nature of Document: Disarmament and International Security Resolution.
    - Exemplary Case: Resolution "Prevention of an arms race in outer space" (adopted multiple times since 2017)[794].
    - Key Wording: Introduces this concept in the field of outer space security, emphasizing the building of "a community with a shared future for mankind" to achieve common security.
    - Note on Terminology: In the UN context, earlier English texts predominantly used "...for mankind." More recently (especially after 2018), some documents have begun

[791] United Nations Security Council, Resolution 2344 (2017) UN Doc S/RES/2344 (17 March 2017).

[792] ibid preamble.

[793] United Nations Human Rights Council, Resolution 34/4. Promoting mutually beneficial cooperation in the field of human rights UN Doc A/HRC/RES/34/4 (23 March 2017).

[794] United Nations General Assembly, Resolution 72/250. Further practical measures for the prevention of an arms race in outer space UN Doc A/RES/72/250 (11 January 2018). (Note: this is an earlier version)

transitioning towards the gender-neutral "...for humanity," or directly use the abbreviated expression "shared future."

B. Documents from Asia-Pacific and Regional Organizations

This is the region where the concept has been most intensively integrated into the core documents of organizations and has reached the highest level of operationalization, primarily embodied in various Declarations and Action Plans.

1. Shanghai Cooperation Organisation (SCO)
    - Document Type: Declaration of the Council of Heads of Member States.
    - Key Document: *Qingdao Declaration of the Council of Heads of Member States of the Shanghai Cooperation Organization* (2018)[795].
    - Key Wording: Clearly proposes "establishing the shared vision of building a community with a shared future for mankind." This document establishes the concept as a top-level political consensus within the organization.
2. Association of Southeast Asian Nations (ASEAN)
    - Document Type: Strategic Partnership Vision, Joint Statement.
    - Key Documents:
        - *Vision Statement on the China-ASEAN Strategic Partnership 2030* (2018)[796].
        - Preamble of the *Regional Comprehensive Economic Partnership Agreement (RCEP)* (signed 2020)[797].
    - Key Wording: The 2030 Vision states that both sides agree to "build a closer China-ASEAN community with a shared future." Although the RCEP preamble does not use the aforementioned Chinese phrase, its stated objectives of achieving "inclusive, sustainable and mutually beneficial" growth are highly consistent with the economic cooperation dimension of the concept.
    - Bilateral Level: China has signed Action Plans on building a bilateral community with a shared future with countries such as Laos, Cambodia, and Myanmar.
3. Lancang-Mekong Cooperation (LMC)
    - Document Type: Leaders' Meeting Declaration.
    - Key Document: *Sanya Declaration of the Second Lancang-Mekong Cooperation Leaders' Meeting* (2018)[798].
    - Key Wording: Advocates for building a "Lancang-Mekong community with a shared future," focusing on practical cooperation areas such as water resources, agriculture, and poverty reduction.
4. China-Arab States Cooperation Forum (CASCF)
    - Document Type: Action Execution Plan.

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[795] 'Qingdao Declaration of the Council of Heads of Member States of the Shanghai Cooperation Organisation (Full Text)' (Xinhuanet, 10 June 2018) http://www.xinhuanet.com/english/2018-06/10/c_137244522.htmaccessed 10 December 2025.

[796] 'Vision Statement on the China-ASEAN Strategic Partnership 2030 (Full Text)' (Website of the Ministry of Foreign Affairs of the People's Republic of China, 14 November 2018) **https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/201811/t20181114_679162.html> accessed 10 December 2025**

[797] Regional Comprehensive Economic Partnership Agreement (signed 15 November 2020, entered into force 1 January 2022) preamble.

[798] 'Sanya Declaration of the Second Lancang-Mekong Cooperation Leaders' Meeting (Full Text)' (Xinhuanet, 11 January 2018) http://www.xinhuanet.com/english/2018-01/11/c_136889658.htm accessed 10 December 2025.

- Key Document: *China-Arab States Cooperation Forum Action Execution Plan for 2018-2020*(2018)[799].
- Key Wording: Includes the expression "promoting the building of a community with a shared future for mankind," incorporating it into the guiding framework for collective cooperation between China and Arab states.

5. Forum on China-Africa Cooperation (FOCAC)
    - Document Type: Action Plan, Cooperation Outline.
    - Key Documents:
        - *Forum on China-Africa Cooperation Beijing Action Plan (2019-2021)*[800].
        - *Cooperation Outline on Strengthening China-Africa Poverty Reduction (Between the People's Republic of China and the African Union)* (2020)[801].
    - Key Wording: The Beijing Action Plan explicitly proposes building a "closer China-Africa community with a shared future." The Poverty Reduction Cooperation Outline extensively embodies the concept of a community with a shared future across its various specific cooperation areas.

C. Bilateral Treaties and Binding Agreements

This category demonstrates the concept's progression from Political Statements towards Legal and Policy Documents that carry greater legal binding force or constitute long-term strategic plans.

1. Bilateral "Community with a Shared Future" Action Plans/Joint Statements
    - Nature of Document: High-level bilateral political documents that establish the strategic direction of the bilateral relationship.
    - Exemplary Cases:
        - *Action Plan on Building a China-Laos Community with a Shared Future* (2019)[802].
        - *Action Plan on Building a China-Cambodia Community with a Shared Future* (2019).
        - *Joint Statement on Further Deepening and Elevating the Comprehensive Strategic Cooperative Partnership and Building a China-Vietnam Community with a Shared Future of Strategic Significance* (2023).
    - Characteristics: Such documents typically transcend specific transactional arrangements, aiming to provide a meta-narrative framework for the bilateral relationship.
2. Treaties of Friendship and Cooperation and Other Bilateral Agreements
    - Nature of Document: Formal international treaties or binding cooperation outlines.
    - Manifestation: Phrases related to "Shared Future" frequently appear in joint statements or treaties signed with Central Asian countries, among others. The

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[799] 'China-Arab States Cooperation Forum Action Execution Plan for 2018-2020 (Summary)' (Website of the Ministry of Foreign Affairs of the People's Republic of China, 10 July 2018) https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/201807/t20180710_679140.html accessed 10 December 2025.

[800] 'Forum on China-Africa Cooperation Beijing Action Plan (2019-2021) (Full Text)' (Official Website of the Forum on China-Africa Cooperation, September 2018) http://www.focac.org/eng/zywx_1/zywj/201809/t20180913_7939521.htm accessed 10 December 2025.

[801] 'Cooperation Outline on Strengthening China-Africa Poverty Reduction (Between the People's Republic of China and the African Union)' (Website of the Ministry of Commerce of the People's Republic of China, 2020) http://www.mofcom.gov.cn/article/i/dxfw/ae/202012/20201203020613.shtml accessed 10 December 2025.

[802] 'Action Plan on Building a China-Laos Community with a Shared Future (Full Text)' (People's Daily, 1 May 2019) 3.

preambles of some newly signed or revised treaties of friendship and cooperation have begun to incorporate the relevant spirit.

- Exemplary Case: The *Cooperation Outline on Strengthening China-Africa Poverty Reduction*(2020), as a specific sectoral cooperation treaty, embodies in its clause design the principles of mutual assistance and common development underpinned by the concept of a community with a shared future[803].

[803] See footnote 11 above.

BIOGRAPHY OF THE CANDIDATE

The candidate, **Ye Yuanzheng**, was born on 11 July, 1994, in Qinghai China. After completing secondary education, she enrolled at Beijing University for Foreign Studies, Department of Croation Language, where she completed her undergraduate studies as one of the top students with an average grade of 85,6/100.

At the Faculty of Law, University of Belgrade, the candidate completed her Master of Academic Studies LL.M with the thesis titled “EU Relationship with Asia”. She is currently enrolled in doctoral studies in the international Law program under the mentorship of Professor Dr. Branko Rakić.

In addition to active work on her masters and doctoral dissertations, the candidate has also published scientific and expert papers in the field of law and social sciences, under the title “European integrations, Strategic Autonomy and the relationship between China and the European Union”.

The candidate also possesses significant professional experience in her field, having held the following positions: Translator at CRBC – Belgrade Branch, Manager of the Administrative Department within the Clean Serbia project at CRBC – Belgrade Branch, and Legal advisor at CRBC – Belgrade Branch.

The candidate is fluent in English Serbian and Chinese.

БИОГРАФИЈА КАНДИДАТКИЊЕ

Кандидаткиња **Ye Yuanzheng** рођена је 11. јула 1994. године у Ћингају, у Кини. Након завршене средње школе, уписала је Пекиншки универзитет за стране језике, смер хрватски језик, где је дипломирала као један од најбољих студената са просечном оценом 85,6/100.

На Правном факултету Универзитета у Београду кандидаткиња је завршила мастер академске студије правног смера (LL.M) одбраном магистарског рада под насловом „Односи ЕУ и Азије“. Тренутно је уписала докторске студије на смеру Међународно право под менторством проф. др Бранка Ракића.

Поред активног рада на мастер и докторској дисертацији, кандидаткиња је објавила и научне и стручне радове из области права и друштвених наука, под насловом „Европске интеграције, стратешка аутономија и односи Кине и Европске уније“.

Кандидаткиња има и значајно професионално искуство у својој области, обављајући следеће позиције: преводилац у CRBC – Огранак Београд, менаџер административног одељења у оквиру пројекта Чиста Србија у CRBC – Огранак Београд и правни саветник у CRBC – Огранак Београд.

Кандидаткиња течно говори енглески, српски и кинески језик.

Проширени апстракт дисертације на српском језику

Савремено међународно право налази се на прекретници коју обележавају глобално пребалансирање моћи и продубљивање међукултуралне интеракције. У овој "поствестфалској" ери дубоке системске трансформације, традиционални мит о "универзалности" међународног права постепено уступа место новој парадигми "вишеструких модерности". Последњих година, азијске државе – црпећи из својих дистинтктивних историјских наслеђа и културних ресурса – активно учествују у праксама "реконтекстуализације": то јест, реинтерпретације западног међународног права у сопственим историјским и културним оквирима и убацивања локалних приступа управљању у механизме регионалне сарадње. Овај процес није ни пасивно прилагођавање западноцентричној правној хегемонији, нити затворени, есенцијалистички културни отпор. Уместо тога, он представља покушај стварања цивилизацијски компатибилног пута за еволуцију међународног права у дијалектици локализације глобалних норми и интернационализације регионалног искуства.

Историјски гледано, систем међународног права патио је од структуралних неравнотежа. Као што тврди Б. С. Чимни, научник који се бави приступима међународном праву из перспективе Трећег света (TWAИЛ), недореченост међународног права често иде у корист моћних држава и ставља у неповољан положај земље у развоју, док праксе Трећег света нису систематски очуване, сумиране нити објављене. Марти Коскенијеми слично примећује да западноцентричне перспективе показују јасна ограничења у објашњавању трансформација глобалног управљања, не успевајући да одразе делатност и аутономију коју азијске државе испољавају усред променљиве глобалне политичке и економске динамике. Постојећа литература, штавише, остаје у великој мери доминирана западним наративима, превидјајући културну разноликост, институционалну креативност и регионална искуства управљања уткана у азијску праксу међународног права. Главни уџбеници и историјски прикази и даље стављају у центар европска искуства и недовољно укључују незападне перспективе. Како критички научници истичу, такви наративи чине део шире структуре моћи и знања која систематски маргинализује регионе попут Азије.

Ова пристрасност произвела је три међусобно повезане слепе тачке: прво, на нормативном нивоу, литература занемарује креативне трансформације развијене из сопствених културних традиција Азије; друго, на институционалном нивоу, потцењује јединствене аранжмане осмишљене да задовоље регионалне специфичности; треће, на филозофском нивоу, прикрива процесе кроз које се древна цивилизацијска мудрост преводи у савремени нормативни дискурс. На овој позадини, овај чланак заузима критички став према западноцентризму и

настоји да превазиђе традиционални бинарни аналитички оквир међународног права предлажући аналитички модел "реконтекстуализације". Он даље конструише тродимензионалну аналитичку структуру која обухвата нормативну иновацију, институционални избор и цивилизацијско превођење, с циљем попуњавања постојећег јаза у истраживањима о реконструкцији међународног права из азијске перспективе.

Сходно томе, ова студија истражује неколико кључних питања: Како азијске државе, кроз регионалну праксу, преобликују структуру интерпретативне заједнице међународног права и редистрибуирају дискурзивну моћ? Како регионална сарадња омогућава иновацију и систематизацију правила међународног права? На које начине азијско регионално искуство управљања може понудити универзално релевантне увиде за реформу глобалног управљања? Како се богати цивилизацијски ресурси Азије могу трансформисати у извор савремене нормативне понуде, чиме се убризгава нова динамика у глобално управљање?

Да би одговорила на ова питања, овај чланак користи методологију триангулације која комбинује компаративну уставну анализу, анализу кључних студија случаја и анализу текста уговора. Он бира репрезентативне случајеве – укључујући АСЕАН-ов механизам за решавање спорова, преговоре о РЦЕП-у, спорове у Јужном кинеском мору и климатске преговоре о "заједничкој, али диференцираној одговорности" – како би испитао како азијске државе реконструишу правне оквире кроз институционални хибридитет и културну адаптацију. Ови случајеви илуструју како азијске земље спајају цивилизацијске традиције са модерним правним структурама да би неговале нове облике утицаја унутар међународног правног поретка.

Истраживање даје три главна налаза. Прво, у конструкцији нормативног дискурса, азијске државе постигле су модерну трансформацију традиционалних вредности. Посебно, у консултацијама ка Кодексу понашања у Јужном кинеском мору, АСЕАН-ов пут – који оличава доношење одлука засновано на консензусу – институционализован је као процедурална норма међународног права. Слично томе, Азијска банка за инфраструктурне инвестиције (АИИБ) креативно интегрише будистичке еколошке концепте у своје еколошке стандарде, додајући источњачку филозофску димензију глобалном финансијском управљању. Овакво културно превођење ремети западњачки монопол над дискурсом међународног права.

Друго, на нивоу институционалног дизајна, Азија је развила моделе управљања са израженим регионалним карактеристикама. АСЕАН-ов механизам за решавање спорова балансира правну извесност са политичком координацијом кроз флексибилне процедуралне

аранжмане. Диференциране обавезе у РЦЕП-у разбијају крута ограничења типична за традиционалне регионалне трговинске споразуме. Кинески модел имплементације "међународно–домаћи двоколосечни" у оквиру Париског споразума даље показује иновативни капацитет региона у правној трансплантацији.

Треће, азијска пракса показује потенцијал за промену парадигме у иновацији правила. Напори да се филозофија "јединства Неба и човечанства" операционализује у шеме за доделу угљеничних квота, или да се принципи давања предности медијацији институционализују у РЦЕП-овом систему за решавање инвестиционих спорова, нуде не само техничке алтернативе већ и епистемолошке изазове универзалистичким претпоставкама које подупиру међународно право. Ове иновације указују на текућу транзицију од формалне једнакости ка супстанцијалној правди у глобалном правном поретку. Разумевање ове еволуције захтева поновно разматрање темељних теоријских претпоставки. Принцип универзалности у међународном праву, често представљен као неутралан, произашао је из специфичних историјских околности и недовољно узима у обзир цивилизацијску разноликост и наслеђе колонијализма.

Овај чланак стога поново разматра питање из историјске и културне перспективе. Државе АСЕАН-а, на пример, нису једноставно реплицирале западне моделе решавања спорова; уместо тога, развиле су алтернативне приступе оријентисане ка консензусу који одражавају регионалне карактеристике. Овакве локализоване трансформације откривају фундаменталнуману традиционалне теорије међународног права: њено занемаривање цивилизацијских разлика у правним схватањима. Испитивањем како азијске земље интегришу будистичку еколошку мудрост, "јединство Неба и човечанства" и друге традиционалне концепте у модерне правне системе, можемо боље ценити јединствене доприносе незападних држава глобалном стварању правила.

Надовезујући се на ова запажања, чланак предлаже прагматичнији развојни приступ – онај који решава нормативне сукобе у глобалном управљању кроз градуализам и културно поштовање. Успешне праксе Азије у решавању климатских промена и осмишљавању регионалних трговинских оквира показују да је признавање међуцивилизацијских разлика у разумевању међународних правила неопходно за изградњу инклузивног и ефикасног система глобалног управљања. Ова трансформација захтева не само техничка прилагођавања већ и суштински одмак од укорењених западноцентричних епистемологија.

Чланак је структуриран у седам прогресивних поглавља. Прво поглавље, увод, поставља темеље истраживања и конструише "тродимензионални аналитички оквир" смештајући

студију у контекст глобалних промена моћи и растућег азијског дискурзивног утицаја. Друго поглавље прати историјску генеалогију међународног права у Азији, деконструишући колонијално наслеђе и реконструишући појаву азијског субјективитета. Треће поглавље испитује нормативне иновације у кључним областима попут суверенитета и управљања океанима, демонстрирајући креативну трансформацију норми међународног права кроз азијску праксу. Четврто поглавље истражује институционалне пробоје, од изградње организација до механизама за решавање спорова, откривајући цивилизацијске гене и управљачку мудрост уткане у азијски институционални дизајн. Пето поглавље води теоријске дијалоге, ангажујући се са либералним институционализмом, TWAИЛ критикама и методологијама упоредног права како би се артикулисала легитимност азијских путева изван геополитичких наратива. Шесто поглавље предлаже будућности оријентисане парадигме – укључујући "тестове цивилизацијске компатибилности" и "прогресивни универзализам" – како би се разрешиле тензије око суверенитета и развоја. Седмо поглавље синтетизује дефинишуће карактеристике азијског консултативног правног поретка и артикулише његове систематске доприносе изградњи плуралистичког савременог система међународног права. Кроз ову историјску, нормативну и институционалну триангулацију, студија открива трансформацију Азије од примаљице правила до сукреаторке глобалног правног поретка и отвара нове правце за међуцивилизацијски правни дијалог.