

National Taiwan University
Department of Political Science / Asian Regionalism

Between Sovereignty and Soft Law: Judicial Regionalism in Asia Reconsidered

Seminar Paper

Anatole Daolio

May 2025

Contents

Abbreviations	2
1 Introduction	3
2 Conceptual Framework	5
2.1 What is a transregional court?	5
2.2 Defining Asia as a Transregion	6
3 Literature Review	8
3.1 Normative context: legal culture and sovereignty	8
3.2 Legal innovation and existing mechanisms	8
3.3 Empirical cases of dispute resolution	9
3.4 Experimental and bottom-up proposals	10
4 Analysis: Obstacles to a Transregional Court	11
4.1 Institutional obstacles	11
4.2 Political obstacles	13
4.3 Legal and normative obstacles	14
4.3.1 Legal pluralism and political will	14
4.3.2 Absence of rights-based jurisprudence	15
4.3.3 Weak judicial networking	16
4.3.4 Civil society and normative legitimacy	16
5 Alternative Pathways and Functional Substitutes	17
6 Conclusion	19
References	23

Abbreviations

AHRC: Asian Human Rights Court

AICHR: ASEAN Intergovernmental Commission on Human Rights

APPIL: Asian Principles of Private International Law

ARMO: Asia-Pacific Regional Mediation Organisation

ASEAN: Association of Southeast Asian Nations

CJEU: Court of Justice of the European Union

EDSM: Enhanced Dispute Settlement Mechanism

ECOWAS: Economic Community of West African States

MERCOSUR: Southern Common Market (*from Spanish*)

SAARC: South Asian Association for Regional Cooperation

SAFTA: South Asian Free Trade Area

SICC: Singapore International Commercial Court

UNCLOS: United Nations Convention on the Law of the Sea

1 Introduction

In July 2016, the Permanent Court of Arbitration in The Hague gave its ruling on the dispute over contested maritime claims in the South China Sea. The case opposed the Philippines against China. In its decision, the Court gave reason to the Philippines. The Tribunal had declared that “it does not rule on any question of sovereignty over land territory and does not delimit any boundary between the Parties” (Permanent Court of Arbitration 2016). The ruling invalidated China’s alleged historical nine-dash line claims under the United Nations Convention on the Law of the Sea (UNCLOS). However, when the Philippines announced that they would take the matter to court, China had upfront declared that it would disregard and reject any ruling from the Tribunal. This case illustrates the limits of international adjudication when not backed by political will. This episode revealed two things: first, legal enforcement in Asia is challenging; second, there is a critical absence of a regionally grounded judicial mechanism with sufficient legitimacy and authority to adjudicate such disputes. Indeed, this second point is key since unlike Europe, Africa, or the Americas, there is no transregional court of law capable of consistently resolving inter-state or human rights disputes across its subregions.

Therefore, this paper asks: Is the establishment of a transregional court of law feasible in Asia? It argues that despite increasing economic interdependence and transboundary legal challenges, the formation of such transregional institution remains improbable. The process of founding a transnational court would face core challenges including Asian institutional fragmentation, normative divergence, and legal pluralism. However, legal experimentation is not completely absent from Asia. Rather than adopting supranational courts, Asian states and Asian society are developing functional alternatives grounded in soft law, voluntary cooperation, and hybrid judicial mechanisms.

The concept of a transregional court is particularly relevant today as Asia faces complex cross-border issues such as cybercrime, investment disputes, and regional human rights concerns. In other regions, similar pressures ferment the creation of regional courts such

as the European Court of Human Rights or the Inter-American court of Human Rights. Nevertheless, in Asia, responses have prioritised informal dispute resolution, non-binding arbitration, and issue-specific cooperation, all approaches that reflect a political culture ingrained in sovereignty, non-interference, and legal pluralism. This raises a central puzzle: why has Asia failed to generate even modest supranational judicial institutions while regions like West Africa or South America have succeeded in doing so even under similarly fragmented conditions? This paper explores that paradox and argues that Asia's alternative legal pathways may reflect a different logic of regionalism rather than simply a lack of capacity.

2 Conceptual Framework

2.1 What is a transregional court?

There is seemingly no established academic definition of what constitutes a “transnational court”. However, we can extrapolate the concept from the existing literature on regional courts and transregionalism more broadly. Alter (2014) defines regional courts as supranational judicial entities created by geographically and politically cohesive states. It is usually entrenched within regional organisations that provide both jurisdictional authority and institutional support. Jetschke and Lenz (2013) add that these types of courts are most likely to emerge in regions characterised by high institutional density and a shared political identity, as seen in the European Union or the African Union.

In contrast, Söderbaum and Shaw (2003) define transregionalism as cooperative arrangements that span multiple regions or subregions. It is mostly found outside of formalised institutional structures. Although Söderbaum and Shaw primarily focus on economic and political cooperation, their definition remains useful for theorising transregional legal mechanisms. Ribeiro-Hoffmann (2016) similarly defines transregionalism as the interaction between different regional spaces. It can involve state and non-state actors as well as it can take institutional or informal forms.

Romano (1999) offers a typology of international courts. His typology provides analytical tools to understand how legal mechanisms can vary in terms of jurisdiction, enforcement, and institutionalisation. Although he does not use the term “transregional court”, his framework helps theorise what an actual one would look like: a supranational institution that operates across fragmented regional spaces, lacking deep political or legal integration but aiming to resolve disputes amongst states or entities spanning multiple subregions.

Therefore, given the aforementioned elements, a transregional court in this paper is thus defined as a supranational judicial institution spanning multiple legal subregions, with

binding authority over participating states. It differs from international and global courts in geographic scope. As for regional courts like the European Court of Human Rights which operate within cohesive legal orders, a transregional court would differ in that it would operate across fragmented subregions without deep political integration. Unlike regional courts, which derive legitimacy from shared political institutions and legal identities, a transregional court would operate in a legal vacuum across disconnected subregions, without anchorage in a regional political body. This absence of “ownership” makes questions of legitimacy and compliance even more crucial.

A transregional court would therefore lack the foundational identity or legal personality of a regional organisation, which distinguishes it both from regional and global courts.

In addition, it is distinct from functional, issue-specific, or hybrid mechanisms, which this paper treats as substitutes rather than equivalents.

It is worth noting that other regions with weak political cohesion, such as West Africa and South America, have established regional courts with binding authority. The ECOWAS Court of Justice and the Mercosur Permanent Review Tribunal both operate in fragmented legal environments but have managed to exercise limited supranational jurisdiction (Alter, Helfer, and McAllister 2013; Giupponi 2012). The absence of a similar institution in Asia thus raises important questions about what differentiates Asia’s legal regionalism.

2.2 Defining Asia as a Transregion

In this paper, Asia will be defined as a transregion composed of East Asia, Southeast Asia, and South Asia. While these subregions are geographically located next to each other, there is no overarching political or legal entity that unifies them. Central Asia and the Middle East are excluded from our work due to distinct geopolitical alignments, legal traditions, and institutional trajectories, i.e., Central Asia’s post-Soviet legacy and the

Middle East's alignment with Arab and Islamic legal frameworks place them outside the scope of our analysis.

Chesterman (2016) emphasises that Asia is best understood as a collection of loosely affiliated subregions instead of a cohesive region. Each of the subregions follows its own developmental path. It creates a diversity in governance systems which range from consolidated democracies (e.g., Japan, Taiwan, South Korea) to authoritarian regimes (e.g., China, Vietnam, Bahrain). Legal systems are also quite different. For instance, India uses common law, Japan civil law, and Malaysia Islamic law. This diversity both in political and legal systems renders a fragmented legal space. Ulfstein (2018) further notes that Asian states tend to favour sovereignty and resist supranational legal commitments, a tendency that strongly hinders any institutional convergence.

To be noted though, ASEAN is often described as the central node of regional governance in Asia (Hamanaka 2025). However, as discussed later, its commitment to consensus and non-interference limits its capacity to serve as the institutional anchor for a transregional legal mechanism (Chesterman 2016).

Hence, Asia is conceptualised here not as a unified region but as a transregion. In other words, we consider it as a geographic expanse comprising politically and legally diverse subregions, marked by weak institutional ties and divergent normative frameworks. This conceptualisation frames the core challenge of legal integration and sets the analytical parameters to assess the feasibility of a transregional court in the region.

3 Literature Review

3.1 Normative context: legal culture and sovereignty

One of the major barriers to regional legal integration in Asia is related to the overall sovereignty-centric political culture. Ulfstein (2018) argues that Asian states are generally more reluctant than Western states to enter binding international legal frameworks. Instead, they prefer bilateral or non-binding mechanisms. This reluctance reflects a broader normative environment in which sovereignty and non-interference are prioritised above supranational legal commitments. Chesterman (2016) reinforces this idea by noting that the extreme diversity of Asia's political systems and histories has inhibited the formation of a unified legal identity or institutional voice within global governance. As later discussed, civil society reactions to simulated rights courts highlight this tension.

3.2 Legal innovation and existing mechanisms

Despite this resistance to binding legal regimes, Asia has developed alternative mechanisms rooted in soft law and hybrid models. Lo (2021) presents the Asia-Pacific Regional Mediation Organisation (ARMO) which is a regionally initiated but non-binding forum for resolving investment disputes. It offers a pragmatic substitute for adjudication. Tiba (2016) highlights the Singapore International Commercial Court as a hybrid mechanism that incorporates foreign judges and transnational legal principles while remaining embedded within Singapore's domestic legal structure. These models reflect a preference for flexibility and voluntary participation while avoiding the political sensitivities that binding supranational courts would spark.

The Asian Principles of Private International Law (APPIL) as analysed by Chen and Goldstein (2017), also provides another example of soft law cooperation. It was conceived and developed by scholars from ten countries of East and Southeast Asia. The APPIL aim to harmonise private international law without unifying it under a binding framework. Their adoption as a non-compulsory reference point illustrates the region's

willingness to cooperate legally under conditions of normative flexibility.

While these mechanisms show legal creativity, they are also strategic responses to political constraints. Their design, non-binding, issue-specific, and often elite-driven, suggests that legal experimentation in Asia is more about managing sovereignty than building shared legal identity. This raises the question: are these mechanisms incremental steps toward deeper integration, or containment strategies to avoid supranational legal commitments altogether?

3.3 Empirical cases of dispute resolution

We can further highlight Asia's reliance on extra-regional or non-binding forums for dispute resolution thanks to empirical cases. For instance, Saputra (2024) discusses a territorial dispute between India and Malaysia. This dispute was ultimately resolved through the International Court of Justice which recommended negotiations within ASEAN, also underlying the concept of ASEAN centrality (Hamanaka 2025). This points to a two-track approach: reliance on global courts for formal decisions, and preference for regional diplomacy for implementation. This is further illustrated by the case of the South China Sea arbitration (Borte and Victoria 2023) detailed later. Briefly, this case underscores a regional norm: legal decisions are only as strong as the political coalitions backing them. This implies that in Asia, legal legitimacy is relational rather than institutional, that it is shaped by geopolitical standing and regional diplomacy more than by formal authority. Thus, the case does not merely illustrate weak enforcement. Rather, it reveals the limits of legal authority when not embedded in shared strategic interest.

In both cases, ASEAN was referenced as the appropriate regional forum for political dialogue. This reflects its central role in regional diplomacy. However, its inability to enforce legal norms underscores the gap between ASEAN's political centrality and its legal ineffectiveness.

3.4 Experimental and bottom-up proposals

There also exist some attempts to bridge the normative gap through experimental or academic initiatives. As mentioned earlier, Shope and Chang (2022) detail the 2019 Asian Human Right Court (AHRC) Simulation in Taipei. The Simulation brought together judges from across Asia to hear the case of Chiou Ho-shun, a Taiwanese death row inmate. Although the court included formal structures like a secretariat and procedural staff, it faced strong criticism from civil society organisations that asked for a more participatory, grassroots model of justice. Hence, even experimental models such as the AHRC have exposed this normative tension. While the simulation tried to create a formalised regional rights mechanism, it faced criticism from NGOs for replicating top-down, elitist legal culture instead of actually including the “people” in the trial process (Shope and Chang 2022).

While the literature paints a clear picture of Asia’s normative preferences and institutional limitations, it leaves open the question of whether these structural features are immutable or whether legal innovation could emerge despite them. The following analysis breaks down these obstacles more precisely across institutional, political, and legal dimensions.

4 Analysis: Obstacles to a Transregional Court

4.1 Institutional obstacles

One of the most important barriers to the formation of a transregional court in Asia is the absence of any institutional framework capable of supporting supranational adjudication. Indeed, regional organisations such as ASEAN and SAARC have explicitly avoided adopting binding legal structures. ASEAN, which is often considered the core institution of Asian regionalism, maintains a foundational commitment to the principles of consensus and non-interference. These principles are therefore enshrined in the ASEAN Charter (ASEAN 2015). While politically stabilising, they act as structural inhibitors to the delegation of judicial authority. Indeed, a paradox here occurs: ASEAN is expected to lead regional coordination but it is structurally prevented from developing supranational legal mechanisms. As a result, it occupies a central role in diplomatic narrative while remaining marginal in legal integration. S. S. Tan (2017) posits this legalisation paradox in these terms: the more ASEAN centralises politically, the more it institutionalises against supranational legal mechanisms.

ASEAN centrality hence reinforces the “ASEAN Way” (Acharya 2001) which emphasises flexibility, diplomacy, consensus-based, informal and non-confrontational approaches throughout the region, ultimately leading to a sort of legal minimalism. ASEAN tends to defer to third-party adjudication through WTO mechanisms, the International Court of Justice, International Tribunal for the Law of the Sea, etc. ASEAN centrality thus reinforces political cohesion while simultaneously constraining legal institutionalisation (Severino 2015). But this paradox raises the deeper question about whether or not legal integration is even desirable under ASEAN model. Or perhaps even whether or not ASEAN functions precisely because it avoids hard law.

ASEAN’s dispute settlement mechanisms, including the ASEAN Protocol on Enhanced Dispute Settlement Mechanism (EDSM), are a clear illustration of this paradox in effect.

They remain state-centric and non-compulsory. The EDSM has been operational since 2004. It provides only for consultations and voluntary arbitration and lacks any standing court or enforcement capacity (Phan 2013). Similarly, the ASEAN Human Rights Declaration (ASEAN 2012) and the ASEAN Intergovernmental Commission on Human Rights (AICHR) lack enforcement powers, thus reinforcing ASEAN's role as a diplomatic rather than legal forum (H.-L. Tan 2011).

SAARC, another major regional body in South Asia, suffers from even weaker institutional cohesion. Its charter explicitly prohibits discussion of bilateral disputes (SAARC 2020, Article X) which thereby disqualifies itself as a venue for any kind of regional legal adjudication. The organisation has also struggled to maintain functional cooperation even on non-sensitive issues such as trade under the South Asian Free Trade Area (SAFTA), and it has no judicial organ or legal harmonisation agenda (Dash 2008).

In contrast, the European Union's Court of Justice (CJEU) operates within a deeply integrated legal framework with supremacy over national courts. Such authority presently lacks in Asia since no Asian organisation has the legal personality nor the institutional depth to support one. The Asian Development Bank and the Asian Infrastructure Investment Bank, although influential, remain very technocratic and economic in orientation with no judicial mandate. This institutional void leaves Asia without a centralised forum or precedent-setting mechanism from which a transregional court could emerge.

Even where hybrid or issue-specific legal mechanisms have been proposed, they remain marginal. For example, the ARMO, as shown later in the discussion on functional substitutes, is designed as a soft-law mechanism which lacks standing authority (Lo 2021).

To summarise, the institutional architecture of Asia is not only insufficient but structurally adverse to the emergence of a transregional legal authority.

4.2 Political obstacles

In addition to institutional constraints, the political landscape across Asia poses significant challenges to the establishment of a transregional law court. The region is indeed marked by extreme diversity in regime types, ranging from consolidated democracies (e.g., Japan, South Korea, Taiwan) to hybrid regimes (e.g., Malaysia, Indonesia) and single-party authoritarian systems (e.g., China, Vietnam). This ideological diversity impedes the formation of shared legal norms and diminishes trust in supranational judicial institutions.

The principle of non-interference remains a cornerstone of regional diplomacy, especially within ASEAN. The ASEAN Charter and various communiqués underscore member states' commitment to sovereignty and non-intervention (ASEAN 2015; ASEAN Secretariat 2023). This orientation has led to an entrenched preference for consensus-based, non-binding cooperation which is often detrimental to enforceable legal mechanisms. Ulfstein (2018) and Chesterman (2016) argue that this reflects a broader reluctance to delegate authority to international courts, even in the face of growing regional interdependence.

Power asymmetry further complicates political consensus. China's dominance in regional affairs has generated wariness amongst smaller states regarding any judicial mechanism that could potentially be influenced or defied by Beijing. The South China Sea arbitration ruling by the Permanent Court of Arbitration has indeed been rejected by China as a striking illustration of this point. It exemplifies further the difficulty of enforcing legal decisions against a powerful non-compliant actor (Borte and Victoria 2023). China's rejection of the ruling did not merely undermine the tribunal's legitimacy, it set a precedent that powerful states can redefine the scope of international law through non-compliance. This highlights how, in Asia, legal enforcement hinges less on legal principles and more on geopolitical leverage. A regional court would face similar constraints unless backed by political coalitions with enforcement capacity. And in an environment such as this, the

incentives for small and medium-sized states to invest in binding regional legal institutions are limited.

Authoritarian resilience and the concentration of executive power also undermine judicial independence which is a necessary condition for supporting any supranational legal body. As noted by indices such as Freedom House (Repucci and Slipowitz 2022) and the Bertelsmann Stiftung's Transformation Index (BTI), several Asian governments exert significant control over domestic courts. In such contexts, proposals for a regional judiciary are likely to be perceived as both intrusive and destabilising.

In addition, civil society perspectives also reflect political contestation over the legitimacy of regional judicial authority. Shope and Chang (2022) describe how the Asian Human Rights Court Simulation underscored tensions between elite models of justice and demands for participatory, grassroots frameworks. This highlights a deeper normative cleavage: whether regional courts should derive authority from intergovernmental consensus or democratic legitimacy.

To summarise, political fragmentation, strategic asymmetries, and entrenched sovereignty norms present important obstacles to the creation of a transregional court in Asia. Even where legal cooperation exists, it remains constrained by geopolitical realities and domestic political interest which renders supranational adjudication politically impossible under current conditions.

4.3 Legal and normative obstacles

4.3.1 Legal pluralism and political will

On top of institutional and political constraints, there are legal and normative obstacles that pose a substantial barrier to the creation of a transregional court in Asia. As we mentioned multiple times, Asia is a region full of diversity. This diversity is also found in the high degree of legal pluralism which encompasses common law (e.g., India,

Singapore), civil law (e.g., Japan, South Korea), Islamic law (e.g., Malaysia, Brunei), and customary legal traditions. This diversity complicates further the harmonisation of procedural rules, jurisdictional norms, and underlying legal values which are all prerequisites for the effective functioning of a supranational court. While legal diversity is often cited as Asia's main obstacle, this explanation is overstated. Regions such as West Africa (ECOWAS) and South America (MERCOSUR) also exhibit legal pluralism and authoritarian governance, yet both have developed functional regional courts. The more decisive factor may be political will, strategic alignment, and regional leadership, all elements currently lacking in Asia. This suggests legal pluralism alone does not prevent supranational adjudication. Rather, it is the political context that determines whether pluralism becomes a barrier or a basis for innovation.

Chen and Goldstein (2017) highlight this difficulty in their study of the APPIL. Even in this relatively technical area of law which could appear devoid of any political sensitivity, consensus was only achieved through soft law mechanisms with non-binding effects as explained above. Thus, APPIL's reliance on harmonisation rather than unification clearly reflects the broader legal culture of the region which prefers flexibility and national autonomy over legal convergence. But the APPIL's success in creating harmonised norms suggests that Asia's legal community is capable of coordination, although not convergence. Scholars seem to have understood this point, that the current Asian context makes it impossible for a transregional court to emerge. Moreover, the APPIL's elite, technocratic origin also reflects a broader pattern in Asian legalism: legal innovation tends to be top-down, soft, and consensus-based, often bypassing democratic legitimacy or civil society input.

4.3.2 Absence of rights-based jurisprudence

In addition, Asia lacks a robust tradition of regional rights-based jurisprudence. Unlike the European Court of Human Rights or the Inter-American Court, no regional institution in Asia has ever been vested with authority to interpret or enforce human rights law. The

AICHR operates as a consultative body with no enforcement capacity whatsoever. And its mandate explicitly defers to national sovereignty (H.-L. Tan 2011). The absence of binding jurisprudence also erodes the normative foundation upon which a regional or transregional court might be built. To build up on the ECOWAS comparison, one of the reasons perhaps behind its success is that the ECOWAS Court was justified in moral and rights-based language following post-civil war efforts. Asia lacks a similar regional narrative of rights and justice as seen with the absence of rights-based jurisprudence. It thus weakens the ideational support for court-building.

4.3.3 Weak judicial networking

Another barrier is the weak regional tradition of judicial networking and professional legal exchange. Europe and Latin America benefit from structured transnational judicial dialogues and shared legal education initiatives such as the European Judicial Training Network (EJTN 2022) and the Ibero-American Judicial Summit (Suprema Corte de Justicia de la Nación 2025). Asia, on the contrary, lacks any such institutionalised frameworks or they remain underdeveloped such as the ASEAN Law Association which keeps a limited scope and focus primarily on informal dialogue rather than legal standard-setting (ASEAN Law Association 2004).

4.3.4 Civil society and normative legitimacy

Even experimental judicial initiatives have faced legitimacy challenges. As mentioned in previous sections, Shope and Chang (2022) describe how the AHRC faced civil society critique for appearing elitist and disconnected from local legal realities. The proposal of a more democratic “People’s Court” highlights the dissonance between top-down legal integration efforts and grassroots expectations. These tensions suggest that without a broader normative consensus and participatory legitimacy, attempts to institutionalise a transregional court are likely to face sustained resistance.

By contrast, the ECOWAS Court operates in a region marked by legal pluralism and

authoritarian regimes, yet it has established a credible record in rights and economic adjudication (Ebobrah 2009). Legal fragmentation in Asia is therefore not a sufficient obstacle in itself; rather, it is the combination of normative diversity, entrenched sovereignty norms, and weak institutional scaffolding that constrains judicial innovation.

To summarise, the legal diversity of Asia, its lack of binding rights jurisprudence, and the underdevelopment of transnational judicial norms constitute major normative obstacles. In the absence of shared legal principles and enforcement cultures, the foundational elements for a supranational judicial institution are missing.

While formal adjudicative institutions remain unlikely, Asia has not been legally inert. The following section explores functional substitutes that reflect the region's adaptive approach to cross-border legal challenges.

5 Alternative Pathways and Functional Substitutes

Although the formation of a transregional court in Asia is constrained by institutional, political, and normative factors, the region has nonetheless seen the emergence of functional substitutes that offer limited legal coordination without requiring supranational authority. These alternatives tend to be issue-specific, consensus-based, and rooted in soft law traditions, reflecting the broader political culture of the region.

Rather than viewing these substitutes as weak or transitional, they represent a coherent regional strategy: maximise flexibility, minimise political risk. These mechanisms avoid legal bindingness not out of incapacity, but by design in order to reflect a strategic equilibrium where legalism serves economic or technical coordination without threatening sovereignty. They reflect Asia's distinct legal strategy rooted in pragmatism and sovereignty.

One of the substitutes is the Singapore International Commercial Court (SICC), a hybrid legal forum embedded within Singapore's domestic judiciary. It is one of the most formal propositions to date. It is partly staffed by foreign judges and is open to cross-border commercial disputes. Tiba (2016) identifies the SICC as a pragmatic solution to the absence of regional adjudication which offers international credibility and enforceability through its integration with Singapore's legal system. The SICC avoids supranationalism while enabling legal harmonisation in commercial matters through voluntary participation. One way to interpret its existence is that it fills the gap left by supranational judicial absence.

Mediation is also gaining ground as a preferred mechanism of dispute resolution in Asia. As mentioned earlier, the ARMO was founded by legal scholars and practitioners. It provides a permanent platform for resolving investment disputes (Lo 2021). Unlike arbitration or litigation, mediation under ARMO is non-binding and consensus-driven which reflects regional preferences for informal resolution. ARMO's scope is large and includes states as well as private actors. It is a way to expand its utility beyond traditional cross-borders state-to-state adjudication. It is more flexible than the SICC since it is not a court *per se*.

Finally, there is the proposed ASEAN Cybercrime Court discussed by Iu and Wong (2024). Designed as a functional response to the rise of transnational cybercrime, the court would rely on a shared but flexible legal framework based on "international common law". It features limited jurisdiction and vague procedural rules that are in fact deliberate and intended to reduce political friction in order to preserve national sovereignty. Thus, the court would not be able to issue binding judgments but it could serve as a regional hub for legal cooperation and soft adjudication. This Cybercrime Court echoes the notion of ASEAN centrality often invoked in regional strategic documents. The concept supports ASEAN's role as a convenor of soft legal cooperation (ASEAN Secretariat 2023). We demonstrated earlier that ASEAN centrality poses the legalisation paradox as it is an

obstacle in itself to the establishment of a transregional court of law. The example of the Cybercrime Court perfectly illustrates the case of what an Asian court would look like if it were to exist: a court without enforcement capacities, non-binding, and granted an advisory status.

These mechanisms function without binding enforcement authority, relying instead on reputational incentives, voluntary compliance, and soft institutionalisation. As A. Chayes and A. H. Chayes (1995) and Abbott and Snidal (2000) have shown, compliance with international norms often occurs not through formal sanctions, but through processes of transparency, justification, and peer pressure. In the Asian context, where binding authority is politically sensitive, such informal enforcement mechanisms may provide a more acceptable basis for fostering legal cooperation.

In addition, soft law instrument such as the APPIL offer a gradualist path to legal convergence. As noted by Chen and Goldstein (2017), the APPIL shows the potential for bottom-up legal standardisation within Asia and how soft law accommodates pluralism in Asian legal practice.

Taken together, all these initiatives suggest that Asia is not legally inert. On the contrary, Asia is legally dynamic, engaging in selective, functional legal cooperation suited to its fragmented and sovereignty-sensitive environment. While these models lack the authoritative force of a transregional court, they may reflect a more politically viable form of regional legalism that prioritises flexibility, informality, and issue-specific coordination.

6 Conclusion

This paper has examined why has Asia yet to implement a transregional law court. Despite the region's growing economic interdependence and the transboundary nature of many legal challenges such as cybercrime, maritime disputes, and investment conflicts,

the analysis has shown that a formal judicial institution with supranational authority is highly unlikely to emerge under current political and institutional conditions.

Three key obstacles underpin this conclusion. First, institutional fragmentation remains pervasive. Regional bodies like ASEAN and SAARC lack the legal authority, enforcement capacity, and integration necessary to support a standing court. ASEAN centrality, while symbolically important in regional diplomacy, reinforces norms of non-interference and consensus that inhibit the formation of binding legal institutions.

Second, political divergence across regime types, strategic interests, and power asymmetries continues to undermine the trust and shared vision required for legal harmonisation. Sovereignty remains the overriding principle in regional governance. On the one hand, dominant states like China resist legal constraints and on the other hand, smaller states hesitate to support mechanisms that could be strategically disadvantageous.

Third, legal and normative fragmentation further complicates any movement towards supranational adjudication. Indeed, Asia's plural legal systems, weak tradition of rights-based jurisprudence, and underdeveloped networks of transnational legal exchange erode the foundations necessary for a shared legal culture.

Future research should continue to track these bottom-up and sectoral initiatives, assessing their cumulative impact on regional legal norms and cross-border dispute resolution. While a transregional court remains unlikely, the evolution of such mechanisms may eventually foster deeper legal convergence and prepare the ground for more ambitious institutional experiments in the long term.

These mechanisms reflect what Acharya (2001) described as the "Asia-Pacific Way", a pragmatic, interest-driven approach to regional cooperation that prioritises flexibility over formal integration. While such pragmatism has ensured political viability, it may also

limit the institutionalisation of legal cooperation. Nearly three decades later, Acharya's critique remains relevant: the region's commitment to consensus and national sovereignty continues to constrain deeper judicial innovation.

But it may also be the case that trying to apply a Western conception of regionalism, particularly one modelled on the EU, is ill-suited to the Asian context. While Asia may never achieve the depth of legal integration seen in the EU, it does not imply that all forms of regional cooperation are destined to fail. Rather, Asian regionalism may constitute a new model of cooperation that other diverse regions could learn from.

The case of Asia demonstrates that legal regionalism can take radically different forms from the European template. Rather than seeing the absence of a court as a deficit, it may reflect a structural realism in how Asia balances legal cooperation with political autonomy. This model, while limited in enforcement, may prove more adaptable in a world where multipolarity, legal pluralism, and soft governance are the norm.

AI Use Disclaimer

For this paper, I used AI through different platforms. I used ChatGPT for reformulation, as well as correcting some grammar and syntax. I also used it to formulate certain titles of sections/subsections after describing what I wanted to talk about in the section. I used two different AI to help me with finding relevant literature. I used Perplexity AI (<https://perplexity.ai>), which is especially good at finding grey literature, reports, speeches, etc. The second one I used is Consensus (<https://consensus.app>) and is best used for searching academic literature and papers from journals.

References

- Abbott, Kenneth W. and Duncan Snidal (2000). "Hard and Soft Law in International Governance". In: *International Organization* 54.3, pp. 421–456. DOI: 10.1162/002081800551280.
- Acharya, Amitav (2001). *Constructing a Security Community in Southeast Asia*. CRC Press.
- Alter, Karen J. (2014). *The New Terrain of International Law: Courts, Politics, Rights*. Princeton University Press.
- Alter, Karen J., Laurence R. Helfer, and Jacqueline R. McAllister (2013). "A New International Human Rights Court for West Africa: The ECOWAS Community Court of Justice". In: *American Journal of International Law* 107.4, pp. 737–779. DOI: 10.5305/amerjintlaw.107.4.0737.
- ASEAN (2012). *ASEAN Human Rights Declaration*. URL: <https://asean.org/asean-human-rights-declaration/>.
- (2015). *The ASEAN Charter*. URL: <https://www.asean.org/wp-content/uploads/2021/09/2.-February-2015-The-ASEAN-Charter-18th-Reprint.pdf>.
- ASEAN Law Association (2004). *Constitution of the ASEAN Law Association*. URL: https://www.aseanlawassociation.org/wp-content/uploads/2019/10/ALA_Constitution.pdf.
- ASEAN Secretariat (2023). *Chairmans Statement of the 42nd ASEAN Summit*. URL: <https://asean.org/wp-content/uploads/2023/05/FINAL-Chairmans-Statement-42nd-ASEAN-Summit-1.pdf>.
- Borte, A. L. and O. A. Victoria (2023). "The South China Sea International Disputes with the ASEAN Area (in International Maritime Law)". In: *International Journal of Law Reconstruction* 7.1. DOI: 10.26532/ijlrv7i1.31914.
- Chayes, Abram and Antonia Handler Chayes (1995). *The New Sovereignty*. Harvard University Press. DOI: 10.2307/j.ctv1pnccs3m.
- Chen, Wenliang and Gary Goldstein (2017). "The Asian Principles of Private International Law: Objectives, Contents, Structure and Selected Topics on Choice of Law".

- In: *Journal of Private International Law* 13.2, pp. 411–434. DOI: 10.1080/17441048.2017.1355508.
- Chesterman, Simon (2016). “Asias Ambivalence about International Law and Institutions: Past, Present and Futures”. In: *European Journal of International Law* 27.4, pp. 945–978. DOI: 10.1093/ejil/chw051.
- Dash, Kishore C. (2008). *Regionalism in South Asia: Negotiating Cooperation, Institutional Structures*. Routledge. DOI: 10.4324/9780203930366.
- Ebobrah, Solomon T. (2009). “Litigating Human Rights Before Sub-Regional Courts in Africa: Prospects and Challenges”. In: *African Journal of International and Comparative Law* 17.1, pp. 79–101. DOI: 10.3366/e0954889009000292.
- EJTN (2022). *About us*. URL: <https://ejtn.eu/about-us/>.
- Giupponi, B. O. (2012). “International Law and Sources of Law in MERCOSUR: An Analysis of a 20-Year Relationship”. In: *Leiden Journal of International Law* 25.3, pp. 707–737. DOI: 10.1017/s0922156512000350.
- Hamanaka, Shintaro (2025). “Understanding ASEAN Centrality: Comparative Analysis of Core and Hub Strategies”. In: *Asia & the Pacific Policy Studies* 12.1. DOI: 10.1002/app5.70006.
- Iu, Ka Yan and Vivian M.-Y. Wong (2024). “The Trans-National Cybercrime Court: Towards a New Harmonisation of Cyber Law Regime in ASEAN”. In: *International Cybersecurity Law Review* 5, pp. 121–141. DOI: 10.1365/s43439-023-00105-x.
- Jetschke, Anja and Tobias Lenz (2013). “Does Regionalism Diffuse? A New Research Agenda for the Study of Regional Organizations”. In: *Journal of European Public Policy* 20.4, pp. 626–637. DOI: 10.1080/13501763.2012.762186.
- Lo, Chi-fai (2021). “Past and Future of Mediation for Investment Disputes: The Case for the Asia-Pacific Regional Mediation Organization (ARMO)”. In: *Handbook of International Investment Law and Policy*. Ed. by Julien Chaisse, Leila Choukroune, and Sufian Jusoh. Springer. DOI: 10.1007/978-981-13-3615-7_15.

- Permanent Court of Arbitration (2016). *Press Release: The South China Sea Arbitration*. URL: <https://pca-cpa.org/wp-content/uploads/sites/175/2016/07/PH-CN-20160712-Press-Release-No-11-English.pdf>.
- Phan, Hien D. (2013). "Towards a Rules-Based ASEAN: The Protocol to the ASEAN Charter on Dispute Settlement Mechanisms". In: *Arbitration Law Review* 5, pp. 254–276. URL: <https://elibrary.law.psu.edu/arbitrationlawreview/vol5/iss1/14/>.
- Repucci, Sarah and Amy Slipowitz (2022). *Freedom in the World 2022: The Global Expansion of Authoritarian Rule*. Freedom House. URL: https://freedomhouse.org/sites/default/files/2022-02/FIW_2022_PDF_Booklet_Digital_Final_Web.pdf.
- Ribeiro-Hoffmann, Andrea (2016). "Inter- and Transregionalism". In: *The Oxford Handbook of Comparative Regionalism*. Ed. by Tanja A. Börzel and Thomas Risse. Oxford University Press.
- Romano, Cesare P. R. (1999). "The Proliferation of International Judicial Bodies: The Pieces of the Puzzle". In: *New York University Journal of International Law and Politics* 31.4, pp. 709–751. URL: <https://cesareromano.com/wp-content/uploads/2015/05/Romano-on-Proliferation.pdf>.
- SAARC (2020). *SAARC Charter*. URL: <https://www.saarc-sec.org/index.php/about-saarc/saarc-charter>.
- Saputra, Muhammad Rizky Satria Kusuma (2024). "Examining Dispute Settlement under the ASEAN Charter: Analyzes Indonesia's Handling of Violations in the Amalat Rock Dispute and the Status of Sipadan and Ligitan Islands". In: *Problematika Hukum Journal* 10.1, pp. 39–54. URL: <https://pdfs.semanticscholar.org/8a42/1464957b8556be047a4167024ff30ea0cf3c.pdf>.
- Severino, Rodolfo C. (2015). *Southeast Asia in Search of an ASEAN Community*. Originally published 2006. ISEAS-Yusof Ishak Institute. URL: <https://www.cambridge.org/core/books/southeast-asia-in-search-of-an-asean-community/6865D4FCA43CB98613947>
- Shope, Mark L. and Wen-Chen Chang (2022). "Civil Society and Regional Human Rights Development in Asia: Lessons from the Asia Human Rights Court Simulation". In:

Indiana Journal of Global Legal Studies 29.1. URL: <https://www.repository.law.indiana.edu/ijgls/vol29/iss1/2>.

Söderbaum, Fredrik and Timothy M. Shaw (2003). *Theories of New Regionalism: A Palgrave Reader*. Palgrave Macmillan.

Suprema Corte de Justicia de la Nación (2025). *Ibero-American Judicial Summit*. URL: <https://www.scjn.gob.mx/relaciones-institucionales/en/foros-permanentes/cumbre>.

Tan, Hsien-Li (2011). *The ASEAN Intergovernmental Commission on Human Rights*. Cambridge University Press. URL: <https://www.cambridge.org/core/books/asean-intergovernmental-commission-on-human-rights/90EA3442FBA79B5979A9AD41CC865E5F>.

Tan, See Seng (2017). “Not Quite Beyond the ASEAN Way? Southeast Asia’s Evolution to Rules-based Management of Intra-ASEAN Differences”. In: *ASEAN@50 Volume 4. Building ASEAN Community: Political-Security and Socio-cultural Reflections*. Ed. by A. Baviera and L. Maramis. Economic Research Institute for ASEAN and East Asia. URL: <https://www.eria.org/publications/asean-50-volume-4-building-asean-community-political-security-and-socio-cultural-reflections/>.

Tiba, F. K. (2016). “The Emergence of Hybrid International Commercial Courts and the Future of Cross Border Commercial Dispute Resolution in Asia”. In: *Loyola University Chicago International Law Review* 14.1. URL: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2943870.

Ulfstein, Geir (2018). “International Courts and Tribunals and the Rule of Law in Asia”. In: *Global Constitutionalism from European and East Asian Perspectives*. Ed. by Takao Suami et al. Cambridge University Press, pp. 518–530. URL: <https://www.cambridge.org/core/books/global-constitutionalism-from-european-and-east-asian-perspectives/international-courts-and-tribunals-and-the-rule-of-law-in-asia/9A56DCE5342B59E2269210863906DA36>.