

RESEARCH ARTICLE

Examining the Possibility of an Eastphalian International Order

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Abstract

This study provides insight into whether an Eastphalian international legal order is possible, and examines the role of China in particular, basing its arguments on concrete issues, rather than theoretical ones. This paper will first discuss the Eastphalian proposal, initially illustrating the main arguments for the Eastphalian order, and then discussing the possibility of an Eastphalia era. This study stresses that, as a growing international actor, China has the potential to affect the current international order in certain ways. However, these effects will not be enough to cause a transformation of that order, because there other determinative factors exist. This study identifies and assesses these determinative factors for Asia, and in particular China, seeing them as offering new autogenous principles and minimizing the problem of coherence in foreign policy, as well as helping establish a strong regional organization. While autogenous principles are an important way to distinguish a new era from the preceding one, there are several considerations that are equally vital for global acceptance and adoption of these autogenous principles that China would develop. This paper first discusses existing concerns with regard to the Five Principles of Peaceful Coexistence, on which China has based its foreign policy. Then, we will highlight coherence issues that have been raised with regard to China's strategies and practices. Finally, we will emphasize the importance of founding an organization that will facilitate regional cooperation in Asia. It is currently unclear whether an Eastphalian world order will manifest itself based on choices made by leading Asian powers, and we must ascertain how far this ideal is from being achieved. The current study contributes to the literature by providing more insight into this largely ignored topic.

Keywords

Asia • Eastphalia • Westphalia • Rise of China • the Coexistence principles

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It is not possible to accurately chart the future of international relations because “in international politics, reality often turns out different from prognostication” (Fidler, 2010, p. 7). China is a growing power, making it likely that the country will increasingly influence the international order economically, legally, and politically. That order may include unfamiliar practices, raising the question of whether these truly signify an imminent transition to a new era. If so, the rise of new actors should also result in new principles. As China’s practices hardly herald a new international legal order, it must revise its principles. This study examines why the principles by which China currently acts render the concept of Eastphalia as problematic, and then suggests revisions.

The rise of China as an economic and a military power in the last three decades has drawn many scholars’ attention, who mostly agree that this development might justify the country’s classification as a superpower (Angang, 2011, p. 16). Only a few of these observers have commented on the impact China’s rise would have on the current international legal order. Those few discuss whether this development might lead to the establishment of a new international legal order called the “Eastphalian Era,” in which international law would be shaped and characterized by Asian powers, particularly China.

While the rise of new actors might be an important factor in renaming the international system, it may not provide a full explanation, as its consequences could also transform the current international legal order into a new one. “Eastphalia” refers to a new era, which could happen if China or other Asian powers continue to affect the way international relations and law are shaped by current international lawmakers. In other words, such a development would need to be distinct from the preceding ones. For example, the emergence of sovereign states that transformed the creation of international law led to the Westphalian order. While the presence of international NGOs dates back to the 6th century, their impact has increased, most significantly since the end of the Cold War², leading some writers to label the order as “post-Westphalian.” If China becomes a superpower and handles international problems by following Westphalian principles, then contemplating a new international system clearly would be inappropriate. Therefore, the “Eastphalian world order” concept does not refer only increased military, economic and political weight of Asian powers; it involves the development of distinct principles for the creation of international law; principles that must be accepted globally if they are to be widely employed.

While China and some other Asian countries such as India, South Korea and Japan might continue to occupy an important place and continue to increase their effect on the international legal order without the emergence of an entirely new order, it is possible that the consequence could be the birth of a new “Eastphalian” era.

2 However, “the first associations which can be seen as the direct predecessors of today’s NGOs appear in the late eighteenth century when private individuals with shared interests created issue-oriented organizations to influence policymaking.” (Nowrot, 1999, p. 582)

Superpower status is quite different from the formation of a new international legal order: the first might refer to an increase in or transfer of power, while the latter concerns transformation from the present state to new one with distinctly different principles. Therefore, the key question is whether the result of China's incipient world leadership through shaping international law would become a new so-called "Eastphalian international legal order," or return to the Westphalian order. Or, indeed, would it simply maintain the status quo?

Only a few scholars have discussed this issue. These few have examined China's foreign policy principles. It is accepted that these policies adhere to and are built on the Five Principles of Peaceful Coexistence. Previous arguments about possibility of establishing an Eastphalian order thus focused on similarities between the principles of peaceful coexistence and those of the Westphalian order. Some argue that the rise of China would constitute a return to the Westphalian order, as its foreign policy principles resemble features of that order. By this measure, the non-interference principle of peaceful coexistence is in particular quite Westphalian. On the other hand, some assert that no alteration would occur in the current international system, because if China wants to become a hegemonic power, it would be required comply with that system.

This study focuses on whether China's rise within the international community heralds any novelties for the current international order. However, this argument is based on different recent examples, and pays more attention to issues of international peace and security than to economics. This study scrutinizes China's attitudes as they have been revealed in the UN Security Council, particularly with regard to the Syrian conflict, and takes some specific Asian conditions into account, as well as China's responses to some recent regional developments. This study stresses that merely being a growing economic and military power is not enough to posit the emergence of an Asian-centered Eastphalian era. It also assesses the possibility of an Asian-centered international legal order and argues for three significant facts resulting from China's current choices.

First, this study joins previous works in discussing the feasibility of the Five Principles of Peaceful Coexistence and their novelty problem. Second, it examines the existing coherency problem that is based on the requirement for globally acceptable values in order to win universal acceptability. Third, it argues that effective cooperation is important for strengthening the influence and adoption of Asian values. This paper concludes that it is indeed hard to see how the rise of Asia, and particularly of China, could result in a new Eastphalian era, because Asia's ability to promote new autogenous principles is insufficient, and because the problems of coherency and regional cooperation are too great. Eager to improve these conditions, China has developed the "The Belt and Road" (B&R) and "neighborhood diplomacy"

strategies. While they seem promising, these developments are not enough. It may be possible to view the country as a dominant power, but not one that could effectively foster a completely new international legal order. The emergence of an Eastphalian era therefore remains no more than prospective for the time being; such an outcome depends on how China and other leading Asian countries would develop policies around these issues.

The Role of Actors in Redefining the International Order

The international legal order has witnessed significant changes in the last three decades, and these changes have been referred to by such diverse terms as Westphalia, the Cold War, and the post-Westphalian Era. The actors in this new order played an important role in defining the period. The rise of new actors and the collapse of the previous ones have persuaded scholars to redefine the order. The emergence of sovereign states was the main reason for calling it the Westphalian³ order, because of the transformative impact it had on the international legal order. The Cold War era name was based on the competition between the two greatest powers,⁴ the USA and the Soviet Union, and the collapse of the latter and the rise of non-state actors was a significant instigator of the post-Westphalian legal order reference (Drake, 1999, p. 243; McGrew, 2002, p. 269).⁵ The USSR's demise also allowed the US to emerge as the only global superpower⁶, while the world has witnessed many humanitarian interventions. As a result, some commentators have begun to propose the existence of contingent sovereignty instead of Westphalian absolute sovereignty. In short, the rise of these actors resulted in a new international legal order because it led directly to the creation of new international legal principles (Elden, 2006, p. 14).

Commentators have been noting Asia's rise as a global player for the last three decades, leading some to examine whether this phenomenon may lead to a transformation in the international legal order to what is referred to as the "Eastphalian Era" (Fidler, 2010; Fidler, Kim, & Ganguly, 2009; Ginsburg, 2010a, 2010b; Kassim, 2014; Lo, 2010). The notion of Eastphalia was first suggested by Sungwon Kim (Ginsburg, 2010a). Kim discusses how the rise of Asia could affect the international legal order. There are two arguments regarding Eastphalia. Some do not see that the rise of Asia must necessarily lead to a totally new international legal order. This argument suggests that Asia's growing prominence, and particularly China's, could return the international system to the Westphalian order, so that would not represent

3 The Peace of Westphalia in 1648 led to development of sovereign states in the international order, and became known as the Westphalian system.

4 This is the period where the veto power in the UNSC was applied extensively. As a result, international law as regards the maintenance of international peace and security was largely stymied.

5 The concept "post-Westphalian" was first proposed by Richard Falk (1998). Other scholars have also used this term, while some prefer "Westphalia II." See for example (Kimon, 2000).

6 For some scholars the US has ceased to be a superpower, while others argue it is not likely to remain one (Buzan, 2011).

a new era. The other argument claims that Asia's rise depends on the circumstances of the current international legal order, so such a rise is unlikely to cause significant change in the international system. Both arguments maintain the improbability that the international legal order would ever enter a new "Eastphalian Era."

While Asian countries have faced political and economic challenges during the twentieth century, the notion of the "rise of Asia" has become commonplace among scholars for the last three decades. The significant economic growth and development of China, East and Southeast Asia, and India has drawn the world's attention lately. Fidler argues that "the history of international law is largely a story written by Western countries, which extended the reach of this law to every corner of the earth and dominated the substantive nature of the rules and the institutions designed to support them" (2010, p. 2). The rise of Asia now inspires scholars to predict that Asian powers are more likely to influence the design of the current international legal order. Among others, Chang-Fa Lo maintains that China's practices will increasingly impact international relations (2010, p. 13).

The notion of Eastphalia highlights the extent to which Asian powers are shaping the international legal order, a process long dominated by Western countries' interests and concepts (Lo, 2010, p. 19). Yet Fidler (2010, p. 3) aptly indicates that Eastphalia does not necessarily mean a world controlled by some combination of Asian powers, or even that China and India will develop into superpowers. Rather, he uses the term to help us understand how an Asia-centric world would influence international legal order in the 21st century. The actions by key Asian players from China, Japan, and India therefore play an important role in any analysis of the potential consequences of the rise of Asia in the international realm. Consequently, the rise of these Asian actors would not automatically result in a new international legal order.

The Extent to Which the Five Principles are Asian

In the Westphalian World Order (WWO), international law can be viewed as being built around five structural pillars, which are defined by Valaskakis (2000) as follows: "national governments are the sole holders of (legal) sovereignty, sovereignty is exercised over physical territory, national governments are not only legally sovereign but are also the most powerful players of the world system, the only enforceable international law is that based on treaties between sovereign countries, and war is a legitimate instrument of international relations." The main thrust of the Treaty of Westphalia is that states are considered free of responsibility for their internal actions because states are not allowed to interfere with other states' behaviors. China refers to the non-interference of other states often in its foreign policy. This is no surprise in light of the strong emphasis on non-intervention found in the Five Principles of Peaceful

Coexistence. This therefore supports the idea that the rise of China might be a return to the Westphalian order in terms of maintaining international peace and security.

As stated by the Panchsheel Treaty of 1954, these are the Five Principles of Peaceful Coexistence:

- i. Mutual respect for each other's territorial integrity and sovereignty
- ii. Mutual non-aggression
- iii. Mutual non-interference in each other's internal affairs
- iv. Equality and cooperation for mutual benefit
- v. Peaceful co-existence

It is often argued that China pays significant attention to the Five Principles of Peaceful Coexistence. Panda states that the Five Principles play a significant role in China's foreign policy (2014). For example, China has used its veto power in the UN Security Council (SC) to prevent a decision on the Syrian crisis, and China referred to the Five Principles in its attempt to justify its Syrian policy. In this regard, Odgaard cites its voting behavior in the SC over the past decade, implying that Beijing has been advocating a strategy of peaceful coexistence all along (2013, p. 238). Xi Jinping recently stated that "the Five Principles of Peaceful Coexistence that China initiated together with India and Myanmar have become a basic norm governing state-to-state relations" (Suryanarayana, 2016, p. 182). Indeed, it is not only China that espouses the Five Principles: other Asian countries such as the member states of Association of Southeast Asian Nations (ASEAN) and India also embrace it "as a normative concept that guides its foreign policy and relations with other nations" (Fidler, 2010, p. 7). The emergence of Asia as a power that could shape the international system could constitute a remarkable change in the international legal order. However, some argue that there is in fact no difference between the Five Principles and the Westphalian order, so any reorientation by the international system toward these principles would merely represent a return to the Westphalian system, rather than a new Eastphalian order. Fidler, for example, maintains that the Five Principles are not distinctively Asian (2010, p. 4). Likewise, Chang-Fa Lo emphasizes that the Five Principles actually reflect traditional concepts of the Westphalian order (2010, p. 20). Fidler (2010, p. 9) states that the rise in political importance of the Five Principles does not signal the end of the utility of international law and global governance. However, whether Asian commitment to the Five Principles might limit the scope and substance of international law and global governance in the new multipolar system is a relevant question.

The first three principles strongly emphasize non-intervention and respect for sovereignty. They reflect a state-based system that does not allow involvement or interference by any other international organizations or non-state players in the state's internal affairs. These values are similar to features of the Westphalian order, in that the Treaty of Westphalia, which guaranteed that sovereign states would not interfere in each other's domestic affairs, preserved individual state's rights inside their own borders. The main thrust of the Treaty freed states from responsibility for their internal behavior, thus allowing them to enjoy plenary authority within their boundaries (Schneebaum, 2004). The last two principles of equality and cooperation for mutual benefit and peaceful coexistence have remained rhetorical during the Westphalian order: Article 2(1) of the UN Charter asserts that the UN is based on 'the principle of the sovereign equality of all its Members', yet veto power falls under the prerogative of only five states, as provided in Articles 27(3), 108 and 109(2).

It is indeed hard to see how the rise of Asia, and particularly of China, would lead to a new Eastphalian era, as the Five Principles are very similar to Westphalian values. Lo aptly argues that "[f]or Eastphalia to be something distinct, China must propose and practice ideas beyond the Five Principles that appeal to a wide spectrum of states and generate benefits for all people in a globalized world" (2010, p. 25). The Five Principles alone are not an adequate means by which China could initiate a new Eastphalian era in the international realm.

The realities of the current world order, such as the rise of new international actors (NGOs), new global problems, and new international security concerns are compelling factors in the international legal order. As a regional candidate for world dominance, Asia, and in particular East Asia, must consider these circumstances and develop relevant strategies. It is likely also an obstacle to Asia's bid for world pre-eminence if it continues to insist on following its traditional Five Principles policies. In other words, continued adherence to Westphalian principles could also prevent Asia from becoming an influential power that can distinctly shape the international legal order. According to Ginsburg the rise of Asia would challenge Eurocentric global constitutionalism and universalism, because Asian powers have not adopted these European models of politics and law (2010, p. 27).

He then emphasizes East Asia's need to conform to current trends in the international realm if it is to become a single dominant region that would influence and shape the international legal order. It is thus important for Asia to develop universal standards in fields such as security, economy, democracy, and human rights. However, China does not seem to be developing friendly policies toward new actors in the international legal order. One example is the controversial law enacted last year that places foreign NGOs "operating in China under the control of the security services," implying that they are considered potential threats by Beijing (Phillips, 2016).

During decolonization and the Cold War, it was reasonable for weak Asian powers to adopt the Five Principles because of their vulnerability to threats of pressure and interference by powerful states (Fidler, 2010, p. 9). Some Asian countries still support these principles. For example, the Philippine President Rodrigo Duterte was not impressed by US criticism of ‘his lethal antidrug program, in which 2,000 people have been killed, mostly by the police’ (Perlez, 2016). Duterte has also reached a solution in the South China Sea dispute between his country and China. The Five Principles played a role in developing relations between the two countries, as China did not raise the issue of the extrajudicial killings.

These principles could be applied to prevent arbitrary intervention by strong states. But there should be certain exceptions: for example, they should not be applied in cases of mass atrocities such as those currently being committed in Syria. The Syrian conflict has clearly shown how the lack of international cooperation in maintaining international peace and security significantly affects the world community. It also shows how a rigid non-intervention policy is not appropriate. As mentioned before, the Five Principles emphasize non-intervention and respect for sovereignty. China has used its SC veto in matters relating to the Syrian conflict four times, justifying its action by referring to the principle that one state may only interfere in another’s domestic affairs with the latter’s consent. While it is true that the mechanisms of such intervention are problematic and need improvement, China should suggest a way to handle conflicts that challenge international peace and security.

By extension, China must propose alternative, universally applicable measures to efficiently resolve problems in international relations. In doing so, China could make its own policies internationally acceptable. Otherwise, persisting within the Westphalian system will lead underdeveloped countries to pay inordinate deference to Western rules that do not even work adequately in practice. Odgaard also highlights some problems regarding China’s policy of coexistence (2013, p. 254). She aptly suggests that Beijing must pay more attention to serious human rights violations, stating that while some countries favor attaching undue importance to the principle of sovereignty, the majority of states still prefer the liberal standards that originated in the West (Odgaard, 2013, p. 263).

Furthermore, China might not actually be able to implement these principles in the context of the current international legal order. The agreement known as the Five Principles was signed between China and India in 1954. Yet there was a war between the two nations in 1962, just eight years later. This suggests how difficult it is to adhere to the Five Principles in practice without considering new developments. The problem therefore concerns not only similarities with the Westphalian order; but also the practical issues that arise when these principles are followed.

What is more, the impact of globalization on the world order may not provide opportunities for the implementation of the Five Principles. Asian communities have also been affected by globalization as they attempt to reach global markets for goods, services, technologies, and investment capital (Fidler, 2010, p. 10). Beeson confirms that Asia has increasingly been integrated into the global economy (2014, p. 167). Fidler points to a significant switch in India and China's autarkic policies, that has occurred as they engage with other countries to develop political cooperation and economic interdependence (2010, p. 8). Globalization has also presented new threats as well as a wealth of opportunities.⁷ China's failure to deal with SARS has shown that international cooperation is the most efficient way to tackle global problems (Huang, 2010, p. 107). Fidler likewise emphasizes that Asian countries must also realize their vulnerability to many global problems, such as the spread of infectious diseases, global financial crises, and the dangers of climate change, which require a high level of international cooperation (2010, p. 10). The globalization of Asian policymaking is making Asian countries less wary about collective action based on the Five Principles.

So, while statements made by Asian powers may emphasize the Five Principles as the main tenets of their foreign policy, the realities of the world order and their own policy changes do not constitute appropriate grounds on which to implement these traditional rules. These rules must be applied with some degree of flexibility. The Five Principles are nevertheless still likely to influence their international relations. Also, China and India's promotion of cooperative regional foreign policies should encourage other Asian countries to increase their commitment to the Five Principles, rather than focusing on gaining possession. The current situation is more about the conflict between the reality of the current world order and the choices made by Asian powers. Indeed, the preferences of leading regional actors could play a key role in determining a region's adaptation of either the new principles of leading Asian countries or the values of the current international legal order such as the promotion of human rights, democracy, and the Responsibility to Protect (R2P).

Improving the Five Principles of Peaceful Coexistence would generate opportunities such as obtaining global support of Asian values for Asian regional powers. If they could contrive to exploit these opportunities, their effects would shape the international legal order for the first time since the Treaty of Westphalia. Fidler states: With China and India developing into great powers, the rise of Asia might make multipolarity the structural characteristic of the next phase of the international system's evolution (2010, p. 8). Multipolarity last characterized the structure of the international system in the nineteenth century and the first half of the twentieth century, but the great powers in these periods were all Western countries, except for Japan. He concludes

7 Kofi Annan states that "[g]lobalization has an immense potential to improve people's lives, but it can disrupt – and destroy – them as well" (Annan, 1998, p. 22).

that if such multipolarity does result from the emergence of China and India as great powers, it would be the first time that Asian countries would shape the main features of the international legal order, which affects the full range of actors across the board, including states, international organizations and non-state actors.

However, such multipolarity in the international system would render it more difficult to take common action concerning international problems because of the difficulty in the big powers reaching a consensus (Fidler, 2010, p. 8). The international community experienced this situation during the Cold War. For example, international peace and security was put at risk by the Soviet Union's and the US's use of their veto powers in the SC. There are more international problems now than there were during the Cold War. New threats such as global environmental degradation, refugee flows, and mass cross-border migration, the spread of infectious diseases, global terrorism and transnational crime have all manifested themselves since then (Chinkin & Baetens, 2015, p. 31). It is therefore likely that the aforementioned multipolar system could present more difficulties, as the number of issues in which big powers do not have converging interests would surely increase. For instance, China and Russia have both consistently used their veto powers in the ongoing Syrian crisis, actions that have caused serious and continuing problems. Fidler predicted an increase in "suspicion, distrust, and competition for influence among the great powers" as a result of the multipolar international system, a prediction that has since proved accurate (2010, p. 9).

It has also been argued that China has already transformed itself from a beneficiary to a shaper of the international order. Odgaard explains how China's strategy of peaceful coexistence has influenced that order, assessing the country's voting behavior in the SC, and in particular in the cases of Sudan, Myanmar, Libya, and Syria (2013, pp. 264–269). In its role as a Council member, she views Beijing as striving to defend certain policies related to its coexistence diplomacy; namely, the requirement for consent and specialization in the use of force, the effective control and adoption of socio-economic development measures relative to the principle of sovereignty, and the requirement for absolute sovereignty in international agreements. She concludes that China has successfully advocated this policy in international law, and has obtained support from other states for its coexistence policy, but also that its adherence to Westphalian principles has become a barrier to demands for collective action in cases such as Syria.

There two main challenges in following the Five Principles. The first is that accommodating Westphalian precepts renders it impossible to make a new beginning. Asia may indeed already have influenced the international legal order to some extent. Yet such influence alone would not constitute a new Eastphalian international order unless it offers new principles that Asian powers would adopt. Secondly, these principles are outdated and might be difficult to implement, so they may be unable to attract wide

international support. China's increasing dominance might even cause new problems. Any proposed new principles must be universally acceptable in order to be adopted by other regions. It would therefore be wise to upgrade the principles to respond to the demands of the current world order. Insisting on the primacy of the Five Principles is to disregard the international community's demands and risks regression from the current order.

The Problem of Coherence

The difficulty of distinguishing between the Five Principles and the Westphalian order is not the only problem. Inconsistency also exists between China's policies and its practices. There is a discrepancy between China's practices and its statements that constitute the basis for its policies. This calls the coherence of China's policies into question. Huang underlines the contradiction between China's new approaches and its practices, analyzing China's attitudes toward health in its foreign policy (China has introduced some initiatives⁸ to promote stronger engagement in global health issues) (2010, p. 115). He states that although China recognizes that solutions to global health problems necessitate neoliberal strategies of cooperation over disease prevention and control, its actions on global health problems are still justified through the lens of classical realism that focuses on power, influence, and security (2010, p. 145).

There are also indications that China's foreign policy does not follow the principles of peaceful coexistence coherently. Unlike in the Syrian conflict, China did not use its veto in the Libyan crisis of 2011. In fact, the UN's documents regarding the Libya Resolution of 1973 show that China explicitly emphasized the importance of peaceful measures and disagreed with the use of force. In fact, during a meeting on the Libyan situation, the Chinese President of the SC in 2011 stated "China has always emphasized that, in its relevant actions, the Security Council should follow the United Nations Charter and the norms governing international law, respect the sovereignty, independence, unity and territorial integrity of Libya and resolve the current crisis in Libya through peaceful means" (UNSC S/PV.6498, 17 March 2011).

However, in Libya's case, China was still able to use its veto power in the SC to prevent the use of force that would have implemented precisely the principle the SC's President espoused. It has followed the same course of action several times in Syria, even when casualties have reached significant numbers and international peace and security have been seriously threatened.

There are also contradictions between China's development and its security and legal policies. Economically, China is developing "The Belt and Road" (B&R) project that could pave the way for the reduction of developmental inequality in Asia. However, the

⁸ These include greater transparency and cooperation, attending more to multilateralism, and the reinvigoration of its health diplomacy in Africa

implementation of such projects could face challenges. As a security issue, a dispute has arisen between China and the Philippines about the South China Sea (Shi & Tweed, 2016). China has found the Permanent Court of Arbitration's ruling on the case "null and void." China has maintained development policies while failing to do so with regard to security and legal issues. Such a situation could undercut the effort to develop good relations in the region and lead states to be suspicious of China's commitment to so-called "neighborhood diplomacy." It could ultimately present a barrier to the establishment of strong regional cooperation that would pave the way for Asian powers to become influential in the international legal order. Nye sympathizes: We could say that American troops "entered Iraq" or that American troops "invaded Iraq." Both statements are true, but they have very different effects in terms of the power to shape preferences. China could criticize the decision, but it should consider adopting a more conciliatory negotiating manner so as to not unnerve both regional and non-regional actors with historical security concerns about China (2011, p. 20).⁹ Such a conciliatory attitude would also add value to its policy toward weaker states, allowing it to be seen as a better alternative to the Western world. Odgaard maintains that "even the most powerful state needs to convince its partners that its policy is responsible and feasible," just as a readiness to compromise is important in order to show regard for the interests of other states (2013, p. 248). Beijing should also consider the feasibility of its policies: it must show that it understands regional actors' security concerns by considering a comprehensive offer that entails more than just economic development.

In short, coherent foreign policies are an important aspect of diplomatic influence (Odgaard, 2013, p. 245). Contradictions between its promises and its practices could therefore pose an obstacle for China, as doubts about its power could cause regional or global actors to withdraw their support for a China-led Eastphalia. Rodrigo Duterte, President of the aforementioned Philippines, is inclined to advance relations with China, yet opinion polls show that the Philippine public is likely to remain pro-American and skeptical of China (Perlez, 2016). A professor of Asian studies, Patricio Abinales notes that "I think Filipinos are happy to see the fishermen back in their fishing grounds, but I doubt that this indicates a significant increase in the 33 percent of Filipinos who favor China" (Perlez, 2016). On one hand, China has introduced some foreign policy approaches that are more acceptable to global and regional actors. On the other, it has sometimes struggled to relinquish undesirable actions that cause global and regional concern about its growing power. China must therefore work to ensure coherence between its newly expressed attitudes and its actions in order to win the trust of regional and global players. However, recent developments do not signal Chinese acceptance of this position. The recent dispute between Beijing and New Delhi as their troops faced off at the border of Bhutan, for

⁹ Kim (2010, p. 102) shares these concerns: the Asian approach to international relations and the prevailing post-Westphalian nature of the human security concept do not share much, if any, common ground. In short, the Asian perspective offers little for advocates of human security to embrace.

example, saw both sides using harsh language (Safi, 2017). Also, the South China Sea disputes continue between China and Japan, and between China and Vietnam (Ives, 2017). As discussed in the following section, such disputes continue to pose obstacles for the development of strong regional cooperation.

The Importance of Regional Cooperation in the Proposed Emergence of an Eastphalian Order

Regional issues that shape the choices made by Asian regional powers present further obstacles to strong regional cooperation, and these obstacles demand attention. Several factors could render such cooperation problematic. The first is the disparities in welfare levels throughout the region. Secondly, growing powers like China and India face domestic problems (Kim, 2010, p. 95). This does not even take the historic friction between Japan and China and the radical differences in their internal structures into account (Japan is democratic while China is not) (Beeson, 2014, p. 100). Third, disruptive choices continue to be made by the decision makers in leading Asian countries. Lastly, we must account for the reactions of current world powers such as the US, Russia and some influential European countries, including the UK, Germany and France. For example, the US had to close its last Central Asian airbase in Kyrgyzstan on June 2014. It is believed that Russia played a role in that decision, and in that of previous closures in the region (Pillalamarri, 2014). The influence of powers other than Asian ones could also undermine the establishment of strong regional cooperation in Asia. However, there are also favorable developments to consider, such as “The Belt and Road” (B&R) project and “neighborhood diplomacy” that could support regional cooperation.

A focus by Asian powers on solving regional problems would help to overcome potential obstacles that could slow and even halt the expansion of East Asia in the international realm. Honghua considers “China’s comprehensive and peaceful rise” as one of the significant factors in the rise of Asia (2010, p. 58). He further stresses the importance of cooperation between China and Japan, as he believes that they, the region, and indeed the world community would all benefit from their cooperation. Should it transpire, such cooperation would make a significant impact on the international legal order comparable to the influence of cooperation that exists between European countries.

Asian countries’ cooperation is by no means assured, as historically their relations have often been hostile. Yet this was also the case with many European states. For example, Germany and France were hostile to each other after World War II, and France and the UK experienced hostility between them after 1904. Germany and France were enemies for centuries, and since the formation of modern Germany,

had fought three bitter wars in 1870–71, 1914–18 and 1939–45. Just six years after the last, most devastating war in human history, the two countries became founding members of the European Coal and Steel Community, the first supranational organization and the progenitor of the EU. Historical relations and current disputes do not look good for achieving strong Asian regional cooperation, but if inveterate enemies like France and Germany can submit their national policies to a supranational organization, surely any Asian countries could as well. Thus, the problem might not be insurmountable; indeed, there are already some encouraging signs of incipient collaboration. For example, China has developed a “neighborhood diplomacy” policy in order to build stronger relations with surrounding countries. In November 2015, President Xi Jinping stated that the “neighborhood will be important for China’s overall diplomacy, and China will take on the duty of promoting neighboring peace, stability, and development” (Li & Yuwen, 2016). If followed coherently, this principle would pave the way for the development of regional cooperation.

Furthermore, obstacles of regional cooperation could be overcome by the leading Asian countries of China, Japan, South Korea and India finding common ground through the foundation of a regional organization resembling the EU. The welfare differences could be dealt with through investment by leading Asian countries in weaker Asian economies. The closing of the significant gap between leading European countries and weaker ones such as Poland, Bulgaria and Lithuania provides a precedent. Before these countries became EU members, other European countries funded them and encouraged them to implement economic strategies such as the “snake in the tunnel” the objective of which is to limit fluctuations between different European currencies (Reçber, 2002). Secondly, a model of strong cooperation patterned on the EU could incorporate certain human rights criteria that member states must fulfill, enabling them to tackle domestic problems arising from human rights violations more efficiently. Third, while it is true that there has not been conflict among regional powers since 1979, regional tensions have still occurred. An EU-type organization would pave the way for Asian countries to integrate, and could make provision for a shared court system that would handle problems between member states and make decisions according to agreed organizational rules. This would consequently minimize tensions among regional actors (Arı, 2008). Lastly, possible threats from current global powers make achieving strong regional cooperation more important, providing for the possibility of defined measures that would limit their effect in the region as a whole.

Some Asian organizations like this already exist, such as the ASEAN, the Shanghai Cooperation Organisation (SCO), the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC), the South Asian Association for Regional Cooperation (SAARC), the Turkic Council (TC), the

Economic Cooperation Organisation (ECO), the Gulf Cooperation Council (GCC), the Mekong-Ganga Cooperation (MGC), and the Asia Cooperation Dialogue (ACD). However, these organizations are not regarded as strong regional entities. Very few countries are members of all of these organizations. The most comprehensive of these organizations is the ACD, whose membership includes close US allies Japan and South Korea. Japan, South Korea, Mongolia (ACD), Turkmenistan (TC) and the Maldives (SAARC)) are members of only one regional organization. Unlike the EU, none of these organizations contain principal organs and regional courts. Be that as it may, these groups could be important in providing the basis for a strong regional organization.

As long as the leading Asian countries of China and India follow the Five Principles of Peaceful Coexistence, however, the establishment of an EU-like organization is not likely. Because following the Five Principles makes them strong supporters of non-intervention and respect for sovereignty, they would oppose the establishment of any international organizations. Indeed, they would hardly be willing to make allowances for any other actors to interfere in their internal affairs. Sharing a strong regional overseeing entity would mean that their internal behaviors would be held to account according to legal, political and economic standards. And while the current powers are indeed keen to approve new economic standards, but not legal and political ones. Of the Asian countries, only India, Timor-Leste, Thailand, Philippines, Pakistan, and Japan have approved the compulsory jurisdiction of the International Court of Justice. Even so, these countries have stipulated exceptions to this compulsory jurisdiction. Philippine President Duterte, for example, has threatened to withdraw his country from the UN in reaction to the UN's criticisms of "extrajudicial killings in the fight against illegal drugs," and its demands that he "ensure the right to life and security of every person in the country, whether suspected of criminal offenses or not" (UN News Centre, 2016). While Asian countries demonstrate a modicum of receptivity to the idea of empowering a regional organization, their reluctance to be accountable for their internal behaviors and their desire for plenary authority within their borders presents a very real barrier to such a development.

Some argue that the existence of sizable developmental disparities in Asia is too big of a barrier. Welfare levels vary enormously between the impoverishment characterizing considerable areas of the region and wealthy areas on the other. A former South Korean Minister of Foreign Affairs and Trade, Kim states that "Asia today contains the best of the first world and the worst of the third world" (2010, p. 101). Such a developmental gap poses a risk to Asia's rise. Fidler states that the gap between these two worlds might expand between Asian countries, undermining their ability to maintain the political, economic, and social growth and stability that has caught the world's attention (2010, p. 11).

Nevertheless, the figures show that the aforementioned gap has been significantly reduced, and that there is less poverty in the region than there used to be. There has been a rise of more than 10 per cent in the GDP across Asia and the Pacific, while there was about a 5% fall in the GDPs of Europe and America between 2000 and 2011 (The Economist, 2012). Problems in developmental and welfare distribution might still exist, but these are likely to be overcome by the increasing rate of Asian economic growth. Economic and developmental issues are therefore not likely to pose obstacles to the establishment of a regional organization.

Establishing an EU-like body is obviously not easy;¹⁰ it may take a long time to come about, or indeed it may never transpire unless regional obstacles are overcome. As mentioned, Beeson notes the difficulty posed by historic friction between the region's leading states to the development of a collective Asian identity (2014, p. 100). The leading players have been doing well in economic and developmental terms, but have largely failed to improve their political and legal behaviors. These behaviors are therefore likely to present a significant obstacle to the establishment of a strong regional organization, which must consequently remain a matter for speculation for now. The choices made by leading Asian powers would play an essential role in determining whether this possibility can be realized.

Conclusion

China is a promising and growing power, a development that might cause some scholars to consider China as more than just a superpower in the making, and to evaluate the potential of its taking a leading role in establishing a new era. At first glance, the rise of leading Asian countries may seem to result in a new international legal order that could be called by a number of terms, including Eastphalian and Sinophalian. However, it is clear that the rise of an actor or actors by themselves is not an adequate means of transforming the international legal order. Such a new order would have to also formulate new and autogenous principles. This does not seem to be happening in the case of China's rise. Examination of the principles China claims to be following reveals their origin largely in the terms of the Treaty of Westphalia. China's professed loyalty to the Five Principles may challenge its ability to develop rules that are acceptable to both global and regional actors. The present paper thus underlines the importance of improving the Five Principles of Peaceful Coexistence by taking the demands of the current world order into account. The principle of non-intervention in particular must be revised: it may be reasonable in some cases, but China must offer new alternatives and effective solutions in major crises such as the current one in Syria in order to achieve international legitimacy. Other problems

¹⁰ Citing the EU as an exemplar does not necessarily imply complete approbation: the organization has certainly faced its own institutional problems. Asia could therefore aim to develop a more effective regional organization than the EU. The current study suggests using the EU as an example by drawing lessons from its failures and successes.

such as coherence and the lack of strong regional cooperation also make it difficult to anticipate a new Eastphalian era. China has developed some reasonable strategies such as “The Belt and Road” (B&R) and “neighborhood diplomacy” initiatives that could help remedy those deficiencies. But while China has been achieving considerable success in its developmental policies, it does not show the same progress with regard to legal and security issues. China must conform its practices to these strategies in order to forestall the concerns of regional and global actors about its policies. China must work to remove the obstacles that exist to the Asian region’s becoming a power with the capacity to shape the international legal order. A new international order is not inevitable, but could be possible if the aforementioned measures are taken. Impediments to its development exist, as discussed in this article, which concludes that the choices made by leading Asian states play a key role in bringing about an Asian-led international legal order.

ARAŞTIRMA MAKALESİ

Eastfalya Uluslararası Düzeninin İmkânının Değerlendirilmesi

Mehmet Halil Mustafa Bektaş¹

Öz

Mevcut çalışma Eastfalya uluslararası düzeninin mümkün olup olmadığına dair değerlendirmeler sunuyor ve bu bağlamda özellikle Çin'in rolünü değerlendirerek argümanlarını teorik açıklamalardan ziyade somut olgulara dayandırıyor. Bu makale ilk olarak Eastfalya hakkındaki temel argümanları sunup bunları tartışacak, sonra Eastfalya döneminin olasılığını değerlendirecek. Çalışma, yükselen bir güç olarak Çin'in mevcut uluslararası düzen üzerinde belirgin etkilerinin olabileceğini, ancak mevcut sistemin dönüşümü için gerekli olan başka belirleyici etmenlerin de olmasından dolayı sadece bu etkilerin böyle bir dönüşüm için yeterli olmadığını vurgulamaktadır. Mevcut çalışma bu belirleyici etmenleri Asya ve özelde Çin için şöyle belirlemektedir: yeni özgün ilkeler sunabilmek, dış politikada tutarlılık sorununu asgariye indirmek ve aynı zamanda güçlü bir bölgesel organizasyon kurmaya yardımcı olmak. Yeni özgün ilkeler sunmak yeni sistemi seleflerinden ayırmak için önemli bir etmen iken, diğer iki etmen de Çin tarafından geliştirilecek olan bu yeni ilkelerin küresel kabul edilebilirliği ve daha sonrasında benimsenmesi için aynı derecede önem arz etmektedir. Makale öncelikle Çin'in dış politikasının esasını oluşturan Barış içinde bir arada yaşamının beş ilkesinin sadece Asya'ya ait olup olmadığına dair argümanları değerlendirilecek. Sonra Çin'in stratejileri ve uygulamalarına dair tutarlılık sorunlarının altını çizecek. Son olarak, Asya'daki bölgesel işbirliğini kolaylaştıracak bir organizasyonun kurulmasının önemini vurgulayıp, böyle bir amaca ulaşmaktan ne kadar uzakta olduğu tespit edilecektir. Sonuç olarak, önde gelen Asya ülkelerinin bahsi geçen belirleyici etmenler ile ilgili yapacakları tercihlerin bir Eastfalya dünya düzeninin oluşup oluşmayacağı hususunda temel belirleyici etken olacağı sonucuna varılmıştır. Mevcut çalışma, çok az ele alınmış olan bu konu hakkında daha fazla incelemeler sunarak literatüre katkı sağlamıştır.

Anahtar Kelimeler

Asya • Eastfalya • Vestfalya • Çin'in yükselişi • Bir arada yaşama ilkeleri

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