

Anti-Suit Injunctions in SEP Disputes: A Constructivist Analysis of Institutional Conflict

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ABSTRACT

This article analyzes the growing use of anti-suit injunctions (ASIs) in standard-essential patent (SEP) disputes and the resulting procedural fragmentation in transnational litigation. It argues that ASIs have been increasingly weaponized by courts to secure jurisdictional advantage, triggering institutional distrust and escalating judicial conflict. Drawing on a comparative study of practices in the UK, US, China, and Germany, the article shows that divergences in ASI issuance reflect deeper legal traditions and judicial role conceptions, rather than purely strategic behavior. Adopting a constructivist approach, the article reframes SEP-related ASI disputes as conflicts of institutional identity, normative constraint, and procedural expectation. It proposes a three-tiered response: refining domestic ASI rules, restoring the normative force of international comity, and fostering judicial self-reflection on cross-border conduct. This framework seeks to restore procedural discipline and rebuild trust in the governance of global SEP litigation.

KEYWORDS

Standard-essential Patents; Anti-suit Injunctions; Judicial Conflict; International Comity; Procedural Order.

1. INTRODUCTION

Since the turn of the century, the Fourth Industrial Revolution, centered on wireless communication technologies, has swept the globe and profoundly transformed human life.^[1] In this process, unified standards have played an indispensable role. To enable interoperability among various communication devices, standard-setting organizations (SSOs) have developed a series of standards such as UMTS and LTE. Standard-essential patents (SEPs) have emerged as necessary components of these technical standards. To prevent such standards from becoming tools of industrial monopoly, SSOs typically require SEP holders to license their patents on fair, reasonable, and non-discriminatory (FRAND) terms.^[2]

In practice, implementers often begin using these standards at the contract negotiation stage. However, because FRAND obligations are expressed as broad principles without specific licensing terms such as royalty rates, disputes frequently arise when the parties fail to agree on detailed FRAND conditions. These disputes are then referred to arbitration or litigation. Owing to differences in procedural and substantive law across jurisdictions, decisions in this area have shown significant regional divergence. For example, Chinese courts tend to protect implementers by awarding relatively low royalty rates. Since the party who initiates litigation first can gain a strategic advantage by selecting a favorable forum, parties to SEP disputes have strong incentives to engage in forum shopping. In this context, anti-suit injunctions (ASIs) have become an important legal instrument for securing favorable jurisdictional control. In SEP litigation, parties often initiate proceedings in a preferred forum and seek ASIs to restrict the other party from pursuing parallel claims in alternative jurisdictions. Given

that the jurisdictional battle in SEP disputes plays a critical role in securing strategic advantages in the global technology competition, courts in multiple jurisdictions have increasingly shown willingness to grant ASIs in SEP-related cases. In response, the enjoined parties have increasingly sought anti-anti-suit injunctions (AASIs), and even anti-anti-anti-suit injunctions, leading to a global escalation of injunction-based procedural conflict. Major technology companies such as Huawei and Samsung have already engaged in a "ping-pong" style litigation war over SEP licensing across multiple jurisdictions.^[3]

In the current academic discourse, SEP-related ASI disputes are often understood as a form of strategic competition between judicial authorities over jurisdictional control and FRAND determination. A representative view frames these conflicts as "institutional games between states," suggesting that courts issue ASIs to secure outcomes favorable to their own national industries.^[4] While such "game-theoretic narratives" partially reveal the strategic motivations behind judicial behavior, they suffer from important theoretical limitations. First, this view tends to reduce courts to unitary rational actors, ignoring the institutional identities, ideational structures, and long-term interactive patterns that shape judicial conduct. Second, it assumes that legal regimes are neutral sets of rules, rather than socially constructed and discursively shaped normative structures. Third, it cannot explain why, amid intense strategic conflict, certain courts exhibit restraint, maintain procedural cooperation, or actively invoke the principle of international comity---behaviors that are often inexplicable in pure utility-maximization models.

Against this background, this paper seeks to introduce constructivist international relations theory to better explain the limitations of the rational choice paradigm in analyzing SEP-related ASI disputes. Constructivism contends that state behavior is shaped not solely by material interests, but also by identity, ideational structures, and normative expectations. The logic underlying judicial decisions on ASIs reflects not only a given court's perception of national interest, but also its self-understanding of international role and institutional trust structure. The interactive conflicts surrounding SEP ASIs are not merely manifestations of strategic rivalry; they reveal deeper fractures in identity, norm adherence, and procedural legitimacy that cannot be fully accounted for by traditional game-theoretic models.

Anchored in this constructivist orientation, the analysis in this paper further draws on the theory of ontological security. As Jennifer Mitzen emphasizes, states-like individuals are self-conscious actors that pursue not only physical survival but also ontological security: the subjective sense of identity continuity and environmental predictability that enables actors to function with confidence. States depend on routinized interactions with others to stabilize their self-identity and worldview.^[5] When these routines are disrupted by unexpected or threatening circumstances, actors may experience profound anxiety. This theoretical perspective challenges the rationalist reduction of states to utility-maximizers, instead highlighting how states may maintain familiar but inefficient relationships in order to preserve stable identity interactions and avoid ontological insecurity.

The current judicial dynamics surrounding ASIs---marked by retaliatory injunctions, institutional gridlock, and declining international coordination---illustrate this logic of ontological attachment. Courts appear unable to disengage from structurally entrenched adversarial practices, as doing so would entail a recalibration of their institutional identity. From this lens, the ASI conflicts are not just legal or strategic contests, but identity-infused processes that reproduce and reinforce participants' roles in the global legal order. The ontological security perspective thus calls for the replacement of rigid identity conflicts with more reflexive and cooperative interactional structures. In addressing the ASI confrontation, this paper argues that institutional reconstruction must go beyond rule rationality to encompass normative coordination and identity renegotiation.

This paper also argues that the SEP-related ASI disputes reflect not only jurisdictional strategy but also deeper fractures in national identity, legal traditions, and normative expectations, which have contributed to the erosion of institutional trust and the fragmentation of international judicial order.

Using a constructivist analytical framework, this paper further contends that restoring procedural order requires not only the recalibration of ASI rules, but also the normative reconstruction of international comity and the redefinition of interactional expectations among national courts. This paper proceeds in three parts. First, it systematically examines the jurisprudential practices and institutional differences regarding SEP-related ASIs in key jurisdictions, uncovering the institutional positions and behavioral tendencies of national courts in global technology governance. Second, it applies a constructivist lens to analyze the interplay between national identity, international norms, and judicial conduct in SEP ASI disputes. Finally, the paper offers a set of responsive strategies aimed at rationalizing the governance of SEP-related ASIs under conditions of institutional tension----focusing on rule construction, norm coordination, and identity recalibration.

2. SEP ASIS IN PRACTICE: JURISDICTIONAL DIVERGENCE AND INSTITUTIONAL PREFERENCES

An ASI refers to a judicial order issued by a court requiring a party to refrain from initiating, continuing, or advancing specific claims in a foreign court, or to take steps to terminate or suspend foreign proceedings.^[6] Broadly construed, anti-suit injunctions include three types: (1) anti-litigation injunctions (narrowly defined anti-suit injunctions), (2) anti-enforcement injunctions, and (3) AASIs. A prohibitory injunction precludes a party from commencing or pursuing litigation abroad; an anti-enforcement injunction prevents the enforcement of a foreign court's judgment; and an AASI bars a party from seeking or enforcing an ASI. Originating from the jurisdictional clashes between the English courts of equity and common law, ASIs were historically granted by courts of equity via "common injunctions" to restrain parties from seeking relief before common law courts.^[7] By the nineteenth century, English courts began issuing ASIs against proceedings in foreign courts, formally establishing the ASI as a judicial tool to resist extraterritorial jurisdiction.^[8] In recent years, courts in certain jurisdictions have increasingly employed ASIs in SEP-related disputes to limit other countries' jurisdiction. As a result, national courts have adopted differing attitudes regarding the issuance and scope of ASIs in SEP litigation. The following sections examine the national approaches of major jurisdictions involved in the SEP ASI "wars," analyzing their legal foundations, conditions for issuance, and prevailing judicial tendencies.

2.1. The United Kingdom: Cautious but Proactive Use of ASIs in SEP Litigation

In general, the United Kingdom adopts a cautious yet increasingly proactive stance on the issuance of ASIs in SEP disputes. As the jurisdiction where ASIs originated, English courts are empowered under Section 37(1) of the Senior Courts Act 1981 to grant such injunctions "in all cases in which it appears to the court to be just and convenient to do so."^[9] The primary analytical framework used by English courts for determining the appropriateness of an ASI stems from Lord Goff's formulation in *Aérospatiale v. Lee Kui Jak*, which involves evaluating jurisdiction, the applicant's equitable or legal right, and the balance between comity and public policy.^[10]

First, ASIs are considered "in personam remedies,"^[11] meaning that English courts may only issue them against parties over whom they have jurisdiction. Such jurisdiction may be established through the presence of the party within the UK, a jurisdictional agreement between the parties, or some other "sufficient connection" such as submission to the court's authority. In SEP cases, parties frequently maintain branches or hold assets within the UK, making it relatively easy to satisfy this requirement. Second, the party seeking an injunction must demonstrate either a legal right (e.g., a breached forum selection clause) or an equitable right to be free from foreign litigation.^[12] The latter arises where foreign proceedings are unjustifiable or oppressive----for example, when they place the party under excessive legal burden, cause substantial inconvenience, or interfere with ongoing proceedings before the English courts. In SEP litigation, where forum selection clauses are typically absent, courts evaluate whether the applicant's equitable right has been violated. English courts exercise significant

discretion in this regard; where foreign proceedings threaten to override or undermine English court judgments, courts may find them oppressive. In *Conversant v. Huawei and ZTE*, the court found Huawei's claims before the Chinese courts vexatious and warned that unless the pleadings were amended, it would consider issuing an ASI.^[13] Finally, English courts weigh public policy and international comity considerations before granting an ASI. Historically, English judges have justified ASIs as remedies directed against individuals rather than foreign courts, thus avoiding undue interference with foreign sovereignty.^[14] Nonetheless, because ASIs limit a party's access to judicial protection in foreign jurisdictions, they unavoidably carry implications for international comity. English courts therefore issue such orders only when necessary to protect public policy interests.

In practice, English courts maintain a cautious yet increasingly proactive approach in SEP-related ASIs. Although the UK was the first jurisdiction to assert the authority to set global FRAND royalty rates---a pivotal development that triggered the global SEP ASI conflict---actual grants of anti-suit relief have been limited. To date, English courts have only granted one AASI in *IPCom v. Lenovo*, aimed at preventing enforcement of a U.S. court decision. They have not issued direct anti-enforcement or prohibitory ASIs in SEP cases. However, English judges have expressed willingness to do so in appropriate circumstances. As noted earlier, in *Conversant v. Huawei*, the judge warned that failure to amend vexatious claims could result in an ASI. More recently, in *Optis v. Apple*, the judge explicitly stated that if Optis continued pursuing global infringement actions against Apple, the court would consider granting an injunction.^[15] This suggests a shift in judicial attitude, with English courts becoming more open to issuing ASIs in SEP litigation.

2.2. The United States: Permissive Standards and Proactive Engagement in SEP ASIs

In the United States, federal circuit courts apply different standards when reviewing ASI applications, resulting in a bifurcation between permissive and stringent approaches. Given this divergence, litigants seeking ASIs in SEP cases often forum-shop by filing in jurisdictions that apply the more permissive standard, such as the Fifth, Seventh, or Ninth Circuits. District courts often reference the decision in *Microsoft Corp. v. Motorola, Inc.*, rendered by a court within the Ninth Circuit,^[16] and thus this subsection focuses on the permissive approach. Under this approach, U.S. courts consider factors similar to those in the United Kingdom, including the identity of parties and causes of action, the applicant's equitable rights, and the balance between public policy and international comity. The "identity of actions" factor assesses whether the domestic and foreign proceedings involve the same parties and arise out of the same underlying dispute. In SEP litigation, affiliated corporate entities are often treated as a single party, and courts usually accept that disputes across jurisdictions stem from the same core issue. As to equitable rights, courts evaluate whether the applicant is entitled to protection from vexatious or oppressive foreign proceedings. Finally, courts must weigh the applicant's equitable interests and the need to preserve judicial policy objectives against the obligation to respect international comity. Nevertheless, international comity is generally treated as a subordinate consideration. U.S. courts do not consider consistency with international comity a prerequisite for issuing ASIs; it suffices if the impact on comity is "tolerable." For example, in *Microsoft v. Motorola*, the court reasoned that Motorola's concurrent injunction requests in California and Germany interfered with the U.S. court's ability to adjudicate the dispute. Compared to the need to safeguard the court's jurisdiction, the comity concerns were deemed negligible.

As one of the first jurisdictions to grant ASIs in SEP cases, the United States has taken a relatively proactive stance. Since *Microsoft v. Motorola*, U.S. courts have issued ASIs in several high-profile cases, including *TCL v. Ericsson* (a anti-litigation injunction), *Microsoft v. Motorola* and *Huawei v. Samsung* (an anti-enforcement injunction), and *Ericsson v. Samsung* (an AASI). However, although U.S. courts do not view consistency with comity as essential, comity considerations nonetheless exert a constraining influence. In *TCL v. Ericsson*, the parties had agreed to resolve their global FRAND licensing dispute before a U.S. court. The court issued a anti-litigation injunction on that basis---its

only such issuance in this domain. In other cases where no such agreement existed, U.S. courts have shown a preference for anti-enforcement injunctions, which have a more limited impact on comity, and have rejected requests for anti-litigation injunctions.^[17] More recently, U.S. courts have signaled an even greater willingness to intervene in the global SEP licensing arena by easing the standards for ASI issuance. This trend underscores the increasing judicial assertiveness of U.S. courts in global SEP disputes.

2.3. Germany: Defensive AASI Practice Rooted in Civil Law Traditions

Traditionally, ASIs, as a judicial tool originating from English equity courts, do not exist in jurisdictions governed by the civil law tradition. Civil law countries tend to regard anti-litigation injunctions and anti-enforcement injunctions as improper intrusions upon judicial sovereignty. Courts in such jurisdictions typically neither recognize nor proactively issue such injunctions.^[18] Nevertheless, as previously discussed, anti-suit injunctions are in personam remedies that do not directly target foreign judicial authorities. Rather, their enforceability lies in imposing sanctions on the enjoined party for non-compliance. As a result, even if civil law countries do not formally recognize the legitimacy of such injunctions, multinational litigants often still comply with them, leading to strategic withdrawals from litigation in civil law jurisdictions. To counteract this deterrent effect and protect parties subject to foreign ASIs, courts in civil law jurisdictions----most notably Germany----have begun to soften their traditional stance and now issue AASIs in SEP-related disputes.

In Germany, the legal basis for AASIs lies in § 935 of the Code of Civil Procedure (Zivilprozessordnung, ZPO),^[19] which allows a court to grant a preliminary injunction where the applicant can demonstrate a substantive right that requires interim protection. In SEP litigation, the asserted substantive right is typically the patentee's exclusive right to enforce their patents.^[20] However, under prevailing German case law, procedural actions taken by foreign courts are generally presumed to be lawful. Therefore, the applicant seeking an AASI must further establish that the foreign ASI unlawfully infringes upon their right to enforce the patent. German courts have held that anti-litigation injunctions and anti-enforcement injunctions illegitimately interfere with a patentee's exercise of its rights---rights that are absolute in nature. Such injunctions are thus deemed substantively unlawful. Moreover, ASIs are viewed as encroachments upon the German judiciary's autonomous authority to determine jurisdiction, thereby lacking legal legitimacy. Accordingly, in SEP-related cases, a party that can demonstrate that a foreign ASI disrupts their patent enforcement efforts may obtain an AASI under German law. Nonetheless, despite this evolution, German courts remain cautious about proactively issuing prohibitory or anti-enforcement injunctions, reflecting the deep-rooted norms of civil law adjudication. As previously noted, German courts justify AASIs primarily as a form of "defensive relief" akin to legitimate self-defense. As such, they refrain from proactively issuing AASIs unless a credible and imminent threat of foreign ASI interference is clearly established. For example, in the *GEVC v. Xiaomi* series of cases, the Düsseldorf Regional Court acknowledged the possibility of granting a "pre-emptive AASI,"^[21] but underscored that such relief must be supported by concrete evidence of an impending foreign ASI.

Courts in other civil law jurisdictions have adopted a similarly restrained posture. These positions demonstrate that, even amid the intensifying global ASI wars in SEP disputes, countries such as Germany continue to adhere to a legal philosophy that places greater emphasis on comity and sovereign judicial autonomy than their common law counterparts----an outlook consistent with the foundational values of civil law traditions.

2.4. China: ASIs based on the Behavioral Preservation Regime

In SEP ASIs disputes, China's position and institutional approach are relatively distinct. Similar to other civil law jurisdictions represented by Germany, China does not have a formal legal framework

for ASIs. However, unlike these jurisdictions, Chinese courts have demonstrated a notably more proactive stance by granting ASIs in SEP cases. Before ASIs in SEP litigation became prominent, Chinese courts had previously granted maritime ASIs under the regime of maritime compulsory measures, ordering parties not to pursue foreign proceedings for vessel arrest. In the SEP context, the institutional foundation for ASIs in China lies in the system of behavioral preservation. According to Article 103(1) of the Civil Procedure Law of the People's Republic of China: "In cases where a party's conduct or other factors may cause difficulty in enforcing a judgment or result in other damages, the people's court may, upon application by the opposing party, issue a ruling ... ordering the party to perform a certain act or prohibiting it from performing a certain act". The provision imposes no strict limitation on the content or scope of such orders, thereby enabling courts to employ it as a basis for granting ASIs.

Specifically, courts may issue behavioral preservation orders that prohibit a party from pursuing legal remedies in foreign jurisdictions. For instance, in the landmark case of *Huawei v. Conversant*, the Supreme People's Court of China held that Huawei's ASI application constituted a behavioral preservation request in nature and should be examined under that framework^[22]. In particular, similar to the U.S. approach, the Court outlined the following factors for consideration: the impact of the foreign judgment enforcement on the domestic litigation; the necessity of the measure; a balancing of interests between the applicant and respondent; and any potential harm to the public interest or international comity.

First, in evaluating the foreign judgment's impact on the Chinese proceeding, the Court considered the identity of the parties, the similarity of subject matter, and the effect of the respondent's request to enforce the foreign judgment. Second, regarding necessity, the Court found that denying Huawei's ASI request would cause irreparable harm to the applicant, making the injunction necessary. Third, the Court conducted a balancing test and concluded that temporarily suspending the foreign judgment's enforcement would result in relatively limited harm to the respondent and significantly less than the harm to Huawei. Therefore, the ASI was deemed reasonable. Finally, the Court addressed public interest and international comity, holding that the ASI did not undermine public interests nor interfere with the subsequent progress of foreign litigation, and that its impact on international comity remained within an acceptable scope. Since this case, Chinese courts have issued multiple ASIs in SEP disputes, generally adhering to the standards established in *Huawei v. Conversant*.

It is also worth noting that to ensure the enforceability of ASIs, Chinese courts have adopted the commonly used international mechanism of *astreinte*, or daily penalty fines^[23]. The Civil Procedure Law leaves room for flexibility in the application of behavioral preservation measures, thus allowing courts to impose daily penalties to enforce compliance with ASI orders. Unlike lump-sum contempt fines, daily penalties do not set a fixed total amount in advance but instead impose accumulating fines for each day the order is violated. This mechanism creates sustained pressure and serves as an effective deterrent against non-compliance.

In sum, Chinese courts have adopted a relatively proactive and affirmative stance in applying ASIs, following a review standard similar to the lenient U.S. approach. Judges enjoy considerable discretion in reviewing ASI applications and are inclined to grant them to protect parties' interests. However, unlike the U.S. courts, which examine whether the foreign proceeding is "vexatious or oppressive," Chinese courts primarily conduct a substantive harm-benefit comparison. In this regard, China's approach may be seen as even more assertive than that of common law jurisdictions, which has provoked considerable international response^[24].

3. THE FORMATION AND EVOLUTION OF SEP ASI DISPUTES FROM A CONSTRUCTIVIST PERSPECTIVE

As previously noted, a dynamic of "ASI warfare" has emerged in SEP litigation across jurisdictions. While national courts differ in their attitudes and tendencies regarding ASIs, none deny the strategic significance of this judicial tool in SEP-related disputes. Each has adopted its own approach to navigating the growing tension surrounding ASIs. Against this backdrop, constructivism----a theoretical paradigm primarily rooted in international relations----offers a compelling framework to analyze and explain the national interests and behaviors underlying the global ASI battles. For instance, when a Chinese court issues an ASI to block the enforcement of a foreign judgment, a rationalist might explain this action purely as a means to protect domestic firms or secure jurisdictional advantages. However, a constructivist approach would highlight how China's identity as an emerging technological power and its evolving expectations about judicial authority shape its willingness to assert procedural control internationally. In other words, the issuance of ASIs reflects not only strategic calculation but also deeper normative constructions of self-perception and institutional legitimacy.

Unlike classical realism or neoliberal institutionalism, constructivism posits that national interests are not preordained or fixed. Instead, they are socially constructed through interaction between agents (states) and structures. In this context, "structure" refers not merely to the distribution of material capabilities among states, but to the patterns of interaction that generate shared identities, norms, and institutions among actors. These interactions give rise to new mutually recognized ideas and values, which in turn shape international norms. These norms recursively influence the construction of national interests and ultimately guide state behavior. This section employs a constructivist lens to examine how ideas, identities, and norms shape national interests and influence state behavior in the context of the global ASI conflict. Specifically, it explores how states generate shared meanings and institutional expectations through interaction in SEP-related disputes, leading to the reconstruction of their identities and normative understandings of interest.

3.1. Static Structures Shaping National Interests and Behavioral Tendencies

Under the constructivist paradigm, national interests are not exogenously given, but are constituted by the actor's own beliefs about how to satisfy its identity needs. These beliefs----rather than material capabilities alone----serve as the proximate causes and direct motivations for state action.^[25] In the context of ASI disputes in SEP litigation, national interests are not only driven by present-day economic and technological considerations, but also deeply influenced by ideational factors such as a country's identity, legal traditions, and the international norms it embraces. These elements collectively shape the stance, strategy, and behavior of national courts in ASI disputes, thereby constructing the current landscape of global SEP litigation warfare. A closer analysis of national legal practices regarding ASIs reveals how identity, legal culture, and normative preferences mold state behavior. As previously analyzed, courts in different jurisdictions adopt divergent attitudes toward issuing ASIs. Broadly speaking, two distinct approaches emerge. The first is a cautious model, represented by the United Kingdom and continental European countries such as France and Germany. The second is a proactive model, exemplified by the United States and China. These practical differences are underpinned by divergent national identities and ideational commitments.

The United Kingdom, through decades of experience in cross-border adjudication, has cultivated a self-conscious identity as a global center for commercial dispute resolution. To sustain this position, the UK seeks to develop a litigation regime that is authoritative and attractive, using its own legal standards as benchmarks. Although intellectual property rights are inherently territorial, SEP holders and implementers often enter into global licensing arrangements covering multiple jurisdictions. If a court in one country claims the authority to determine global FRAND licensing rates, parties can resolve disputes in one forum at lower litigation cost----thereby increasing that forum's attractiveness.

This serves the UK's national interest. As such, British courts were the first to assert jurisdiction to set global FRAND rates. However, the UK's desire to maintain its judicial appeal has also engendered caution when it comes to issuing ASIs. Because the perceived legitimacy and enforceability of UK rulings depend on predictability and international cooperation, aggressive issuance of ASIs may provoke retaliatory responses such as AASIs, undermining both enforcement and credibility. Therefore, rather than acting as a partisan tool to serve domestic firms, the UK judiciary prefers to act as a "neutral arbiter," emphasizing the principle of international comity. Even as the "home" of ASIs, UK courts exhibit restraint, mindful not to undermine comity in pursuit of jurisdictional enforcement.

In contrast, civil law jurisdictions such as Germany exhibit a more categorical resistance to ASIs, often denying their legitimacy outright. From a constructivist perspective, this position is rooted in deeper ideational factors: legal tradition, judicial philosophy, and multilateralist values. Civil law systems emphasize systematic and determinate legal structures, where judges are seen as the "mouthpiece of the law," and judicial discretion is strictly confined.^[26] ASIs, originating from common law equity doctrines, rely heavily on discretionary judgments and procedural flexibility---features antithetical to civil law's commitment to legal certainty. Moreover, in the aftermath of World War II, many Western European states, particularly Germany, internalized a political culture centered on multilateralism and sovereign respect, cultivating an identity as "civilized nations" and "guardians of international order."^[27] These normative commitments have made civil law jurisdictions particularly wary of unilateral measures like ASIs, which are perceived as intrusive and antithetical to comity-based judicial interaction.

The proactive model, by contrast, is best represented by the United States and China. After the Cold War, the U.S. emerged as the sole global superpower, fostering a strong identity as both "world leader" and "technological pioneer." Preserving its leadership status and technological supremacy became central to its conception of national interest. Consequently, ASIs in SEP litigation serve as a strategic tool to protect U.S. firms and assert jurisdictional dominance. Simultaneously, the extraterritorial reach of U.S. law---backed by its hegemonic influence---has enabled the country to not only enact but also enforce long-arm legislation abroad.^[28] ASIs, in this context, are not merely procedural devices, but instruments of judicial hegemony, employed to advance U.S. policy objectives and suppress foreign competitors.^[29] This explains why American courts often disregard the constraints of international comity when issuing ASIs: they seek to secure litigation primacy rather than deference to foreign jurisdictions. As a result, the U.S. has become the most active jurisdiction in issuing ASIs in SEP disputes.

From a constructivist standpoint, China's adoption of ASIs reflects its dual identity as a legal learner and a people-centered judicial system. China has long emphasized institutional adaptation and legal learning, drawing selectively from foreign legal systems---including both civil and common law traditions---to meet emerging challenges. As early as the foundational years of its modern legal system, Chinese legal reformers advocated the study of "ancient and modern, domestic and foreign" laws, with the goal of "retaining their useful essence and discarding their toxic dross."^[30] Although China's legal framework is structurally more aligned with the civil law tradition, its courts have not hesitated to incorporate flexible equitable remedies like ASIs, especially when such adaptation meets domestic litigation needs. China's judiciary also stresses the principle of "people-oriented justice", which mandates responsiveness to litigants' practical needs. In the landmark *Huawei v. Conversant* case, the SPC's IP Tribunal characterized ASIs as a form of conduct preservation---a procedural remedy grounded in Article 100 of the PRC Civil Procedure Law. The court explicitly stated that issuing ASIs was essential to avoid forcing domestic parties to abandon Chinese litigation in the face of foreign ASIs, thereby justifying its adoption as a legitimate and necessary response. Through this lens, China's engagement with ASIs reflects both strategic adaptation to global judicial dynamics and a normative commitment to safeguarding litigants' access to domestic remedies. It exemplifies the

country's institutional learning capacity and its pursuit of national interests through tailored procedural innovation.

3.2. The Dynamic Co-construction of Ideas, Norms, and Rules in ASI Interactions

While static structures---such as national identity and legal tradition---shape a state's default posture, strategy, and behavioral tendencies in SEP-related anti-suit injunction (ASI) disputes, the dynamic evolution of these disputes reveals that national positions are not immutable. Through ongoing judicial interaction, states revise their stances and practices, co-constructing consensus and even reshaping the trajectory of international legal norms.

3.2.1. Ideational Reconstruction: Converging Western Positions and Double Standards

As previously discussed, identity plays a constitutive role in shaping national preferences and behavior in the context of ASIs. Yet identity does not only explain national divergence. In certain contexts, a shared sense of identity and ideational consensus across states may also foster coordinated responses. A telling example can be found in the unfolding Western reaction to China's growing use of ASIs in foreign-related SEP cases. On February 18, 2022, the European Union filed a request for consultations at the World Trade Organization (WTO), alleging that China's ASI practices in SEP disputes violated provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Following the EU's request, the United States, Japan, Canada, and other countries submitted third-party participation notices, asserting legal interests and expressing support for the EU's position. As of now, the dispute (WT/DS611) is pending before a WTO panel, with a report expected in the first quarter of 2025.^[31] Almost simultaneously, several U.S. lawmakers introduced the Defending American Courts Act (DACA), aimed at countering foreign ASIs in SEP disputes. The draft legislation seeks to deter ASI-seeking parties by restricting their ability to challenge patent validity or seek enhanced damages in U.S. courts.^[32] It is evident that both the WTO consultations and the DACA proposal specifically target the issuance of ASIs by Chinese courts in transnational SEP litigation. Regardless of their prior positions on ASIs, Western nations have now converged on a coordinated opposition to China's deployment of this judicial tool.

What is striking, however, is that China's ASI practice is hardly anomalous. In fact, U.S. courts have issued ASIs with even greater frequency and assertiveness in SEP litigation---including in landmark cases such as *Microsoft, Huawei v. Samsung*, and *Ericsson v. Samsung*---yet have not faced comparable international backlash. These U.S. ASIs have been widely accepted as part of prevailing transnational judicial practice. No WTO complaints were filed, nor were there formal judicial or diplomatic reprisals. This asymmetry suggests that the Western reaction to Chinese ASIs is less about the ASI instrument per se, and more about underlying identity structures and the conflicting interests they produce. Western states do not categorically reject ASIs; rather, they interpret the issuance of ASIs by Chinese courts as a challenge to the established global judicial order. As such, they have mobilized against China through increasingly coordinated legal and policy responses.

In this process, the internalization of shared identities and normative understandings plays a pivotal role. As Alexander Wendt famously noted, states do not act solely based on material facts but on their social interpretation of those facts: "British nuclear weapons are less threatening to the United States than North Korean ones because of who wields them."^[33] The present study argues that the West's convergence in ASI policy reflects this dynamic. The root of the conflict lies in the identity dissonance between China as a rising "latecomer" and Western countries as entrenched "incumbents." Historically, the West has enjoyed first-mover advantages in both technological leadership and institutional design. Western countries dominated global standard-setting organizations and built the international intellectual property regime to reflect their commercial interests and competitive advantages.^[34] For example, over 50% of SEP filings for GSM (Global System for Mobile Communications) technologies were submitted through the European Patent Office, with most patent holders being large European or American corporations.^[35] This dominance yielded substantial

commercial returns, fostering licensing-dependent companies such as Qualcomm, Ericsson, Nokia, and InterDigital—all of which are key players in SEP-related litigation and major stakeholders in ASI disputes. Likewise, Western courts have long acted as primary adjudicators in global IP disputes, with their rulings setting informal benchmarks across jurisdictions.

Yet this dominance is now under pressure. The rise of China—particularly in the 5G era—has reshaped the competitive landscape. Among the top ten 5G SEP holders, five are Chinese firms.^[36] Western countries no longer hold an uncontested lead. More significantly, China's willingness to issue ASIs—often through creative doctrinal adaptation and flexible procedural tools—has added new instruments to its "judicial toolbox." If these Chinese ASIs gain international acceptance as effective mechanisms for resolving SEP disputes, Chinese courts could emerge as preferred forums, displacing the dominance of Western jurisdictions. In this sense, the perceived threat is structural: China's ASIs are not merely inconvenient; they are interpreted as a challenge to the institutional hierarchy of global technology governance. Consequently, the Western response has been swift and multidimensional—coordinated WTO litigation, domestic legislative initiatives like DACA, judicial rhetoric, and policy synergies—all aimed at preserving Western dominance in global SEP adjudication. This indicates that the evolution of the ASI dispute is not a mere jurisdictional controversy, but a frontline conflict in the global contest for normative authority and institutional primacy. Western states, acting from an entrenched identity as "rule-makers" and "global stewards," view Chinese ASIs as normatively destabilizing and thus warranting systematic pushback.

3.2.2. Normative Transformation: The Erosion of International Comity

As previously noted, identity, norms, and national interests are not static constructs; rather, they are continuously shaped and reshaped through dynamic interaction. International comity, a foundational concept in private international law for reconciling sovereign conflicts and facilitating judicial cooperation, was historically intended to function as a normative constraint on unilateral judicial actions. However, in the context of the intensifying ASI battles within SEP disputes, the constraining role of comity has been visibly weakened, and its normative authority has been significantly undermined.

Traditionally, the principle of international comity has been viewed as a political extension of state sovereignty, encouraging mutual recognition of foreign laws and judgments where appropriate to serve both commercial certainty and judicial efficiency.^[37] In essence, comity demands mutual respect and goodwill among sovereign legal systems and the public authority of states.^[38] Classical frameworks, such as those developed by Huber, Story, and Dicey, offered relatively stable boundaries for the application of comity, requiring recognition of foreign judgments unless they contravene domestic public policy, due process, or are intended to circumvent local law.^[39] Yet as discussed earlier, the trajectory of ASI disputes in the SEP domain reveals a gradual transformation of comity from a binding international norm into a discretionary rhetorical device. In practice, some courts now treat comity as a secondary consideration, invoked only after determining that there is no "legitimate reason" to intervene in foreign proceedings. As a result, comity has been absorbed into the equitable discretion of courts, reduced to a "prudential reference" that may be bypassed when perceived to conflict with domestic priorities. More troublingly, in the reactive cycles of cross-border ASI and AASI litigation, courts have increasingly abandoned any presumption of reciprocal comity. The "ping-pong-style" escalation of ASI disputes has led courts to prioritize maintaining procedural control over the parties and protecting the effectiveness of domestic rulings, with little regard for potential foreign retaliation.

This shift is not merely doctrinal—it reflects a deeper transformation in how national identity and interest are interpreted. In the early stages of SEP litigation, comity maintained a residual degree of mutual consensus and reciprocal deference. But as ASI conflicts have escalated, comity's normative power as a shared constraint has steadily deteriorated. From anti-enforcement injunctions to ASIs,

AASIs, and even preemptive AASIs, the practice shows that comity has become increasingly incapable of containing judicial overreach in transnational disputes.

Nevertheless, it is important to recognize that international comity still retains latent normative potential as a product of long-standing legal practice and shared jurisprudential imagination. Across national court decisions----regardless of whether the ASI was ultimately granted----judges frequently devote significant portions of their reasoning to explaining why their decision does or does not violate comity. The divergence in outcomes thus arises not from the principle's irrelevance, but from varied factual findings and competing interpretations of what comity entails in a given case. This suggests that comity's role is not simply a legal technicality; rather, it is an ideational rule embedded within broader structures of national identity and interest contestation. In times of diminishing trust and growing reliance on self-help judicial strategies, comity inevitably loses its practical foundation. But conversely, if comity's design-limiting function can be reactivated in institutional design, it may again serve as a resource for rebuilding trust and mitigating identity-based confrontation. Amid the proliferation of ASI-related judicial conflicts, a move from normative erosion to reasoned reconstruction of comity is not only possible but jurisprudentially necessary. This reorientation represents a foundational step in crafting a normative response to the disorder surrounding SEP anti-suit injunctions.

3.2.3. Rule Crisis: The Diminishing Effectiveness of ASIs

In the interactive structure of ASI conflicts, the very conception of national interest is undergoing a significant transformation. Initially, anti-suit injunctions were perceived as powerful procedural tools capable of interrupting parallel foreign litigation, defending judicial sovereignty, and maintaining control over transnational proceedings. However, as more jurisdictions have added countermeasures like AASIs and even preemptive AASIs to their legal arsenals, the zero-sum escalation of the ASI "arms race" has severely undermined the practical efficacy of the ASI mechanism itself.

In early cases, ASIs did exhibit strong instrumental potential. A paradigmatic example was the ASI issued by the Supreme People's Court of China in *Huawei v. Conversant*, which successfully preserved Chinese jurisdiction over the dispute. The parties complied with the ASI, engaged in substantive commercial negotiations, and ultimately resolved their conflicts without protracted parallel proceedings. However, as ASIs became more widely used, their confrontational logic surfaced with increasing clarity. In *Xiaomi v. InterDigital*, for instance, courts in China, India, and Germany successively issued ASIs, AASIs, and other injunctive relief measures----many of which neutralized one another. Litigation stagnated, judicial resources were heavily consumed, and the dispute descended into procedural deadlock. The case illustrates how mutual escalation of ASIs has led to institutional gridlock, producing neither meaningful resolution nor efficiency. Today, when ASIs automatically trigger opposing injunctions in a tit-for-tat sequence, no single court can unilaterally dominate the course of SEP licensing disputes. The institutional dividends once promised by ASIs have become substantially diluted. On one hand, the issuance of AASIs by foreign courts deprives the original forum of effective procedural control. On the other, litigants are left with limited procedural space, hampering their ability to negotiate FRAND licenses or secure enforceable judgments. Even more troubling, repeated recourse to injunction-based countermeasures risks damaging a court's reputation for neutrality and its attractiveness as a litigation forum.

That said, the failure of ASIs to deliver unilateral control does not imply their total obsolescence. Without any judicial constraint on parallel proceedings, SEP litigation would likely devolve into rampant forum shopping, duplicative lawsuits, and enforcement inconsistencies. In the absence of a functioning coordination regime, measured, well-reasoned, and selectively granted ASIs still play a role in checking procedural manipulation and preserving the coherence of global jurisdictional order. In other words, the ASI's declining marginal utility does not render the tool illegitimate, but highlights the risks of strategic overuse and institutional drift. Courts must recognize that the over-politicization and aggressive deployment of ASIs often fail to generate institutional gains----and instead sow the

seeds of jurisdictional exhaustion and normative fragmentation. To retain relevance, the ASI regime must be reconceived as a subsidiary remedy, applied sparingly and under strict procedural safeguards. A recalibration of the ASI's institutional role----from an instrument of jurisdictional offense to one of measured procedural defense----would not only restore judicial credibility, but also open space for multilateral engagement and regulatory alignment. Such a conceptual shift is not merely a technical adjustment; it reflects the reconstruction of national interests and serves as a precondition for rational governance in the SEP litigation ecosystem.

4. IMPLICATIONS AND RESPONSES

As previously analyzed, the judicial conflicts surrounding SEP ASIs across jurisdictions do not stem merely from superficial institutional divergences. Rather, they are deeply rooted in ideational structures shaped by legal traditions, institutional trajectories, and identity constructions. The increasingly adversarial posture adopted by national courts in ASI disputes not only reflects their respective roles and technical interests within global governance, but also illustrates the erosion of normative foundations and the lack of shared consensus in judicial interactions over SEPs. Such structural tension, when continually compounded through iterative confrontation, has progressively pushed the judicial resolution of SEP disputes toward the brink of systemic dysfunction----characterized by heightened distrust, diminishing institutional returns, and procedural stagnation. Nevertheless, the present predicament does not render consensus entirely elusive. Courts across jurisdictions still share, to some extent, fundamental logics of judicial governance, legitimate concerns for sovereign control, and a common discursive framework of international comity. These minimum shared understandings provide a possible starting point for institutional reconstruction. This section, based on the constructivist paradigm, explores the potential institutional responses to the SEP-ASI disputes from the dimensions of rules, norms, and ideas.

4.1. At the Level of Rules: Coordinated and Restrained Application Regimes

As previously demonstrated, the ASI regime in SEP disputes has gradually deviated from its original institutional purpose as a procedural safeguard mechanism and has instead evolved into a judicial weapon for advancing national technological interests and jurisdictional control. This adversarial usage has severely undermined judicial trust and cooperation among national courts, resulting in diminishing marginal utility, escalating retaliatory measures, and procedural deadlock. ASIs, which were initially designed to maintain procedural stability in cases of parallel litigation or jurisdictional conflicts, have seen their normative legitimacy eroded as they have become tools of judicial aggression and policy projection. However, as the constructivist framework highlights, legal rules are not natural, pre-existing constraints, but governance instruments that states actively reconstruct through institutional interaction and normative evolution. Against the backdrop of the current crisis in the judicial handling of SEP-related ASIs, initiating rule-level institutional reform is not merely a technical adjustment. It is an inevitable response to evolving national interests shaped by international interaction----aimed at redefining the institutional role of ASIs within SEP disputes and responding to the practical demands of judicial governance.

If a state succeeds in constructing a reasonable ASI regime----characterized by clear review standards, restrained application logic, and credible judicial reasoning----it may not only extricate itself from the mire of ASI litigation but also produce "institutional spillover" effects, generating quasi-international public goods that may be referenced by other jurisdictions.^[40] The transmission and absorption of such rules are not driven by material incentives, but rather by ideational recognition of normative legitimacy. This makes them a potential foundation for building international judicial consensus and provides both the institutional basis and practical impetus for developing future coordination mechanisms. Hence, the first step in addressing the current ASI disorder should be pursued at the rule level: domestically, states must clarify the boundaries and review mechanisms for

ASI issuance to ensure judicial behavior remains within a controllable scope; internationally, they must promote a minimum procedural coordination framework to prevent adversarial escalation and to reestablish order and trust in transnational judicial engagement.

Specifically, due to pervasive ambiguity in applicable rules, heightened risks of abuse, and prominent legitimacy concerns, ASIs in the SEP context are now facing acute functional decline and strong countermeasures in several jurisdictions. Institutional recalibration is thus no longer optional. Take China, for example: in recent years, Chinese courts have proactively issued ASIs in several transnational SEP disputes, initially achieving certain institutional objectives. However, these rulings have also triggered WTO dispute settlement proceedings, retaliatory anti-ASI orders from foreign courts, and targeted legislative responses abroad---placing the long-term sustainability of the mechanism under substantive threat. This situation demonstrates that, within today's high-stakes structure of judicial interaction, no state can continue to rely solely on the discretionary restraint of individual judges. Rather, the establishment of internal institutional boundaries and legitimacy frameworks is essential to provide a stable foundation for judicial behavior.

On the implementation level, China should, within the existing framework for interim measures, construct a more restrained ASI regime by clarifying applicable types, refining substantive criteria, and enhancing legitimacy review. First, in terms of applicable types, courts should, in principle, refrain from issuing anti-litigation injunctions and instead limit ASIs to anti-enforcement injunctions and AASIs. The former targets attempts to enforce foreign judgments; the latter operates as a procedural response to ASIs issued by other jurisdictions. Compared to anti-litigation injunctions, both forms entail lower degrees of extraterritorial intervention and less controversy regarding their legitimacy, making them more suitable for maintaining judicial restraint amid intensifying SEP-related ASI disputes.^[41] Second, even anti-enforcement injunctions should adhere to a principle of "manifest necessity"---that is, they should be issued only when the foreign court's decision would seriously obstruct the domestic court's proceedings, impair the fairness of adjudication, or inflict irreparable harm on the applicant's procedural rights.^[42] This would prevent ASIs from being misused as a vehicle for institutional confrontation. Third, the legal elements constituting ASI eligibility should be clearly articulated, including---but not limited to---whether the foreign proceedings constitute procedural oppression, whether they interfere with domestic judicial order, and whether alternative coordination pathways are available. These elements should be accompanied by structured reasoning requirements in the court's decision, thereby ensuring consistency in normative logic and external comprehensibility.

Based on the foregoing, a restrained national ASI regime with clearly defined boundaries and rigorous review elements may not only reinforce China's legitimacy position in navigating the global ASI conflict, but also---by virtue of its normative clarity and institutional moderation---possess the potential to spill over as an international public good. In light of the current vacuum in international coordination mechanisms and the erosion of consensus-generation platforms, the normative expressions and technical pathways of such domestic rules can function as institutional public goods in the governance of judicial systems---delivered indirectly through value recognition and institutional emulation. For example, the decision by the Düsseldorf Higher Regional Court in Germany to overturn the lower court's ruling and reject InterDigital's request for a preemptive anti-ASI in a SEP case was recognized by Chinese judges as a "rational return" to procedural moderation.^[43]

To address the escalating procedural confrontation and erosion of institutional trust caused by ASIs in the judicial resolution of SEP disputes, it is essential not only to refine domestic review standards and maintain judicial restraint, but also to develop broader mechanisms of judicial coordination. The repeated emergence of "ping-pong"-style jurisdictional conflicts in SEP-related ASI disputes across multiple jurisdictions reveals a critical lack of even minimal procedural coordination mechanisms tailored to such cases. In the absence of external coordination constraints, courts may be drawn into

intensified patterns of judicial expansion and defensive posturing, thereby exacerbating cross-border tensions.

In this context, there is an urgent need to build a foundational consensus grounded in mutual respect for judicial sovereignty as a means to de-escalate procedural conflict. The core of such a coordination mechanism does not lie in unifying adjudicative standards or compelling the transfer of jurisdiction, but rather in providing minimal judicial self-restraint principles and cross-border channels of procedural communication. The institutional principles of such a mechanism should include restraint, reciprocity, and embeddedness, thereby ensuring that the mechanism preserves national judicial legitimacy while retaining a minimum level of operational feasibility. Such a framework could be promoted through soft law instruments at the multilateral level---for example, by WIPO, the WTO, or regional standard-setting bodies issuing official guidelines on transnational judicial coordination. Alternatively, procedural coordination clauses could be embedded within bilateral or multilateral jurisdiction agreements or judgment recognition treaties, enabling a stepwise progression in institutional design.

A more practical approach may also emerge through inter-court dialogues and rule emulation mechanisms. As previously noted, the international contestation over ASIs could be alleviated through judicial engagement in rule-based dialogue. The underlying reasoning structures in court decisions can themselves serve as semantic units for regulatory alignment. Through cross-case imitation, institutional referencing, and procedural alignment, courts across jurisdictions may gradually converge toward a shared understanding of "soft law order" in ASI adjudication---thus avoiding a zero-sum game over rule dominance.^[44]

4.2. At the Level of Norms: The Normative Restoration of International Comity

As previously discussed, the principle of international comity in SEP-related ASI disputes has gradually deteriorated from a consensual international norm aimed at reconciling judicial conflict into a discretionary rhetorical device that may be bypassed at will. In the structural shift from trust-based institutional coordination to confrontational judicial expansion, courts no longer apply the principle of comity based on broad institutional recognition but instead deploy it as a strategic tool to reinforce national procedural control and project legal authority abroad. As a result, comity's normative legitimacy and binding effect have been significantly weakened.

However, consistent with the constructivist framework, norms are not fixed material structures, but ideational structures continually constructed and reconstructed through state interaction and practice. Though international comity has weakened in practice, its normative vitality and theoretical foundations remain intact. Indeed, it may re-emerge as a form of "basic consensus" amid the judicial antagonism characterizing the ASI battlefield.

First, comity is a norm with deep jurisprudential and historical roots. From Huber's three principles to Story's three principles and Dicey's six principles, comity has long served as a foundational principle in modern private international law, emphasizing sovereign respect, procedural restraint, and judicial modesty.^[45] Even in the current adversarial context of SEP-related ASIs, civil law jurisdictions such as Germany continue to uphold international comity and national judicial sovereignty, often rejecting the legitimacy of ASIs altogether. This normative persistence indicates that international comity still retains robust potential as a structural element of global judicial interaction. Second, the regulatory function of comity remains effective in a wide array of cross-border civil and commercial disputes outside the SEP context. In maritime, contractual, and personality rights disputes, for instance, comity continues to constrain judicial overreach and helps maintain the baseline order of transnational litigation.^[46] This suggests that the normative capacity of comity as a cornerstone of cross-border judicial cooperation has not been entirely lost. Third, as previously noted, even within the highly adversarial SEP litigation context, the principle of comity remains an indispensable element of judicial reasoning. Courts often justify the issuance of ASIs by

arguing that their decisions "do not violate" international comity, even when the principle lacks substantive limiting effect. This rhetorical persistence reflects the ongoing role of comity as a normative foundation in judicial legitimacy construction---offering a semantic anchor for consensus reconstruction and normative recalibration.^[47]

Furthermore, norms are not exogenous constraints that exist a priori; rather, they are ideational orders continuously shaped, internalized, and rearticulated through state behavior and interaction. The weakening of comity reflects not only the intensification of ASI disputes and the erosion of normative consensus but also reveals the very conceptual lever through which these problems may be addressed. Promoting the "rational return" of comity does not entail reinstating it as a rigid judicial constraint. Instead, it entails reestablishing its function as a "basic consensus norm" within structures of judicial discretion, reconstructing its normative logic toward operational usability, and facilitating a normative progression from rule-based restraint to comity-based rationality.

Concretely, the rational return of comity should follow a synergistic pathway that links rules and norms---rebuilding ideational recognition of comity through restrained domestic judicial practices while generating new institutional expectations through international interaction. First, courts should standardize the reasoning behind ASIs and proceduralize the elements of review to ensure that references to comity are not invoked or dismissed abstractly. This would help restore comity's discursive constraint. Second, states may explore procedural doctrines such as "prior request obligations" or "presumptions of judicial sovereignty" to transform comity from a hollow declaration into a substantively enforceable check on judicial conduct.^[48] Third, states should embed the normative evaluation of comity into international judicial coordination mechanisms---enhancing judicial foreseeability and acceptability across borders and establishing comity as the bedrock of expectation management in transnational litigation.^[49]

4.3. At the Level of Ideas: Identity Consciousness and the Reconstruction of Interactional Expectations

As previously analyzed, the ongoing judicial conflicts in SEP-related ASI disputes reflect not merely clashes over procedural rules and legal norms but rather a deeper rupture in national identity recognition and interactional expectation systems. The coordinated stance formed by Western states around "discursive legitimacy" involves more than simply applying a double standard to emerging economies like China. It also operationalizes legitimacy distribution through normative output and justification structures -- embedding identity into the chain of norm diffusion and institutional authority. Against this backdrop, the international contestation over ASIs has evolved into an "interwoven identity confrontation," wherein each procedural decision by a national court inevitably reflects its self-perception and anticipated role in the international order.

From a constructivist perspective, national identity is not a static attribute but is continually constructed through interaction with international structures. Likewise, national interests are not mere aggregates of material preferences but are expressions of identity itself.^[50] Accordingly, responses at the ideational level do not entail rigid adherence to predetermined identities, but rather a proactive redefinition of "the role one ought to play in a normative conflict," thereby reconstructing interactional expectations within international legal structures. These interactional expectations are not unilateral norm internalizations or purely strategic calculations. Rather, they are jointly constructed anticipations of legitimacy ---- what roles and behaviors are intelligible, sustainable, and acceptable within the institutional imagination of both the self and the other.

Specifically, in the context of multilateral judicial contestation over SEP-related ASIs, the institutional dilemmas faced by emerging powers such as China are not limited to the substance of legal norms or technical rules, but rather implicate crises of legitimacy and identity recognition. For instance, when China's issuance of ASIs triggers WTO dispute settlement proceedings and reciprocal legal measures, while U.S. ASIs have historically gone unchallenged, this reflects a deeper cleavage

in normative perception between "institutional exporters" and "institutional reformers." If this asymmetry persists, it will not only erode the space for institutional negotiation but also risk transforming international legal order into a mechanism for identity exclusion.^[51]

Nonetheless, the constructivist lens reveals that identity conflict is not structurally inevitable. States may, through constructive practice, generate new self-understandings and institutional expectations. In the current context of fragmented legal orders surrounding ASIs, the ideational response must center on reconstructing a framework of interactional legitimacy -- a normative environment in which legal rules are perceived as coherent, intelligible, and mutually recognizable. This reconstruction does not aim to displace others' norms, but rather to recalibrate one's own legal behavior----through rule moderation, discursive transparency, and legitimacy awareness----to rebuild the interpretive framework through which others evaluate domestic judicial actions.

Therefore, identity consciousness means the active development of a legitimacy-based explanatory framework for institutional behavior. National courts, when designing domestic rules for ASIs, must incorporate external dialogicity into their reasoning---not merely addressing domestic procedural fairness, but also anticipating and engaging with foreign courts' reasonable expectations concerning comity, sovereignty, and judicial restraint. Likewise, states should enhance external transparency through judgment publication, legal interpretation, and international fora, thus narrowing ideational gaps, reducing behavioral misreadings, and promoting identity negotiation in place of institutional antagonism.^[52]

Furthermore, the construction of interactional expectations requires not only ideational work but also institutional articulation. Emerging economies like China may explore the development of a multilateral reference list or promote the drafting of a procedural consensus blueprint for cross-border technology disputes, using legal texts to communicate their identity positioning and institutional vision. Such initiatives would enable these states to shift from being reactive actors to proactive norm entrepreneurs and contributors of institutional public goods----thereby enhancing their discursive presence and normative affinity in international legal governance.

In sum, within the institutional turbulence of SEP-related ASIs, technical rule repair and normative coordination alone cannot resolve the root identity antagonism. Only through identity self-reflection and the reconstruction of institutional expectations can states accumulate the interactional foundation necessary to move beyond zero-sum legal confrontation. This is not only a conceptual prerequisite for restoring order to ASI practices but also an aspirational direction for cultivating a new, collaborative architecture of international law.

5. CONCLUSION

This article, grounded in the theoretical paradigm of constructivism, provides a systematic analysis of the institutional evolution and governance dilemmas arising from the current surge in SEP-related ASI disputes, structured around three analytical dimensions: rules, norms, and ideas. The article contends that ASIs---originally intended as procedural safeguards to coordinate overlapping transnational litigation---are increasingly weaponized by states in the context of technological governance. This strategic instrumentalization of ASIs has not only led to the erosion of judicial trust and diminishing institutional returns but has also exposed deeper fractures in global judicial consensus and intensified identity-based antagonisms within international legal structures. To address the institutional crisis, this paper proposes a tiered constructivist response. At the rule level, states must recalibrate domestic ASI mechanisms to ensure procedural discipline and avoid escalation. At the normative level, the principle of international comity should be revitalized as a shared constraint on judicial overreach. At the ideational level, states must engage in identity reflection and reconstruct interactional expectations to rebuild trust and legitimacy in transnational judicial governance.

However, the development of ASI practices in the SEP context is not merely a matter of technical legal design—it reflects a broader value choice and normative trajectory. At present, global multilateralism faces mounting pressures. Trends such as technological protectionism, institutional unilateralism, and even judicial weaponization are gaining momentum. The ASI disputes over SEPs serve as a microcosm of this larger dynamic, revealing the complex entanglement of state interests, technological authority, and institutional identity. Against this backdrop, international law must not retreat. Rather, it must reassert its normative mission of coordinating pluralism and co-constructing order. From a constructivist perspective, international law is not merely a regulatory mechanism for managing power relations among states. It should also serve as a platform for ideational interaction and the accumulation of institutional trust. Future institutional governance must be grounded in multilateral consensus and identity coordination. It must seek to revitalize normative dialogue and institutional cooperation beyond doctrinal formalism or unilateral assertion. Only in this way can we avoid slipping into a "Dark Forest" where every rule becomes a weapon in the absence of mutual trust. Instead, we must work toward restoring a global judicial order based on rationality and co-governance.^[53]

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- [51] See Heli Peng, The Impact of Identity on the U.S. Vision of International Law: A Constructivist Perspective, Modern L. Sci., No. 1, at 84 (2021); see also Lei Zhao, Norm Evolution and Value Standards: China's Practice in Shaping International Norms, Int'l Forum, No. 6, at 25 (2022).
- [52] See Yang Zhao, Actors, Structure and Interaction in National Identity Construction: A Study of China's Participation in the International System, Int'l Pol. Stud., No. 5, at 58 (2020); see also Mengmeng Huang, The Changing Role of German Foreign Policy: From Civilian Power to Constructive Power?, Eur. Stud., No. 2, at 79 (2023).
- [53] See Cixin Liu, *The Dark Forest* (Joel Martinsen trans., Tor Books 2015).