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A Rules-based Order in the Indo-Pacific

A View from Jakarta

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In recent years, there has been a lot of talk about the importance of ensuring a rules-based international order in the Indo-Pacific region. The increasing use of the “Indo-Pacific” terminology to replace the more familiar “Asia-Pacific” has been promoted by the United States, Japan, India, Australia, and Indonesia among others in recognition of the integration of the Indian and Pacific Oceans as a single geostrategic theater and the growing importance of the maritime domain. Various initiatives proposed

by different countries to promote a cooperative framework in the Indo-Pacific, such as a “Free and Open Indo-Pacific” (FOIP) by Japan and the United States and the “ASEAN Outlook on the Indo-Pacific” by the Association of Southeast Asian Nations (ASEAN), each stress the importance of adherence to international laws and a rules-based international order. On the one hand, this emphasis on a rules-based international order could be seen as nothing out of the ordinary, since naturally all regional and international initiatives would and should be based on commonly accepted international conventions and laws that regulate international relations. On the other hand, however, it also reflects the growing concerns that a rules-based international order in the Indo-Pacific is being threatened by certain events and actions.

The current rules-based international order is understood as a broad architecture of global governance which has developed since the end of World War II.¹ This rules-based international order is centered on multilateral organizations, with the United Nations (UN) as its primary custodian; a set of universal norms, values and principles; and international laws all designed to maintain international peace, prevent conflicts, and promote common prosperity. In an inherently anarchical international

system where nation-states tend to maximize their respective power and compete with each other to gain relative advantage, a rules-based international order is aimed at constraining power and curbing the illegitimate use of power. The UN Security Council has the ultimate, and in the eyes of most states, the only legitimate authority to enforce compliance to the rules-based international order by punishing violations of the principles of the UN Charter and other international laws. As a complement to the UN system, regional organizations have played important roles in acting as early warning systems, and in promoting regional cooperation that help maintain peace and stability in their immediate neighborhoods.

It must be admitted that a rules-based international order has remained more of an aspiration than a reality. Since the establishment of the UN in 1948, world politics was first dominated by the Cold War between two opposing ideological blocs led by the United States and the Soviet Union respectively (1948-1990), while in the post-Cold War period there has been a proliferation of interstate and intrastate conflicts. Great power competition has made a rules-based international order difficult to achieve, as adherence to international laws

has often been subjected to the vested interests and military might of major powers. In Southeast Asia, international laws could not protect the sovereignty and territorial integrity of regional states, as major powers used the former as proxies in the Cold War. At the multilateral level, the international community has often found it difficult to take collective actions to maintain a rules-based international order as the veto-wielding powers on the UN Security Council, particularly the United States on the one hand, and China and Russia on the other, have taken opposite positions in dealing with international crises and supported different sides in conflicts. Moreover, unilateral actions carried out by major powers also often undermine the multilateral system underpinning the rules-based international order.

The Indo-Pacific is a vast and diverse region with many security flash points, such as the India-China border dispute, the India-Pakistan conflict over Kashmir, North Korea's nuclear threat, the Taiwan issue, and the East China Sea and South China Sea territorial disputes. At the same time, there are also myriad nontraditional threats to security such as transnational crimes carried out by nonstate actors including

terrorism, people-smuggling, drug-trafficking, and illegal fishing. Despite all these traditional and non-traditional security threats, however, a rules-based international order has overall prevailed in the Indo-Pacific region. This region has become a dynamic center of economic growth, made possible by the existence of relative regional peace and stability which has enabled countries to devote their scarce resources to more productive uses and to engage in international trade, investment, tourism and other economic activities. The relations between peace and development are shown to be inextricably linked. In East Asia since the 1979, there have been significant reductions in deaths from interstate conflicts as countries prioritized economic development as the primary strategy for achieving their national objectives, resulting in the so-called “developmental peace.”²

While many intractable disputes remain unresolved, regional states have for the most part acted with restraint to prevent open conflicts and respect international laws, while devoting their energies to pursue economic development and improve the welfare of their citizens. ASEAN has succeeded in developing norms, values, principles, and promoting ever widening and

deepening regional cooperation that has transformed the formerly conflict-ridden Southeast Asian region into a security community where wars between the member states are becoming unthinkable.³ The ASEAN Treaty of Amity and Cooperation (TAC) in Southeast Asia has played an important role as a regional code conduct which stresses the importance of adherence to international laws, peaceful settlements of disputes, and the rejection of the use or threat of use of force in resolving conflicts. ASEAN has also tried to promote the principles of the TAC to other countries and, in fact, made accession to the TAC as one of the conditions for the dialogue partners to be accepted in the ASEAN-driven East Asia Summit, now comprising the 10 ASEAN member states, Australia, China, India, Japan, New Zealand, South Korea, the United States, and Russia.

In the past few years, however, the rules-based international order has come under greater challenge due to the intensifying rivalry between the China and the United States - the ascending and incumbent superpower, respectively - and China’s increasingly assertive policy in the East and South China Seas to enforce its territorial claims. While the 1982 United Nations Convention on Law of the Sea

(UNCLOS) has provided the legal basis for maritime governance, particularly the extent of waters and continental shelves that come under the sovereignty and jurisdiction of littoral states, it has also engendered new disputes due to overlapping claims between countries separated by narrow seas. Several ASEAN countries have not fully demarcated their maritime boundaries, but they accept the 1982 UNCLOS without reserve, carrying out drawn-out bilateral negotiations to achieve mutually satisfactory agreements, and in certain cases submitting their disputes to the International Court of Justice (ICJ) and accepting the Court's decisions. For instance, Malaysia accepted the ICJ's decision to award the disputed island Pedra Blanca to Singapore in 2008, while Indonesia accepted the ICJ's ruling which favored Malaysia over the disputed islands Sipadan and Ligitan in 2002.

Based on UNCLOS, the Spratly Islands in the South China Sea are claimed in parts by four ASEAN countries (Brunei, Malaysia, the Philippines, and Vietnam) whose claims do not overlap, and by Taiwan. China, on the other hand, claims the entirety of the South China Sea, based on historical and traditional rights not recognized by UNCLOS, which has become the

major focus of contention in the area. Although Indonesia is not a claimant in the Spratlys, China's so-called "nine-dash line" impinges on Indonesia's Exclusive Economic Zone (EEZ) in the North Natuna Sea. While relations between China and ASEAN countries have become increasingly close, and both sides try to manage conflicts in the South China Sea through the nonbinding 2002 Declaration of the Conduct of Parties in the South China Sea (DOC) and are currently negotiating a binding Code of Conduct (COC), China has reclaimed and militarized islands while its navy and coast guards enforce China's claims through displays of force. China has also refused to recognize the Permanent Court of Arbitration (PCA) ruling of 2016 which affirmed the Philippines rights to its claims in the Spratlys based on the 1982 UNCLOS. Although it has ratified the 1982 UNCLOS, China clearly does not feel bound by it in pursuing its claim in the South China Sea, while its growing economic and military prowess has given China the confidence to flout the UNCLOS openly. The United States, while it still has not ratified the 1982 UNCLOS, has played a leading role in promoting the concept of a rules-based international order in the Indo-Pacific, joining others in adopting the

language of a FOIP strategy, such as that proposed by President Trump in 2017. The United States is particularly concerned about disruptions to the freedom of navigations and overflights in the disputed areas in the East and South China Seas due to China's military actions. Under the Trump administration, the United States increased the frequency of Freedom of Navigation Operations (FONOP) in the South China Sea and revitalized the Quadrilateral Security Dialogue (the Quad) between the United States, Japan, India, and Australia as a deterrent to China's military actions. China undoubtedly regards the emphasis on a rules-based international order propounded by the United States and the other Quad members as a strategy to contain China, thus perceiving this concept to be exclusive rather than inclusive.

Southeast Asia as the frontline in the US-China rivalry has no desire to see the region being forced to take side and divided again as had happened during the Cold War. Both China and the United States are important partners of ASEAN and its member states. While most tacitly accept that the US initiatives in promoting a rules-based order in the Indo-Pacific can play an important role in deterring China's hegemonic ambitions in

the region, Southeast Asian countries do not wish to see the rivalry between the existing superpowers escalate and destabilize the region as a whole, which could disrupt the peace, stability and economic development that the ASEAN region has enjoyed. ASEAN has played an important role as the primary regional convenor in bringing together all the main stakeholders in the Indo-Pacific region into ASEAN-led regional mechanisms such as the ASEAN Regional Forum (ARF) and the EAS. In 2019, ASEAN launched the *ASEAN Outlook on the Indo-Pacific*, which emphasized openness, transparency, inclusiveness, and adherence to international laws, including the UN Charter and the UNCLOS, and the principle of ASEAN centrality.⁴ Faced with increasing major power competitions, ASEAN has tried to put itself as a bridge to promote dialogues and cooperation within an inclusive regional architecture to build trust, foster preventive diplomacy, and resolve conflicts through peaceful means, that in turn may contribute to a more inclusive rules-based order in the Indo-Pacific region. ■

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Notes

¹ Ben Scott, Madeleine Nyst, Sam Roggeven, *Australia's Security and The Rules-Based Order. Tracking a Decade of Policy Institution*, <https://interactives.lowyinstitute.org/>.

² Stein Tønnesson, "Explaining East Asia's Developmental Peace: The Dividends of Economic Growth", *Global Asia* 10, no. 4 (December 2015), <https://www.globalasia.org/>.

³ Kishore Mahbubani and Jeffery Sng, *The ASEAN Miracle. A Catalyst for Peace* (Singapore: NUS Press, 2017).

⁴ Dewi Fortuna Anwar, "Indonesia and the ASEAN Outlook on the Indo-Pacific," *International Affairs* 96, no. 1 (2020): 111–29.

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