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Challenges in Institutionalizing Rules-based Order in the Indo-Pacific

Defending or Reordering the Status Quo

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The rules-based international order led by the West is undergoing a crisis, with post-World War II (“liberal international”) institutions seeming particularly vulnerable to the relative decline of the United States. Meanwhile, the tectonic shift of power from the

West to Asia has intensified the geopolitical and strategic relevance of the Indo-Pacific,¹ with China’s challenge to US leadership (alongside the rise of regional middle powers) amplifying existing criticisms of the international rules-based order as inadequate or biased. Indeed, what is happening in the Indo-Pacific region can be considered a microcosm of global politics, underscoring the need for a reinforced yet reshaped rules-based order.

The Importance of Rules in the Indo-Pacific

Rules-based order is a “system”—the basic principles and standards of conduct in a “society of states” where members share a “sense of common interest,” rules and institutions, and seek to facilitate these rules effectively in the form of international organizations, treaties, and law.² In other words, rules-based order is a shared commitment by states based on consensus. The rules-based international order formulated under the United Nations and the Bretton Woods institutions seven decades ago brought much prosperity and order. In Asia, the West assumed that as China opened up to the world, it would slowly embrace liberal and democratic values. However, this turned out not to be the case: China has kept its core

traditional values intact despite embracing capitalism, and now represents a challenge to America's vision of regional and global order.³ Dissensus seems to have replaced consensus: China's exponential rise, a growing US-China rivalry, widespread unwillingness or inability to enforce rules, the waning of US leadership - all these factors and more have the rules-based order to the test. In such a volatile environment, sustaining a rules-based Indo-Pacific has become critical to attaining a rules-based globally.⁴

Paradoxically, the United States - the key proponent of rules-based order—retreated from multilateralism under the Trump administration,⁵ leaving regional partners on tenterhooks. Meanwhile, the Chinese Communist Party under President Xi Jinping became more nationalistic, assertive, and expansionist. The signal that China sends out concerning power projection is perplexing, at times displaying “Wolf Warrior diplomacy”⁶ while, on other occasions, appearing to operate within the existing rules-based order. The result is that most maritime nations in the littorals of the Indo-Pacific harbor at least some apprehension about China's assertiveness.

Malcolm Jorgensen has observed that, rather than overturning

existing international laws, China has preferred to “fragment” the rules, furthering its own “security and strategic interest” by slicing out a new “geolegal” space. What is more, some small states are ready to concede to China because of the incentives and inducements that Beijing provides.⁷ In a similar vein, Vijay Gokhale opines that China (perhaps the highest beneficiary of economic globalization and Western-led multilateral institutions) need not overthrow the global order when it can simply take over the order instead.⁸ From this view, reinventing a new system of order or rules would not be necessary for China to serve its self-interest.⁹ As Fu Ying has argued, China's actions are “complementary to the existing international system,” helping to facilitate a “gradual evolution into a fairer and more inclusive structure.”¹⁰ It is to be expected, after all, that emerging powers will seek to attain “greater voice and weight” within the rules-based system.¹¹

Seen from another lens, however, China's ambitions have ideological underpinnings and are directed toward changing the status quo. Consider, for example, the establishment of the Asian Investment and Infrastructure Bank and the Belt and Road Initiative (BRI). When a country accumulates

enough wealth and influence, it eventually desires political clout commensurate with its economic power. In China's case, its attempts to expand political and economic influence have attracted criticisms; the BRI faced a backlash for "debt-trapping" poorer nations as a new form of colonialism with exploitative practices, for example.¹²

The overall picture is that China observes the existing rules-based order where it suits the Chinese national interest but will seek to change rules and laws that do not align with its needs and wants. There is a risk that smaller states will accede to China's revisionism out of fear of punishment or desire for material benefits (inducements), which result in a "snowball" effect: Beijing would become emboldened, its ambitions to alter the status quo might expand, and other states would be put in the position of choosing whether to validate China's demands or put up a costly fight to preserve the existing order.

Institutionalizing Rules-Based Order in Indo-Pacific

In the Indo-Pacific megaregion, charting out rules-based order is a colossal task. The region is multi-layered with several major stakeholders at play, such as ASEAN, at

geographic the core of the Indo-Pacific region; the "Quad" of Australia, India, Japan, and the United States; and regional powers like South Korea. The viability of the Free and open Indo-Pacific (FOIP) strategy in upholding rules-based order rests on how (or whether) regional stakeholders like ASEAN can fully embrace the FIOP strategy put forward by the Quad countries.¹³ There is reason to believe that a broad agreement can be found, for despite some competing agendas and diversity in how the "Indo-Pacific" narrative is being interpreted, all of the aforementioned regional stakeholders are confronted with the same China threat and, as such, seem to be advocating a rules-based order in response.

In the current international context, the concept of a global "hegemon" has become anachronistic.¹⁴ There are several stakeholders and middle powers that now help to shape international politics, which is quite unlike the earlier Cold War-era of bipolarity. Even the concept of the "Indo-Pacific" is at a nascent stage: "the litmus test for the Indo-Pacific [...] is whether it can be institutionalized; that is, whether states are willing to develop meaningful institution-building mechanisms on the basis of Indo-Pacific

concept.”¹⁵

The fact is, there is no monolithic consensus on the rules-based order; it is entirely subject to interpretation. Rules often work on the terms and dictates of the majority and the powerful, given that, at some point, all great powers flout the rules whenever such rules do not align with their interest—China’s disregard for the United Nations Convention on the Law of the Sea (UNCLOS) ruling in 2016, for example. If Louis Henkin’s famous statement is true that “almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time,” it is partly because powerful states that fail to adhere to rules and obligations are often successful at justifying their violations.¹⁶

If the existing norms are compromised, does rules-based order mean anything? According to Ian Hall and Michael Heazle, “the rules-based order is [...] neither fixed nor uncontested.”¹⁷ States follow the rules because one way or another, it benefits them - or, at least, does not compromise their interests. Besides, rules create an “element of stability and predictability.”¹⁸ For Ben Scott, “rules matter even when they are violated.” Along similar lines, Greg Raymond maintains that it is an

overstatement to assume that rules are made purely at the whims of great powers, as all international rules need some “consensus and legitimacy.” Even concerted attempts by small “like-minded states” can go a long way toward achieving reform.¹⁹ And of course, great powers face at least some reputational costs whenever they flout rules. In sum, rules are better than no rules despite the shortcomings of multilateral international organization.

In the evolving region of the Indo-Pacific, the need for new rules is evident in areas such as climate change, cybersecurity, and non-traditional security threats such as terrorism, infectious disease pandemics, and more.²⁰ Along with the challenges brought by globalization, all countries big and small face common challenges, which makes inclusive collaborative efforts necessary. It is an opportune moment to see the relevance of the existing rules and then reshape and reorder those rules to cater to the current exigencies.

Conclusion

The feasibility of a rules-based order in the Indo-Pacific depends on the degree to which regional states can come up with a concerted response. Rules and norms are indispensable, as is compliance with those rules and norms.

Multipolarity with shared commitment to multilateralism has the potential to make the Indo-Pacific peaceful, predictable, and rules-oriented. The task of the new US President Joe Biden is to undo Trump's legacy, which undermined the cause of a rules-based order in the Indo-Pacific; salvage US leadership and influence; and resuscitate multilateralism for the common good. At the same time, it is necessary for other powers to engage both the United States and

China to prevent the Indo-Pacific region from becoming a theater of the "new cold war," and to ensure that freedom and openness across the region are enough to abate the risk of coercion and instability. ■

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Notes

1 The Indo-Pacific is a regional construct that includes Northeast Asia, the South China Sea, and the extensive sea lines of communication in the Indian and Pacific Oceans. The geographical realm of Indo-Pacific region represents over 50 percent of global GDP and population.

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4 Harsh Vardhan Shringla, "More and more countries now share India's vision for the region," *Indian Express*, 7 November 2020, <https://indianexpress.com/>.

5 Trump has an apparent aversion to and disdain for the United Nations, World Trade Organization, and NATO. He withdrew from the Paris Climate Accord the Trans-Pacific Partnership, and Iran Nuclear Deal. See: Alex Pascal, "Against Washington's 'Great Power' Obsession," 23 September 2019, <https://www.theatlantic.com/>.

6 Zhiqun Zhu, "Interpreting China's 'Wolf-Warrior Diplomacy,'" *The Diplomat*, 15 May 2020, <https://thediplomat.com/>.

7 Malcolm Jorgensen, "International law cannot save the rules-based order," *Lowy Institute*, 18 December 2018, <https://www.lowyinstitute.org/>.

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9 Greg Raymond, Hitoshi Nasu, See Seng Tan, and Rob McLaughlin, "Prospects for the Rules-Based Global Order," ANU College of Asia & the Pacific, June 2017, <http://bellschool.anu.edu.au/>.

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12 Caitlin Byrne, "Securing the 'Rules-Based Order' in the Indo-Pacific," *Security Challenges* 16, no. 3 (2020): 10–15.

13 Ryosuke Hanada, "ASEAN's Role in the Indo-Pacific: Rules-Based Order and Regional Integrity" in *Mind the Gap: National Views of the Free and Open Indo-Pacific*, ed. Sharon Sterling, (Washington, DC: German Marshall Fund of the United States Report, 2019): 7–12.

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16 Patrick, "World Order."

17 Ian Hall and Michael Heazle, "The Rules-Based Order in the Indo-Pacific: Opportunities and

Challenges for Australia, India and Japan,” Griffith Asia Institute, Regional Outlook Paper No. 50 (2017), <https://www.griffith.edu.au/> .

18 Hall and Heazle, “The Rules-Based Order in the Indo-Pacific.”

19 Raymond, Nasu, Tan, and McLaughlin, “Prospects for the Rules-Based Global Order.”

20 Byrne, “Securing the ‘Rules-Based Order’ in the Indo-Pacific.”

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