

Indo-Pacific Perspectives

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Indo-Pacific Perspectives

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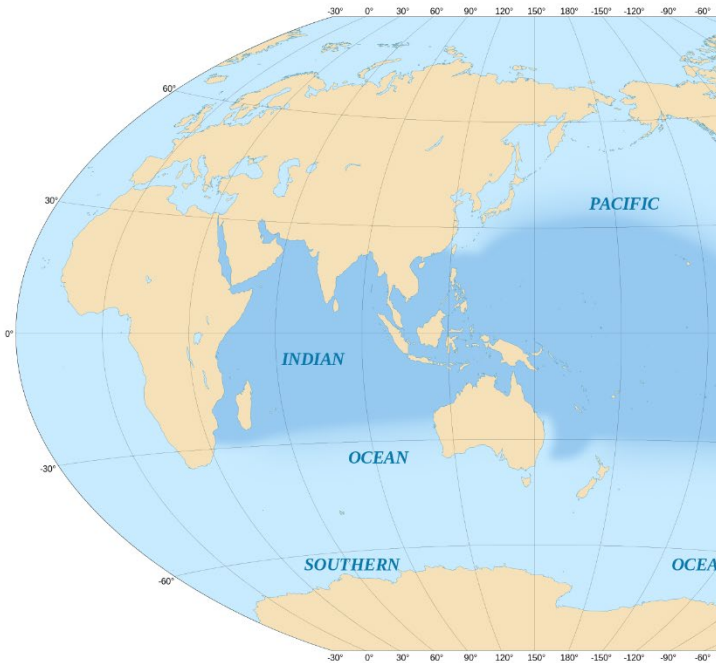
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Introduction

A Rules-Based Order for the Indo-Pacific?

Dr. Peter Harris, editor



It is the policy of the United States government to ensure that the Indo-Pacific megaregion remains “free and open.” In no small part, this vision rests upon the wager that a single rules-based order can exist from the western reaches of the Indian Ocean to the vast expanses of the Asia-Pacific. However, developing and enforcing a cohesive international rulebook for the Indo-Pacific will be far from simple. For the United States and its allies, the urgent need to

cement a rules-based order in the Indo-Pacific is driven, at least in part, by anxiety surrounding the rise of China—yet this ongoing movement in the balance of power is also a major reason for why a stable rules-based system will be difficult to maintain. Then there is the question of legitimacy. It is possible for a rules-based system to be truly fair and inclusive, or does international order inevitably reflect the interests of some more than others? Finally, it is not assured that America’s presence in the Indo-Pacific will continue to be welcomed by regional governments.

This, the first “Indo-Pacific Perspectives” roundtable from the *Journal of Indo-Pacific Affairs*, will offer some answers to these complex geopolitical (and “geolegal”) questions. As the name suggests, this new series of roundtables will showcase viewpoints from across the Indo-Pacific megaregion (and sometimes beyond). The goal is to facilitate a dialogue between academics and policy practitioners that will be of great interest—and, we hope, considerable use—to an international cast of scholars and decision makers whose work focuses on the Indo-Pacific. In this inaugural roundtable, the participants hail from the United States, United Kingdom, Singapore, India,

and Indonesia. They are academics, expert analysts, and seasoned policy advisers. Tasked with shedding light on the concept of a rules-based order in the Indo-Pacific, they have provided a range of perspectives to clarify just how fraught and contentious such an order-building (and order-defending) project will be.

The roundtable begins with Nilanthi Samaranyake's keen analysis of US foreign policy toward the Indo-Pacific. She points out that, despite the inclusive rhetoric and phraseology of a "free and open Indo-Pacific," America's leaders sometimes betray a preoccupation with the Asia-Pacific at the expense of the Indian Ocean. For example, US officials sometimes discuss the entire Indo-Pacific region as bedeviled by maritime boundary disputes, whereas such disagreements are much more prominent and consequential in the Asia-Pacific than the Indian Ocean. If states from India to Japan are to remain committed to the idea of belonging to a single Indo-Pacific region, it will be important to clarify the interests that these states are supposed to share in common with one another.

Benjamin Ho turns to analyze the foreign-policy motivations of China, America's supposed rival in the Indo-Pacific and another

potential driver of a rules-based system for the region. According to Ho, China's leaders are open to the broad concept of a rules-based international order, even if they (unsurprisingly) tend to support a different configuration of rules than that put forward by the United States. One of Ho's major insights is that Chinese leaders desire a rules-based international system that will help them to ward off external threats to *domestic* security. This is the reverse of how international order is discussed in the West—that is, as a straitjacket to prevent domestic actors from upending *international* security.

Laura Southgate agrees that China has an interest in using international rules as tools to serve its national interests—and, moreover, that its growing power means that Beijing must be taken seriously as a rule-shaper in the region. This is true whether China chooses to be an active "maker" of new rules for the Indo-Pacific or whether it is expected to be a mere "taker" of rules made by others. Simply put, China is so powerful, and its interests are so expansive, that China's willingness to comply with rules will be a decisive factor in determining the success of any rule-based order. Southgate provides a case study of the United Nations Convention on the Law of

the Sea—to wit, Beijing’s summary rejection of a 2016 ruling by the Permanent Court of Arbitration that held some of China’s maritime claims in the South China Sea to be incompatible with international law—to illustrate the central importance of China to the success of rules old and new.

Kei Koga offers a complementary analysis of Japanese foreign policy toward the Indo-Pacific. He points out Japan’s leaders were among the first to articulate the existence of a cohesive Indo-Pacific space. Koga points to the Quadrilateral Security Dialogue (“Quad”) as Japan’s primary means of operationalizing and institutionalizing its commitment to a free and open Indo-Pacific, but makes the important observation that Japan and the other Quad members (Australia, India, and the United States) cannot act imperiously toward smaller regional actors. Koga emphasizes the special importance of the Association of Southeast Asian Nations (ASEAN), noting that Southeast Asia is the geographical center of the Indo-Pacific. Without the endorsement of ASEAN, Japan’s leaders seem to have concluded, there can be no hope of maintaining a rules-based order to unite the Western Pacific and Indian Ocean. Such international-level considerations have

interacted with domestic politics to shape Japanese policy toward order-building, Koga argues.

Titli Basu uses her contribution to bring India into the frame. Basu makes the incisive point that the coming multipolar world will be anchored in a multipolar Asia; how the competing powers of the Indo-Pacific can manage to live alongside one another will, in no small measure, determine the fate of global governance and security. Basu argues that India must be considered a major player in the Indo-Pacific (and, by extension, the rest of the world), but she insists that India should not be regarded as a mere “balancer.” This is something that US analysts are sometimes guilty of—valuing India in geopolitical terms as a bulwark against Chinese expansion, but not taking the time to consider how Delhi intends to exert itself as a shaper of regional and global order in its own right.

Ngaibiakching provides a sweeping analysis of the issues facing Indo-Pacific nations, from the problem of institutionalizing regional order to the imperative of avoiding a new “Cold War” between the United States and China. She echoes both Southgate and Basu in observing the importance of power as a foundation for rule making; agrees with Koga that small and middle

powers will play a critical role in shaping the emerging Indo-Pacific order; and makes the forceful argument that multipolarity will not be kind to the Indo-Pacific if it is not accompanied by a firm commitment to multilateralism on behalf of the region's major powers.

Finally, Dewi Fortuna Anwar offers her unique perspective as not just an eminent academician but also a former policy maker in the Indonesian government. Her description of ASEAN's successes at order-building, rulemaking, and shared regional governance is another powerful reminder that the Indo-Pacific zone is far from monolithic. Even if there is ample reason to treat the Indo-Pacific as a single megaregion, this must surely be done while paying careful attention to variation at the sub-regional level.

What future is there for a rules-based order in the Indo-Pacific? It depends. Great powers like the United States, India, and China; middle and smaller powers like Australia, Japan, and Indonesia; regional blocs like ASEAN—all of these actors will have an impact upon the development of rules for the region. The contributions to this roundtable shed valuable light on the interests and decision-making processes of some of the parties involved. They suggest that a

rules-based order from the Persian Gulf to Northeast Asia is possible, and perhaps even inevitable, but still as yet undetermined. ■

Dr. Peter Harris

Dr. Harris is an assistant professor of political science at Colorado State University, where his teaching and research focus on international security, international relations theory, and US foreign policy. He serves as the editor for the *Journal of Indo-Pacific Affairs'* new "Indo-Pacific Perspectives" series. Dr. Harris has two main research projects underway: one focusing on great-power relations during periods of major international change (with a specific emphasis on US–China relations) and another focusing on the environmental protection of US military bases, including overseas bases in the Indo-Pacific, as well as installations in the US states and territories. He has conducted extensive research into Diego Garcia, the largest island of the Chagos Archipelago (British Indian Ocean Territory), which is home to one of the most important US military bases in the world. He received his PhD from the University of Texas at Austin and holds additional degrees from SOAS, University of London, and the University of Edinburgh. His work has appeared in

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2

The Indian Ocean's Key Role in the Indo-Pacific Rules-based International Order

Nilanthi Samaranayake



In September 2020, the US secretary of defense gave a speech to promote the “international rules-based order, rooted in our shared values, that has supported

stability and prosperity around the world for more than seven decades.”¹ The United States and its allies and partners have played a decisive role in establishing international rules and norms since the end of World War II. This order, however, is now being challenged by a rising China and a resurgent Russia. The defense secretary referred specifically to the Indo-Pacific region and Washington’s work “to focus attention on our priority theater, the Indo-Pacific. Not only is this region important because it is a hub of global trade and commerce,” he elaborated, “it is also the epicenter of great power competition with China. And in the face of destabilizing activities from the PLA, particularly in the maritime domain, the United States must be ready to deter conflict, and if necessary, fight and win at sea.”

Yet, the Indian Ocean is not characterized by rampant territorial disputes and Chinese assertiveness, as the Pacific is. From such characterizations, it seems clear that US strategy is still focused on the Pacific segment of the Indo-Pacific and less so the Indian Ocean, which remains a secondary theater for US defense planners. The Department of Defense’s *Indo-Pacific Strategy Report* repeated a phrase that is often stated by US officials: “The United States is a Pacific

nation.”² Whereas China has unquestionably challenged established rules and norms in the Pacific, it has, for the most part, been a lawful actor in the Indian Ocean. In considering the rules-based international order in the wider Indo-Pacific region, therefore, it is important to examine the Indian Ocean on its own terms and consider options for preserving the rules and norms of this still relatively peaceful maritime region.

Evolving US Policy toward the Indian Ocean: From the Asia-Pacific to the Indo-Pacific

The 2017 *National Security Strategy* identified China and Russia as the major threats to US interests, and great-power competition has since become the organizing principle behind the implementation of Washington’s diplomatic³ and defense⁴ policies globally. Since 2017, Washington has adopted the term Indo-Pacific to describe the region stretching from “the west coast of India to the western shores of the United States.”⁵ This reflects the evolution of US policy toward this region over the past decade, especially the increased importance of the Indian Ocean. At the beginning of the decade, the region was referred to by the long-standing “Asia-Pacific” term. By 2011-2012, this geography was prioritized

under the pivot⁶ (or “rebalance”)⁷ strategy to offset the operational focus of the United States in the Middle East. Then, this regional concept evolved as US diplomats began to link Southeast Asia with South Asia under an “Indo-Pacific Economic Corridor.”⁸ Among US defense officials, in 2013 Admiral Samuel Locklear, then the Commander of U.S. Pacific Command (PACOM), began to refer to the region as the “Indo-Asia-Pacific.”⁹ The term was used in US military service documents such as the US Navy, Marine Corps, and Coast Guard strategy in 2015. Finally, in 2017 and 2018, the concept of the “Indo-Pacific” was adopted in Washington’s highest-level national strategy documents. This was in part due to recognition of how allies such as Japan and Australia had described the wider region. Even PACOM was renamed “Indo-Pacific Command” in 2018 as part of this alignment of terms.

Washington has expanded the articulation of its interests in this wider region over the past decade through shifts in geographic terms. Most recently, it has assigned a normative dimension to the region as well. By calling the region the “Free and Open Indo-Pacific,”¹⁰ the US acknowledges the rules, values, and norms that it seeks to defend and promote through the concept.

Washington applies this vision to the Indian Ocean segment of the Indo-Pacific. Yet, even as the Indian Ocean has assumed greater importance in U.S. strategic planning through the Indo-Pacific concept, the United States continues to understand the region through a Pacific lens and risks overlooking the unique features of the Indian Ocean.

A Rules-based International Order in the Indian Ocean

As a laboratory for cooperation, the Indian Ocean has seen many successes. This is due largely to the fact that the Indian Ocean's strategic importance derives from its economics. The region effectively serves as a highway, connecting the bustling Pacific waters through the Malacca Strait and across to the Middle East and African straits of the Hormuz and Bab Al-Mandeb, respectively. The Indian Ocean sees significant traffic of hydrocarbons and container shipping. Due to the economic significance of this region, countries increasingly share a common interest in keeping the sea lanes open and safe. When piracy in the western Indian Ocean threatened to disrupt the stability of these waterways more than a decade ago, we witnessed a multinational response to secure them. Counterpiracy operations

emerged, including from the US-led coalition Combined Maritime Forces Task Force 151 and the NATO alliance's Operation Ocean Shield. Meanwhile, China began its own counterpiracy operations as an independent deployer, as did India and Japan. Despite tensions in other domains, all three countries coordinate on escort convoys.

In addition to counterpiracy, search and rescue is another area where countries have cooperated—for example, in the search for the missing Malaysia Airlines 370 plane. Beyond military operations, countries have pursued Indian Ocean seabed mineral exploration rights lawfully through the International Seabed Authority. This includes China, South Korea, and India, among other countries. The role of international law in the Indian Ocean has also been bolstered by the use of the International Tribunal for the Law of the Sea and the Permanent Court of Arbitration (PCA) to resolve maritime disputes between Bangladesh, India, and Myanmar.¹¹ The respect for international law in these cases stands in contrast to China's disregard for the PCA decision over the Philippines-China dispute in 2016. In addition to working within legal institutions, major extraregional powers such as the US and China have pursued membership roles in

existing venues for cooperation in the Indian Ocean. This includes regional institutions such as the Indian Ocean Rim Association (IORA) and Indian Ocean Naval Symposium (IONS). Without obstacles such as major territorial disputes and with converging economic interests to protect the free flow of commerce, the Indian Ocean is not as contentious as the Pacific Ocean.

Connecting US Strategic Goals in the Indo-Pacific with the Indian Ocean Order

This examination of the cooperative successes in the Indian Ocean does not intend to minimize the threat of major power rivalry in this region. In fact, this is a historical concern among countries in the Indian Ocean region. During the late 1960s and early 1970s, smaller countries promoted their vision for an Indian Ocean Zone of Peace due to the Cold War rivalry between the Soviet Union and the United States. Resident Indian Ocean countries face a similar challenge in a new era of great power competition.¹² The regional security environment is even less stable when considering the broad-based militarization and increased acquisition of naval platforms, including in the undersea domain, by resident countries themselves.

Yet, while many observers fear the implications of China's expanding footprint through the Belt and Road Initiative, deployment of submarines to the Indian Ocean, establishment of a military base in Djibouti, and even undersea surveillance and exploration for seabed minerals, the reality is that China is mostly behaving according to the laws and norms in the Indian Ocean. In fact, even actions that India sees as intrusive, such as Chinese platforms operating in its exclusive economic zone (EEZ), are actually in line with the US interpretation of the United Nations Convention on the Law of the Sea (UNCLOS). As China becomes a global deployer, ironically this status helps underscore the order that the US wants—the freedom of navigation where international law allows. Many Indian Ocean countries reject the US interpretation of UNCLOS that would permit military activities in EEZs. They include Bangladesh, Myanmar, India, Iran, Kenya, Malaysia, Maldives, Mauritius, Pakistan, Somalia, Sri Lanka, Sudan, Thailand, and United Arab Emirates.¹³

Still, the United States should be vigilant about threats by China to disrupt the Indian Ocean order. One disturbing demonstration of this potential lies in the Chinese military's lasering of US Air Force

personnel in Djibouti in 2018. Such incidents suggest China's assertiveness in the Pacific could carry over into the Indian Ocean region—which is precisely the fear of resident Indian Ocean countries that call for an Indian Ocean Zone of Peace.¹⁴

As Washington considers its broader Indo-Pacific strategy, it should call out the areas where China wants to benefit across the board. This is clear when Beijing seeks to limit international rules and norms to its advantage in the Pacific, yet free-ride off the lawful order and the interpretation of UNCLOS that the US seeks in the Indian Ocean. At the same time, Washington should also recognize the current strengths that exist to underpin the lawful order in the Indian Ocean. More importantly, it should not ignore the key differences between this region and the Pacific while continuing to invoke the Free and Open Indo-Pacific concept as another decade begins in this dynamic region. ■

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Notes

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3

Chinese Vision of a Rules- based Order

International Order with Chinese Characteristics

Dr. Benjamin Tze Ern Ho



In recent years, the idea of a “rules-based order” (RBO) has been in vogue among scholars and practitioners of international politics, particularly in the Asia-Pacific (or Indo-Pacific) region amid heightened geopolitical rivalry between the United States and China. At first glance, the need for “rules” to ensure international order is stating the obvious: *to have order, individuals and states need to operate with some rules.*

At the same time, however, what these rules might be (and ought to be) remains a vexing problem, particularly given the varying opinions and views among states regarding who gets to set the rules and, more fundamentally, whose interests the rules are meant to serve.

To be certain, countries in the West are far from monolithic; competition for global influence exists even among states who subscribe to the liberal tradition. However, the idea that rules remain necessary to ensure a degree of predictability and regularity in international affairs is generally accepted by Western powers. From this view, only with rules can international stability—even as an idealized outcome—be sustained and safeguarded amid shifting domestic-political dynamics.

The rise of China complicates the Western-centric understanding of RBO given that the idea of a rules-based order is not inherently self-evident within traditional Chinese political philosophy. Indeed, Beijing’s experience of encountering RBO (and multilateralism more generally) is a comparatively recent phenomenon; only after its reform and opening-up program in the 1980s was Beijing more amenable to considering its foreign policies in such terms—and even then, mostly with an eye to the

Taiwan issue. It was only after the 2008–09 global financial crisis, whereby Chinese leaders perceived a notable decline in the West and a reduction of Western (particularly American) influence in global multilateral institutions that Beijing started to court multilateral institutions with greater deliberation.

As the thinking in China goes, diminished American influence would create an opportunity to modify the rules governing the international system. In addition, Beijing's realpolitik vision of international politics leads it to conclude that most countries who aligned with the United States in the past did so not because of some higher ideational motivation (for instance, to preserve individual human rights, or believing that democracy was the best form of governance) but because their own national interests—often materially defined—were best served subscribing to the American-led international order. A Chinese-led order could therefore expect to command similar levels of support.

China perceives the present moment, marked by US domestic dysfunction and the especially the ongoing COVID-19 pandemic, as a golden opportunity to shape global norms and values in accordance with its own preferences. This does not mean entirely dismantling the

present international structure and replacing it with a Chinese one (Beijing is aware that many countries would not go along with it), but rather to continue to support a rules-based order (*jiyu guize de guojizhixu* 基于规则的国际秩序) that preserves “Chinese characteristics” and ultimately Chinese national interests.

To be clear, the safeguarding of national interests is hardly unique to China; most if not all countries prefer rules that favor themselves. What is problematic is that China's national interests are defined primarily with respect to the preservation of its one-party rule. In liberal democracies, of course, political parties vie to see who can best articulate the national interest. As observed by Qin Yaqing, who previously headed the China Foreign Affairs University, “the most basic feature of socialism with Chinese characteristics is the leadership of the Chinese Communist Party.”¹ Seen this way, it comes as no surprise that many Chinese scholars equate the pursuit of a rules-based order as being synonymous with the pursuit of a liberal international order, which runs fundamentally at odds with the CCP's single-party rule. Indeed, the narrative the CCP frequently touts is that the pursuit of a liberal order by the United States is meant to

make other countries to become more “Western,” thus fundamentally threatening the CCP’s grip on power.

Not surprisingly, when Chinese leaders discuss regional order, they frequently talk about building “a more just, equitable, fair, democratic and representative international political and economic order” in the future tense, a vision that China aims to have an influential role in helping to implement.² Similarly, there is a deeply held belief among many Chinese scholars and policymakers that the United States—as a hegemonic power—does not practice what it preaches in terms of living up to the ideals of the RBO. For instance, China points to the United States as having violated (or opted out of) core aspects of international order—such as the 2003 invasion of Iraq or Washington’s nonratification of the UN Convention on the Law of the Sea (UNCLOS)—to argue that hegemons have the privilege of hypocrisy.³ Again, this suggests that China perceives the RBO as being conceived ultimately to preserve American international primacy while artificially constraining China’s own rise.

With this in mind, I contend that China’s approach to multilateralism is one which seeks not to acquiesce in *existing* ideas of RBO

(which posits certain universal ideals) but rather one which call into question the relevance of multilateralism as framed by Western thinking and worldview. China takes a more flexible approach to international law by portraying such rules as less morally (and legally) binding than how the West views them. In other words, Beijing seeks to *relativize* the application of international rules for reasons of self-interest. Unlike the US vision of multilateralism and RBO, which is that international rule-making can help to preserve international stability despite changing domestic-political circumstances, China’s goal for a revised RBO is far narrower, more limited, and conspicuously inverted: to ensure *domestic* stability amid a changing *international* environment. In sum, multilateralism and the RBO means different things to different state actors: *the United States and the West see multilateralism as a means of entrenching global leadership and promoting a liberal vision of world order, while China sees multilateralism as a diplomatic tool to preserve China’s national interests and legitimize its one-party rule.*

Moving forward, it will be more necessary than ever for countries to demonstrate that their support for RBO (if indeed they support

such an order) is more than just an outgrowth of their alignment with the United States or a product of anti-China politics. In other words, states will have to articulate how and why abiding by the tenets of a RBO is inherently good for them, or else what the characteristics of a better, more equitable RBO ought to be like. Should their dispositions depart from the preferences of Washington and Beijing, then perhaps it is time the international community come together to examine what is problematic and how best to remedy it. On the other hand, if there are core aspects of

RBO that speak to broader universal concerns, than China's framing of international order as inherently biased in favor of the West will be exposed as self-interested and, indeed, irresponsible. ■

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Notes

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4

Do Regimes Matter?

Implications of the 2016 UNCLOS South China Sea Ruling for a Rules-based order in the Indo-Pacific

Dr. Laura Southgate



The Philippines' 2013 decision to initiate proceedings against China at the Permanent Court of Arbitration (PCA) under Article 287 and Annex VII of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) was a result of the ongoing, heated sovereignty dispute

between the two countries over maritime territory in the South China Sea. China claims historical rights to all territory within the 'nine-dash line', an undefined demarcation that encompasses the majority of the South China Sea. This has created conflict with a number of small claimant states in Southeast Asia and other regional powers such as the United States, Japan, India and Australia. China's militarization of islands in the disputed waters and the assertive tactics it has used to defend its sovereignty claims are symptomatic of its growing status as Great Power in the international system. These actions have also increasingly challenged the existing rules-based order in the Indo-Pacific. As stated by President Obama in April 2015, "where we get concerned with China is where it is not necessarily abiding by international norms and rules and is using its sheer size and muscle to force countries into subordinate positions."¹ The Philippines' attempt to have its sovereign rights in the South China Sea acknowledged under international law represents a direct challenge to China's regional claims. China's response to the PCA ruling provides a window through which to examine both the existence of a rules-based order in the Indo-Pacific and its future prospects as China increasingly seeks to exert its influence in the international system.

UNCLOS Ruling and Its Aftermath

China responded dismissively to the Philippines' arbitration case by refusing to participate in proceedings. China's Ministry of Foreign Affairs released a 'position paper' in December 2014 claiming that territorial sovereignty over maritime features was beyond the scope of the Convention.² This did not deter the PCA, which ruled in July 2016 that China's claim to historic rights to resources in the South China Sea were "incompatible with the exclusive economic zones provided for in the convention" and that "there was no legal basis" for China to claim historic rights within the nine-dash line.³ The groundbreaking ruling had little immediate impact on the dispute, however. China dismissed the ruling as a "null and void decision" and "nothing more than a piece of paper."⁴ The Philippines' new President Rodrigo Duterte stated that he would "set aside the arbitral ruling" in favor of economic incentives from China.⁵ This was confirmed by the Philippines' Foreign Secretary Perfecto Yasay Jr., who stated that the Philippines "won't take any steps against China" and that he wanted "to make sure that there will be no further actions that will heighten the tensions between the two countries,

particularly in the Scarborough Shoal."⁶ Yasay concluded: "we cannot stop China at this point in time...we will continue to pursue peaceful means" to the dispute.⁷ Despite the brokering of a 'status-quo' between the Philippines and China, whereby the latter purportedly agreed to halt further expansion in the South China Sea,⁸ reports from as early as November 2017 suggested that China had continued to develop facilities in the Paracel Islands, in addition to a military buildup in the Spratly Islands.⁹

In the wake of the UNCLOS ruling, China has also pursued a new legal basis for its territorial interests in the South China Sea. It has done so by re-packaging its sovereignty claims to appear more consistent with UNCLOS. Employing a new legal tactic referred to as a legal warfare, or 'lawfare' approach, China's 'nine-dash line' narrative has been de-emphasized in favour of a 'Four Sha' claim.¹⁰ Translated as 'four sands', this new position sees China asserting sovereignty over four island chains: the Pratas Islands, Paracel Islands, Spratly Islands and Macclesfield Bank area. In adopting this approach, China has attempted to strengthen its legal claims in the South China Sea by claiming the Four Sha as part of

China's 200-mile Exclusive Economic Zone (EEZ), and by asserting that they are part of China's extended continental shelf.¹¹ As noted by two prominent international legal experts, while "this new Chinese legal strategy is even weaker than the Nine-Dash Line given [that] it clearly violates UNCLOS," China "may have concluded that it can better shape (or undermine, depending on your viewpoint) the law of the sea by adopting UNCLOS terminology."¹² Thus China's 'Four Sha' claim attempts to circumnavigate existing law and re-conceptualize the existing rules-based order in support of Chinese state interests.

Regimes, Sovereignty and Power

China's actions raise a number of interesting questions regarding the importance of regimes in the international system and what happens when states seek to pursue their own interests to uphold state sovereignty. According to Hans Morgenthau, "international law owes its existence and operation to two factors, both decentralized in character: identical or complementary interests of individual states and the distribution of power among them."¹³ In many respects, power dynamics are at the center of international law enforcement, whereby

"it makes it easy for the strong both to violate the law and to enforce it, and consequently puts the rights of the weak in jeopardy."¹⁴ Legal rules therefore only serve to satisfy the interests of the most powerful. This is supported by Robert Gilpin, who argues that "the primary foundation of rights and rules is in the power interests of the dominant group or states in a social system."¹⁵ China's reaction to the UNCLOS South China Sea ruling demonstrates how international laws exist and operate on the basis of powerful state interests. Great Powers will seek to undermine existing laws when conflictual matters of state sovereignty and territorial integrity are at stake. The doctrine of sovereignty is both an operating principle enshrined in international law *and* a principle that can be used as a tool to circumvent or manipulate international law in support of state interests.¹⁶ Underlying this argument is the crucial role of state power and the distribution of capabilities in the international system.

China's largely successful attempts to reconfigure international law in the South China Sea is evidence of its growing regional and international power. It is also testament to the continued applicability of regimes insofar as they can be used

to support a state's agenda. As this case study shows, a powerful state will seek to challenge international law if it is in its interest to do so, particularly as it relates to a core security concern such as state sovereignty. This treatment of international law is certainly not new, nor limited to actions conducted by China. However, it is indicative of the type of behavior we can expect to see repeated as China seeks to exert its influence over the Indo-Pacific as its power rises. If successful, a new type of rules-based order may develop, one that does not necessarily reflect the existing status quo. As far as the existing order reflects US interests, Great Power security competition cannot be ruled out. For smaller states in the international system, the

UNCLOS ruling will undoubtedly act as a valuable lesson: that while all states, regardless of their size, have recourse to the international courts, little can be done to enforce a ruling if a powerful state chooses to ignore it. ■

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5

Next Priorities for Japan's FOIP Vision

The Quad, ASEAN, and Institutional Linkages in the Indo-Pacific

Dr. Kei Koga



One of Japan's most important diplomatic agendas has become the realization of a "Free and Open Indo-Pacific" (FOIP), which was launched by former Prime Minister Shinzo Abe in 2016 to maintain and facilitate the existing rules-based order in the region.¹ And yet, it

was not clear to what extent new Prime Minister Yoshihide Suga would emphasize this strategic vision. In fact, the question of Japan's commitment to the FOIP has drawn much international attention from practitioners and foreign policy experts because of Japan's potential preoccupation with a number of domestic issues, ranging from COVID-19, economic recovery, and the 2021 Tokyo Olympics.² Indeed, Suga's political priorities appear to focus on domestic affairs, such as unemployment and revising the small and medium-sized enterprise basic law. The Prime Minister is also said to lack diplomatic experience, which was well illustrated by his statement during the campaign for President of the Liberal Democratic Party in September 2020, when Suga stated that he cannot emulate Shinzo Abe's summit diplomacy and that he would consult with the Minister and Ministry of Foreign Affairs as well as former Prime Minister Abe about Japan's diplomacy.³

As a result of this apparent inertia, diplomatic continuity has ensued. Since Suga was inaugurated on September 16, 2020, he emphasized the importance of Abe's foreign-policy agendas. The FOIP remains Japan's core strategic vision, with the US-Japan alliance playing a pivotal role.⁴ Japan hosted the second Japan-Australia-India-US Foreign Ministers'

meeting (the so-called “Quad”) on October 6 to further coordinate their policies to realize the FOIP region.⁵ Suga regards Southeast Asia as the geographical center of the Indo-Pacific, and he made his very first diplomatic trips to Vietnam (2020 ASEAN chair) and Indonesia (the largest Southeast Asian country) in October. Based on these early moves, there appears to be no diplomatic upset: Suga seems likely to follow through on what Abe has envisioned for the FOIP.

However, this diplomatic posture is not sustainable in the long-term. Eventually, Japan needs to provide a clear strategy to realize the FOIP in the context of the rapidly evolving US-China great power rivalry. There are three reasons for this.

The Need for Flexible Adaptation

First, Japan’s FOIP vision is essentially evolutionary, which requires conceptual updates over time. As many have already pointed out, the concept of Japan’s FOIP has been changing since its inception in 2016. Initially, Japan aimed to maintain and strengthen the rules-based international order in the Indo-Pacific region, which has been largely shaped by the United States in the post-Cold War era.⁶ Japan’s interest has been to blunt

China’s increasing political influence in the region, which is thought to be detrimental to existing international rules and norms. Most notably, China’s rejection of the 2016 South China Sea Tribunal Award disrespected international laws, while China’s “Belt and Road Initiative” has been responsible for setting new international standards for development.⁷

However, Japan’s strategy to protect the FOIP principles was unclear to begin with. Japan initially emphasized the importance of “fundamental rights” such as the rule of law, human rights, and democracy.⁸ Yet, because there are many non-democratic states in the region, such an emphasis soon disappeared. Moreover, the FOIP vision was initially called the “Free and Open Indo-Pacific Strategy” but Japan eliminated “strategy” from the phraseology because some ASEAN member states were concerned about its diplomatic implications—that FOIP aimed to counterbalance or contain China, for example.⁹ As such, Japan flexibly changed the FOIP concept in accordance with reactions from other states.

Currently, Japan’s FOIP vision consists of “three pillars”: (1) “promotion and establishment of the rule of law, freedom of navigation, free trade, etc.”; (2) “Pursuit of

economic prosperity (improving connectivity and strengthening economic partnership including EPA/FTAs and investment treaties”); and (3) “Commitment for peace and stability (capacity building on maritime law enforcement, HA/DR cooperation, etc.).”¹⁰ These are all international rules and norms that Japan has long supported. Nevertheless, these pillars might change in the future, depending on the development of the region’s strategic environment. Particularly, as power diffuses across the region, a renewed rules-making mechanism may become necessary. The Suga administration must prepare for this challenge in the future.

Navigating Great Power Rivalry

Second, Japan still seeks a balance in its diplomatic relations with both the United State and China. Currently, Japan’s foremost ally, the United States, has begun to take a much tougher stance on China in terms of COVID-19, economics, and technological modernization. Many in Washington now believe the past approach of “engagement” to have been a mistake. The experience of the COVID-19 pandemic has exacerbated this trend.¹¹ To be sure, the Trump administration’s confrontational

approach toward China faces severe criticism, and there are debates over a means to manage its relations with China. Nevertheless, Washington’s tough posture toward China has garnered broad bipartisan support. America’s FOIP strategy is now part of an anti-China strategy, designed to force Beijing to follow existing international rules and norms. This trend will not easily be reversed.

On the other hand, Japan still attempts to engage China. Earlier this year, Abe invited Xi Jinping to Japan as a state visit in April and attempted to draft the “fifth document,” the fifth symbolic official document after the Sino-Japanese diplomatic normalization in 1972 that highlights the future vision of Sino-Japanese relations.¹² The visit was postponed because of the COVID-19 pandemic, however, and rising tensions over the East China Sea mean that both leaders seem to have lost political traction for bilateral initiatives.

Suga recognizes the importance of Japan-China relations for national, regional, and global stability. He has advocated the need for common agendas.¹³ Even as he maintains a firm stance on territorial sovereignty and the rule of law, then, Suga has shown interest in persuading China to follow international rules and norms by

maintaining channels of communication at various levels, including the summit level.¹⁴ In this sense, there is a divergence in diplomatic posture between Japan and the United States. Yet, since the US-Japan alliance is the core of the FOIP vision, it will be necessary for both states to coordinate how to maintain consistency between Japan's softer and US tougher FOIP stance vis-à-vis China.

Realigning Institutions

Third, Japan's institutional strategy in the Indo-Pacific has yet to be clearly articulated. In the initial concept, Japan's emphasis was on the Quad as a central framework to realize FOIP.¹⁵ However, given diplomatic concerns raised by several ASEAN member states in 2018, Japan and the Quad members began to emphasize the importance of ASEAN unity and centrality.¹⁶ In response, with a strong push from Indonesia and a diplomatic coordination by Thailand as ASEAN chair, ASEAN issued its "ASEAN Outlook on the Indo-Pacific" (AOIP) statement in 2019, which emphasized the "inclusiveness" of regional architecture and regional cooperation over "rivalry."¹⁷ ASEAN's priority is thus to neutralize great power rivalry and its negative spill-over effect to Southeast Asia and other sub-

regions of the Indo-Pacific. Japan immediately supported the AOIP. That said, it is still not clear what Japan and the Quad members expect from ASEAN. If the Quad members regard ASEAN's utility only as a dialogue convenor that provides multilateral communication channels, and if they attempt to create "effective multilateralism" that gets things done as the US Secretary State Pompeo indicated, some ASEAN member states would likely view this as diplomatic marginalization.¹⁸ To reassure ASEAN and garner its support for their FOIP vision, Japan and the Quad members need to clearly delineate ASEAN's role in the Indo-Pacific.

The Future of FOIP

These three factors show that more work needs to be done to realize Japan's FOIP vision—constructing a new regional rules-based order. This is the work that the Abe administration left out, and that the Suga administration needs to work on.

Two tasks should be prioritized. The first is to evolve the Quad into the Quad-Plus as an Indo-Pacific institutional framework. While agreeing the basic principles of the FOIP, Quad-Plus member and partner states will have to understand that there are diverging

national interests among them, and that cooperation will not be possible in all issue areas. Rather, an expanded Quad-plus could emulate the division of labor modeled by the Japan-Australia-US “Trilateral Partnership for infrastructure investment in the Indo-Pacific,” and the partnership between the United States and Japan on energy, infrastructure, and digital connectivity.¹⁹ In short, the Quad(-Plus) can function best as a forum to flexibly coordinate policies that advance the FOIP vision where possible. This means that the Quad can also expand its membership to any states that agree with the FOIP principles. Accordingly, it is in Japan's interests to ensure that the Quad-Plus formula it utilized to include more regional states, such as Vietnam and Indonesia, as well as European states, such as the United Kingdom, France, and Germany, to buttress the provision of international public goods such as knowledge-transfer rules, infrastructure development, and management of non-traditional security issues.

The second task is to strike a balance between ASEAN and the Quad. As mentioned above, some ASEAN member states are skeptical about the development of the Quad framework, which threatens to diplomatically marginalize

ASEAN and intensify great power rivalry with China. Without close consultation, institutionalizing the Quad could exacerbate ASEAN's concerns and skepticism. Also, given ASEAN's consensus-based decision-making process, it is important to reassure all member states in this regard. Therefore, Japan should propose to enhance ASEAN's role in the Indo-Pacific by forming “webs” of regional institutions. The starting point might be to create a Quad-ASEAN Track-II dialogue, as well as to link the Quad and ASEAN-X formula. The Quad's strength is its flexibility: it should actively engage ASEAN and its individual member state, offering reassurance and building partnerships. At the same time, in order to enable regional states to engage in deeper multilateral, strategic discussions and prevent great powers from irreversible political and economic decoupling, Japan should encourage ASEAN to further institutionalize the East Asia Summit, such as strengthening its secretariat functions and conducting more frequent Senior-Official level exchanges.

Japan's FOIP vision under the Suga administration aims to avoid an intensive confrontation between the United States and China by developing regional rules and norms that are based on the existing

international order. This will be a difficult task given that the consolidation of rules and norms will require a regional consensus. If the attempt fails, it will result in exposing intraregional divides. However, such a window of opportunity has not been closed yet. Japan is in a good strategic position to bridge the various regional powers. Proactively taking a normative leadership role in the Indo-Pacific by evolving the Quad, encouraging ASEAN to further institutionalize

EAS, and creating the linkages between them — all of these are goals worth trying for. ■

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6

India's Indo-Pacific Reckoning

Dr. Titli Basu



US-China disorder presents a defining moment in international history. A fractured power structure and contestation over the rules of the international system have been sharpened by the COVID-19 pandemic. Beijing's ascent in the international order and the ensuing disequilibrium in the balance of power between the United States and China at the global level, and China and India at the regional level, are making

policy elites in Delhi fiercely debate key strategic choices in pursuit of the national interest. Stakes are high with trade, technology, the fourth industrial revolution, and infrastructure all defining great power contestation in the strategic theatre of the Indo-Pacific.

Disequilibrium in US-China-India Triangle

China frames its pursuit of power within the narrative of “great rejuvenation of the Chinese nation,” anchored in an historical interpretation of the Middle Kingdom’s “century of humiliation” from the First Opium War through the Sino-Japanese War. Beijing’s path to primacy is anchored not only in military modernization and economic statecraft but also soft and sharp power instruments to advance grand strategic designs like the Belt and Road Initiative. With China’s rise, the Chinese Communist Party (CCP) seeks a renegotiation of the asymmetry that exists between the distribution of *power* and the distribution *benefits* in international society. Offering Chinese solutions to international problems, Beijing has challenged the US-led liberal order with alternative rules and norms, ideas, and institutions.

At the regional level, the growing

power differential in India-China relations is manifesting beyond contested Himalayan borders. Chinese checkers in Pakistan, South Asia, and the wider Indian Ocean Region further complicate geopolitics. In the last two decades, Beijing's defense spending has witnessed around a seven-fold increase, rising from \$39.6 billion in 1999 to \$266.4 billion in 2019.¹ The reality of China's economy being one-sixth larger than America's (in purchasing power parity terms) is upon us.² It is imperative for India to adjust to the profound impact of China's rise in the immediate neighborhood, and especially when it comes to addressing Chinese aggression along its land border with India. In recent times, India has managed incidents like Doklam, Chumar, and Depsang—but the Galwan standoff was the definitive moment when Beijing has “strategically lost India.”³ In India, the debate over China is increasingly turning in favor of making the cost of unilaterally altering the status quo unsustainable for Beijing.⁴

Beijing's Proposition of a Unipolar Asia in a Chinese Century

The narrow prism of analyzing India as a mere “balancer” in great power game is flawed. Sharper strategic articulation from Delhi is

positioning India as a leading power in a multi-polar world. Delhi's strategic quest for a multi-polar world was shaped amid apprehension of US hegemony in the post-Cold War years. India believes that a multipolar world should be anchored by a multipolar Asia at its core.⁵ But today, the prospect of a *unipolar* Asia has become more pronounced with President Xi Jinping's “China Dream.” While India is seeking strategic equilibrium, China is relentless in its pursuit of engineering a hierarchical Asian order, with Beijing at top,⁶ fueling its vision of a *Chinese* century as opposed to an *Asian* century.⁷

Judging from key policy pronouncements, India aspires to be a stabilizing power bringing its capacities to bear on the international system for the purpose of promoting the global good.⁸ It wants to be a net-security provider rather than a disruptionist power in the Indo-Pacific. India's Foreign Minister Dr. S. Jaishankar has deftly articulated that today's multi-polar world reflects strong bipolar characteristics, with not all the poles being of the same size, and the United States and China being relatively more influential than other players.⁹

Shaking off “hesitations of history”¹⁰ and debunking the

narrative of India as a reluctant power, Delhi aims to be a rules-shaper and not an abstainer – recognizing that “rule of force” underwrites the “rule of law.” At the Shangri-La Dialogue, India has argued that the Indo-Pacific should be anchored in rules and norms based on the consent of all and not the power of a few. Strategic conversations have urged for a New Delhi Consensus, characterized by a call for a more inclusive, equitable, and participatory world order.¹¹ The experience of the liberal rules-based order was “neither liberal, nor particularly orderly”¹² for all. History shows that great powers have often customized rules of the international system and have taken an *a la carte* approach in pursuit of their national interest and strategic ambitions. Rules-based order has at times been overridden by power-based order.

The rules of the international system need to be overhauled and India cannot afford to be a passive player. India largely has a rule-taker instinct. For instance, unlike Beijing’s disregard for the PCA’s ruling in favor of the Philippines, Delhi respected the ruling by a PCA-established tribunal in favor of Bangladesh in the Bay of Bengal Boundary Arbitration. But India’s rising political capital as a rules-shaper makes it imminent for

Delhi to make tough policy choices and shape global conversations setting standards on pertinent issues, for instance, global trade rules, tech *rules* and digital governance.

Dividends of India’s Doctrine

India’s search for solutions in managing differences and protecting strategic equities has renewed the debate on strategic autonomy versus alliances. The strategic assessment in Delhi is that “the more India rises, the more it must expect Chinese opposition.”¹³ With the Galwan misadventure, Beijing has incentivized Delhi’s pivot to Washington, but the current border crisis might not fundamentally reorient Indian policy towards alliance, but it may rebalance some of its priorities.¹⁴

Sieving the conversation in Delhi shows that, while alliance continues to remain the “wrong answer” for India, greater “realism” is permeating policymaking. Political discourse suggests that while India cannot give any other country a veto over its policy options, there is a need to look beyond dogma and enter the real world of convergences.¹⁵ Today, military alliances are neither being offered to nor sought by Delhi. The very discourse in India has pivoted to encompassing issue-based multi-alignments and coalitions in

pursuit of shared strategic interests and leveraging partnerships to further India's national interests. Indeed, this new discourse has echoes in India's history of trysts with various shapes and forms of alliances, all of which were influenced by the evolving nature of international threats.¹⁶

While the Trump administration has treated Delhi relatively more gently than Beijing and even some of its formal allies,¹⁷ India is keenly aware that the United States has fed the rise of China and that a US-China "grand bargain" at some point is not impossible. To date, India's strategy of engagement-with-all without having to choose between rival great powers paid rich dividends in terms of sourcing capital and technology. "Balance of interest" has remained the guiding principle of Indian foreign policy.

Between National Interests and International Responsibilities

India's Indo-Pacific strategy, while being a critical component of Delhi's China policy, also enumerates an open, inclusive, and cooperative construct to maximize geopolitical advantages and geo-economic guarantees in advancing India's global influence.

Maritime security is at the heart of Indo-Pacific construct. While the

geography extends from the "shores of Africa to that of the Americas," the India Ocean remains the primary theater for Delhi. Despite the natural geographic advantages in the littoral, India's policy elites have long had a continental orientation. But China's strategic ambition in the Indian Ocean, manifested in its expanding military footprint and the 21st Century Maritime Silk Road projects, has compelled Delhi to reorient its focus. As such, island nations and smaller littoral states situated in the strategic geography across Indian Ocean, Pacific Ocean, and even the Caribbean are gaining more attention in New Delhi's strategic thinking.¹⁸

Securing a stable maritime order - and the rule of law at sea - has driven Indian maritime diplomacy. To uphold rule of law and freedom of seas, Delhi is weaving a deeper security-cooperation network among Indo-Pacific stakeholders. This is taking the form of a growing number of logistics agreements, intelligence sharing arrangements, advancing maritime capacity building, maritime domain awareness, and strengthening interoperability between navies through joint drills like the Malabar exercise in key theatres. India has conceived the Indo-Pacific Ocean Initiative (IPOI), building

on the Security and Growth for All in the Region (SAGAR) doctrine, in its quest for securing maritime global commons and present governance solutions to shared maritime challenges. In designing a rules-based regional architecture, India's IPOI rests upon the seven pillars of maritime security, maritime ecology, maritime resources, capacity building and resource sharing, disaster risk reduction and management, science, technology and academic cooperation, and trade connectivity and maritime transport.¹⁹ This has gained traction with other maritime democracies like Japan and Australia, and also features in the India-ASEAN Plan of Action (2021-2025).

Strategic pursuit of a free, open, and inclusive Indo-Pacific is shaping India's issue-based alignments with various Indo-Pacific stakeholders, especially the United States, Japan, Australia, and France in addition to ASEAN and the European Union in bilateral, trilateral, quadrilateral and "Quad plus" strategic geometries. While the Quadrilateral Security dialogue ("Quad") is anchored by a desire to keep maritime highways free and open, coordination under the India-Japan-Australia Supply Chain Resilience Initiative (SCRI) is driven by the need to map and manage supply-chain

vulnerabilities in key sectors like pharmaceuticals, medical devices, semiconductors, automotives, and chemicals. India's recent involvement along with Japan in the Five Eyes intelligence-sharing framework is designed to navigate tensions between law enforcement and the encryption policies of tech companies – another demonstration of Delhi's rising interest in forming global coalitions.

India accords primacy to advancing regional connectivity and infrastructure across the Indo-Pacific. Doing so not only connects the economic growth poles and advances regional economic linkages, production networks and value chains, but also acts as strategic leverage in the great power game. As host nations today have several financing options, including BRI, India advocates infrastructure projects underpinned by consultative practices involving local stakeholders. India's infrastructure outreach is driven by compliance with global governance standards, including respect for sovereignty, responsible debt financing practices, and ecological sustainability. As such, India has steered a Coalition for Disaster Resilient Infrastructure and International Solar Alliance.

Infrastructure financing is a vital geo-economic instrument of statecraft and India is catching up by

tapping into the joint capacities of strategic partners like Japan and the United States to deliver on the shared responsibility of addressing the infrastructure gap. The Indo-Pacific Infrastructure Trilateral Forum aims to channel the assets and resources of the India-Japan-United States private sectors to address the infrastructure gap. Moreover, India is inching towards joining forces with the US-Japan-Australia-led Blue Dot Network (BDN), seeking to advance high quality infrastructure. Japan has emerged as India's preferred partner in third country co-operation with a few success stories to boast in the Bay of Bengal.

Beyond hard infrastructure, strategic competition also centers on technology and data. Given the vitality of digital connectivity and secured networks, India is coordinating with like-minded partners at the D-10 on strategic vulnerabilities and national-security challenges posed by critical technologies including 5G. The Open Radio Access Network (O-RAN) is driving the discourse and an O-RAN Policy Coalition is formed to advance open and interoperable solutions aimed at enabling innovation. Mutual interests could drive momentum on key verticals including artificial intelligence, quantum technologies, space technologies and in

strategic metals and minerals.

Revisiting the global economic order became apparent following Covid-19. The pandemic unleashed severe economic contraction across the world, and tentatively dialed down India's growth story. The disruption has made Delhi devise the Atmanirbhar Bharat strategy which has sparked a fierce debate on globalization versus economic autarky. To be clear, Prime Minister Modi's self-reliance policy is not about being self-contained or being closed to the world but is driven by India's determination to enhance its economic contribution to the global economy. India's exit from the Regional Comprehensive Economic Partnership (RCEP) pact, which took place even before the COVID-19 pandemic struck, underscores the domestic compulsions and urgent need to accelerate structural reforms and enhance competitiveness.

India's ability to economically engage with the region remains imperative since economic isolation is not an option. But the RCEP negotiations proved that the world is perhaps unwilling to accommodate India's interest despite the size of its market. India's target of becoming a US\$5 trillion economy is contingent on becoming able to withstand global competition and seize benefits from export opportunities

that external markets offer. Multi-lateral agreements create such expanded opportunity.²⁰

Walking the Talk

While the Indo-Pacific is dominating the political lexicon and strategic thinking in Delhi, the biggest challenge will be matching political intent with material and national capacity. The conversation on the Indo-Pacific gained traction with Japanese Prime Minister Abe Shinzo's landmark speech in the Indian Parliament – “Confluence of the Two Seas” - capturing the dynamic coupling of the Indian and Pacific Oceans as seas of freedom and prosperity. India's “Look East Policy,” meanwhile, pivoted to “Act East” and subsequently the idea of a “Free and Open Indo-Pacific.” If geopolitical churning in the major capitals of the world have positioned India at the heart of their respective Indo-Pacific strategy, India has, for its part, shed its

initial reluctance and is ready to step up to the challenge. Structural organization in the Indian foreign ministry (the creation in 2019 of an Indo-Pacific division) and institution of key 2+2 dialogues with major Indo-Pacific powers like the US, Japan, and Australia; elevating the Quad's profile; and the rise of Indo-Pacific trilaterals with India-Japan-US, India-Japan-Australia, India-Australia-France, and India-Indonesia-Australia – all of these developments demonstrate Delhi's quest to engage in a collaborative and cooperative framework to design a free and open Indo-Pacific. Without doubt, India is now walking the walk when it comes to Indo-Pacific order. ■

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7

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

Defending or Reordering the Status Quo

Dr. Ngaibiakching



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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8

A Rules-based Order in the Indo-Pacific

A View from Jakarta

Dr. Dewi Fortuna Anwar



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 inter-state 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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