

## U.S. CONCEPT OF A “RULES-BASED ORDER” AND ITS DISCONTENTS: IS THERE A CREDIBLE ALTERNATIVE?

Vladimir TRAPARA and Ana JOVIĆ-LAZIĆ<sup>1</sup>

*Institute of International Politics and Economics, Serbia*

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**Abstract:** Recently, there has been significant discourse in political and academic circles surrounding the concept of a “rules-based order” (RBO) in international relations, championed by the Obama and, especially, the Biden U.S. administration. The primary issues revolve around the relationship between this concept and international law, as well as the reactions of other states to it. Various alternative stances towards this concept appear within and outside the U.S.-led bloc of states, ranging from its acceptance in principle, albeit with different interpretations attached, to vociferous resistance. The authors delineate the fundamental assumptions of the U.S. concept of RBO, linking it to its grand strategy of liberal hegemony (rooted in Wilsonian principles), the perceived imperatives of the current international political landscape (including challenges to liberal democracy and a growing confrontation with alleged anti-RBO powers), and a broader Anglo-Saxon legal tradition of the rule of law (in contrast to the continental European *Rechtsstaat*). Then they evaluate the credibility of alternatives to the concept, proposed by U.S.-allied Germany and Australia, rival powers Russia and China, and India as a “third force”. This assessment takes into account the specific national interests and regional imperatives of these states, their positions in the current international situation, and the distinct legal traditions they adhere to. The credibility of international law and institutions is appraised separately, considering the current international power and interest dynamics. The authors conclude by advocating for a reform of international law based on a mutual understanding of diverse national interests and legal traditions, positing it as the optimal foundation for a genuine rules-based order.

**Keywords:** rules-based order, international law, rule of law, the United States, European Union, Germany, Australia, Russia, China, India.

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## Introduction

In his 2015 National Security Strategy, former U.S. President Barack Obama asserted that “strong and sustained American leadership is essential to a rules-based international order that promotes global security and prosperity as well as the dignity and human rights of all peoples” (The White House, 2015). Similarly, in his own 2022 National Security Strategy, the current U.S. President Joseph Biden emphasized that “the vast majority of countries want a stable and open rules-based order that respects their sovereignty and territorial integrity, provides a fair means of economic exchange with others and promotes shared prosperity, and enables cooperation on shared challenges” (The White House, 2022, p. 18). The heightened frequency with which top U.S. officials employ the term “rules-based order” (RBO) has not gone unnoticed, triggering reactions from other international actors – U.S. allies, rivals and third states – and sparking discussion within International Relations academic circles. The central question raised by the widespread use of this term is: why introduce a new term like RBO when there is already international law? Is RBO merely another expression for international law, or is the distinction intentional? The debate surrounding the use of this term in both international politics and academia strongly suggests, as articulated by one prominent scholar in the field, that the preference for RBO over international law on the part of the United States is “considered and deliberate” (Dugard, 2023, p. 223).

In this paper, we operate from the premise that the U.S. concept of a “rules-based order” (RBO) in international relations is indeed intended to convey something distinct from international law. This distinction justifies the political reactions of other actors and merits academic consideration. The roots of this concept can be traced back to President Woodrow Wilson’s vision of how the world should be governed to be “safe for democracy”, evolving into Washington’s grand strategy of liberal hegemony after the Cold War. The recent surge in the usage of the RBO concept is linked to the contemporary political landscape, where Washington’s concerns about the survival of liberal democracy both outside and within the U.S.-led bloc of states coincide with its growing confrontation with explicitly identified anti-RBO autocratic powers – Russia and China. The U.S. administration perceives international law, with its institutional structure based on the UN Charter and the paramount role of the Security Council in maintaining peace and security, as insufficiently credible to perpetuate its vision of a world order where its domestic institutions and values would be secure. Consequently, the invocation of RBO represents a strategic move, presenting

a flexible combination of rules and their (re)interpretations from different parallel legal orders. This approach relates to international law in a manner analogous to how the Anglo-Saxon tradition of the rule of law relates to the European continental *Rechtsstaat*.

However, the genuine intrigue lies in the reactions of other states, adding depth to the analysis of this concept. Drawing on its own legal tradition and earlier applications of the term RBO by the European Union, Germany has presented its unique interpretation, aligning more closely with international law and adopting a more “multilateral” stance. Another U.S. ally, Australia, enthusiastically embraced the concept, only to reveal that its acceptance of RBO’s departure from international law is driven more by its regional imperatives than its intrinsic vision of order. Among U.S. rivals, Russia delivered a pointed critique, dismissing the concept as a smokescreen for American circumvention of international law, and proposing its alternative concept of “genuine multilateralism”, seemingly designed to legitimize deviations from international law in its own behaviour. China responded with its own version of RBO, aiming to “complete” international law by drawing on the Confucian tradition of the “rule of virtue” for the “common future of mankind”. Finally, India seized upon the U.S. invocation of RBO to highlight the need for the international legal order to evolve towards a more consensual model, intending to position itself as a new major power within it.

It is evident that states in the international system, led by their national interests, legal traditions, geopolitical positions, and roles in the current power dynamics, determine their stance towards international law and the U.S. concept of RBO. What conclusions can be drawn from these complex relationships for impartial observers seeking a world governed by universally accepted rules? Our approach begins with providing a detailed explanation of the U.S. concept of RBO, enabling a deeper understanding of other states’ responses to it. We then analyze the credibility of the alternatives proposed by these states concerning the U.S. concept and international law. Following an assessment of the credibility of international law itself, particularly in the light of the inclination of significant international actors, starting with the United States, to deviate from it and justify these deviations by invoking alternative concepts, we suggest a direction for reforming international law to pave the way for a world order genuinely based on rules to emerge.

## **What is a “rules-based order”? the U.S. concept explained**

The term “rules-based order” suggests the existence (or possibility) of an order not rooted in rules but reliant on the voluntary use of force by the powerful. This understanding resonates with Western legal traditions, where the primary role of law in society has been to curb power and authority, binding them into a legal framework. The international order differs from domestic ones within states; it is anarchic, lacking a single supranational center of power to which sovereign states are subordinate. Consequently, international law differs from domestic law, as there is no international monopoly of force to enforce it upon states and their citizens. This raises the question of whether states, particularly the most powerful ones (great powers), would voluntarily wield their sovereign power in the international arena, potentially rendering the international order akin to the Wild West? Alternatively, would they choose to voluntarily bind themselves by common rules, creating a more predictable and secure rules-based order? The existence of a developed international legal system since 1945, based on the UN Charter, with its institutional structure built around the UN and its Security Council as the highest authority in peace and security issues, underscores that states, including great powers, opted for the latter.

However, the frequent use of the term by the United States in recent years, instead of invoking international law and the UN Charter, sparked controversy over the true meaning and existence of RBO. Essentially, the United States also envisions an international order based on universally accepted rules rather than the voluntarism of states, but a closer examination is needed to discern the specifics of these rules and how their “breakers” (U.S. great power rivals and so-called “rogue states”) demonstrate “voluntarism”. We delve into the U.S. concept of RBO through three key issues to grasp its significance and the reason for its emphasis by Washington. The first issue acknowledges that, in addition to the UN-based international order, two more international legal orders were established in the early post-World War II years: the international economic order, which achieved universality only after the Cold War, when former socialist states transitioned to free market capitalism and joined globalized world economy; ideological Western order, which expanded from its North American-Western European core after the Cold War, but never attained universality. The second issue highlights the seemingly unbreakable link between the U.S. concept of RBO and its foreign-policy idea of liberal internationalism, rooted in Wilsonian principles and manifested today as the grand strategy of liberal hegemony. The third issue explores a subtle yet important

difference in the understanding of RBO from the perspective of the Anglo-Saxon legal tradition of the rule of law compared to the continental European *Rechtsstaat*.

The controversy surrounding the disparity between the U.S. concept of RBO and international law would likely be non-existent if there was a single international legal and institutional order. In fact, in the aftermath of World War II three distinct orders based on rules emerged, as classified by Malcolm Chalmers (2019): a universal security system, a universal economic system, and a more exclusive Western system, alongside “a set of Major Power Relations” (involving bilateral arms control agreements and informal bargains among major powers). Excluding major power relations, we mainly follow this classification of international legal orders. The “universal security system” aligns with the international legal order based on the United Nations with fundamental principles such as “self-determination and non-aggression, together with the inadmissibility of force in changing international borders”, alongside with other “security-related rules established before and during this period, particularly those related to nuclear weapons and other weapons of mass destruction, the international law of the sea and the conduct of international diplomacy” (Chalmers, 2019, p. 4). The “universal economic system” refers to a set of agreements and institutions (such as the International Monetary Fund, the World Bank and the General Agreement on Tariffs and Trade/World Trade Organization), which laid “the political and legal framework for the massive growth in international trade and investment” since 1945 (Chalmers, 2019, p. 5). Initially limited to the capitalist world, this order achieved universality after major socialist economies joined following the Cold War. The Western system represents “a community of shared political, economic and security interests” which “brings together developed market democracies in North America, Europe and the Asia-Pacific” through an exceptionally dense network of agreements and institutions (NATO, the EU, OECD, G7, Five Eyes intelligence sharing agreement, U.S. bilateral security agreements with its major allies in Asia-Pacific, etc.) (Chalmers, 2019, p. 5). This order is “based on shared democratic norms and shared responsibilities for protecting those norms” and is inherently ideological (“the West was above all an ideological endeavour”) (Chalmers, 2019, p. 15). Despite expanding into Central-Eastern Europe after the Cold War, it remains far from universal.

The United States played a pivotal role in creating all three RBOs, officially supporting each. However, tensions between them and contradictory U.S. responses to these tensions are evident. The UN order,

resulting from a bargain between the victorious World War II allies, features a veto power held by the five permanent members of the Security Council, emphasizing equality among great powers. In contrast, the Western order, conceived later to contain the Soviet Union and communism, centers largely on U.S. hegemony. Instances where the U.S. interfered in sovereign countries' internal affairs (sometimes by military intervention, without the UNSC authorization) during the Cold War or post-Cold War period, either to contain communism or in the name of human rights, aligned with the Western order but violated the UN Charter principles (Chalmers, 2019, pp. 20-21). While the international economic order was contemporaneously created with the UN order, the U.S. played a more decisive role, given the Soviet Union's disinterest in formulating capitalist rules. However, conflicts arose between the international economic and the Western order as well. One source of tension is the U.S. policy of sanctions as a primary means of intervening in non-Western states' internal affairs, which violates free trade rules (Chalmers, 2019, p. 27). The second source is the recent rise of protectionism in the U.S. and other parts of the political West, triggered by the observation that China does better playing by the existing rules, while globalization produces economic and social disparities within Western societies (Chalmers, 2019, pp. 24-26; Casarini, 2019).

So, which order do U.S. administrations envision when referring to RBO? The simplest answer would be a combination of the three orders collectively known as the liberal international order (LIO). Essentially, it comprises international law (the UN order) with additional elements from the international economic and the Western order, such as an open economy, human rights protection, and democratic governance (Dugard, 2023, p. 225; Lieberherr, 2023, p. 2). However, we have already observed that there are instances where the U.S. not only breaches international law (dissatisfied with Russia and China's use of veto in the UNSC) but also violates the rules of the international economic order when it conflicts with the Western order. Furthermore, for a full alignment of RBO at least with the Western order, the U.S. should unequivocally endorse one of its core values – democracy. However, this seems unlikely given the numerous autocracies that Washington has supported in recent decades. In its 2022 National Security Strategy, the Biden administration asserts that its “vision of a free, open, prosperous, and secure world” is supported not only by “democratic allies in Europe and the Indo-Pacific as well as key democratic partners around the world”, but also by “countries that do not embrace democratic institutions but nevertheless depend upon and support a rules-based international system” (The White House, 2022, p. 8). If embracing

democracy is not an essential prerequisite for being a supporter of RBO – and we have seen that neither is a strict adherence to the UN-based international law or the rules of the international economy – then the question arises: what specific rules constitute this order? To answer this, we need to delve into the very origins of the concept.

The first U.S. president to advocate for an international order based on rules was Woodrow Wilson. His famous phrase “to make a world safe for democracy” is often misunderstood, and does not imply a desire to transform every country in the world into a liberal democracy. Instead, it was a call to protect existing democratic governance in the United States and its Western European allies, ensuring it was shielded from threats by illiberal powers. This conceptualization, known as “liberal internationalism”, aimed to create a world order where democracies would be safeguarded like “eggs in an egg carton”. The key elements of this order included economic openness (opposed to closed mercantilist blocs), rules and institutions, liberal-democratic solidarity (close cooperation among liberal-democratic states), cooperative (collective) security, and progressive social purposes (Ikenberry, 2020, pp. xi-xiii, 33-44, 122-140, 307-311). The failure of the interwar (Versailles) order, partially due to U.S. isolationism, convinced Washington elites that a robust international RBO required active U.S. involvement in global politics, evolving over time to signify U.S. global hegemony. NSC-68, a programmatic document from the Cold War’s onset, expanded upon the original Wilsonian idea, emphasizing the need to “build a healthy international community”, which the U.S. “would probably do even if there were no international (Soviet) threat”, with the objective of creating a “world environment in which the American system can survive and flourish” (Ikenberry, 2020, p. 187). With the advent of unipolarity after the Cold War, Washington adopted a grand strategy of liberal hegemony, seeking to establish a hierarchic international order under U.S. leadership in the name of liberal ideology (Posen, 2014; Mearsheimer, 2018; Walt, 2018; Trapara, 2022). President George H. W. Bush’s vision of a “new world order” was explicitly rules-based, presenting “a world where the rule of law supplants the rule of the jungle” (Sakwa, 2023, p. 46). If RBO is indeed equivalent to an American hegemonic order, suggesting that the U.S. can break international rules if necessary to establish or maintain its global hegemony as the only arrangement in which American (and allied) liberal democracy could be secure, critics arguing that this is not a genuine rules-based order but rather a “rule based on orders” – an “alternative to international law, an order that encapsulates international law as interpreted by the United States to accord with its national interests” – may have a point

(Dugard, 2023, p. 226). However, considering the intricacies of the American legal tradition, the answer is not that straightforward.

The United States subscribes to the Anglo-Saxon doctrine of the rule of law, which differs in important and interesting ways from the European continental concept of *Rechtsstaat* (a German word translated as “state of law”, or “legal state”) (Barber, 2003, p. 444). Fundamentally, both concepts share the same meaning – governance by law, rejecting the dictate of any powerful individual or group (Barber, 2003, p. 444; Krygier, 2015, p. 780). However, a stark difference lies in how these doctrines perceive the connection between the state and the law. *Rechtsstaat* binds law and state together: society should be governed by the law with a separation of powers within the state, and those who rule (state officials) should also be bound by the law. There is no law without or outside the state – the law is exclusively a product of the state for the sake of certainty and predictability (Barber, 2003, pp. 447-450; Krygier, 2015, p. 782). In contrast, the rule of law etymologically lacks the word “state”, which is not accidental (Krygier, 2015, pp. 780-781). It rests on legal pluralism, allowing for multiple legal orders in the same territory (including sub-national and supra-national, alongside with multiple sources of the law, such as unwritten customs, court judgements, etc.) and different institutions determining the content of the law (Barber, 2003, pp. 450-451; Krygier, 2015, p. 781). This concept separates the state from the legal system, fosters flexibility, and lacks an ambition for a harmonious state-law relationship (Barber, 2003, pp. 451-452; Krygier, 2015, pp. 781-782). Thus, the rule of law is both a legal order and “a theory about a legal order” embodying “a set of qualities that ought to be present in all legal orders” (Barber, 2003, pp. 444, 452). Applying this to the international level, one can draw an analogy between *Rechtsstaat* and international law, with its institutional structure centred on the UN and its veto-powered permanent members of the UNSC. The U.S. concept of RBO, characterized by overlapping sources and a flexible interpretation of rules, can then be seen as analogous to the rule of law. While it remains rules-based, the determination of what the rules are and how they are interpreted and applied cannot solely be entrusted to the UN, where illiberal states hold veto power. Instead, there should be room for the “judicial” prerogative of the U.S. as an “exceptional” nation. Hence, the U.S. concept of RBO can be defined as a flexible combination of rules from multiple parallel international legal orders, with their also flexible interpretation a prerogative of the United States as a liberal-hegemonic power. To those in the rest of the world not attuned to the peculiarities of the rule of law this might seem like



pure voluntarism of the world's most powerful country. It is them whom we now turn our attention to.

### **Alternatives on the inside: European/German “effective multilateralism” and Australian regional approach**

The Western order operates within the sphere of U.S. hegemony. Consequently, it is unsurprising that U.S. allies within this order align with its foreign policy more often than not, including a recent frequent employment of the term RBO. However, the interpretations they attach are somewhat different from Washington's perspective, with Germany and Australia serving as illustrative examples. Germany, unlike the U.S, directly links its understanding of RBO to international law, encompassing the UN Charter, human rights conventions, arms control and non-proliferation treaties (Lieberherr, 2023, p. 3). In its first-ever 2023 National Security Strategy, signed by Chancellor Olaf Scholz, RBO is mentioned ten times. “The Federal Government advocates the strengthening and further development of a free international order based on international law and the United Nations Charter. Such a rules-based order creates stability and the conditions for peace, security and human development” (The Federal Government, 2023, p. 48). The adoption of this Strategy was motivated by a significant shift in Germany's security environment during the “watershed era” (*Zeitenwende*) marked by “Russia's war of aggression against Ukraine” which is deemed “a violation of international law and of the European security order” and makes Russia “the most significant threat to peace and security in the Euro-Atlantic area” (while China is “a partner, competitor and systemic rival”) (The Federal Government, 2023, pp. 11-12). Germany views the world as increasingly “multipolar”, acknowledging new centers of power and rising systemic rivalry (The Federal Government, 2023, pp. 5, 13, 22, 23). In this evolving security landscape, Germany (and Europe) seek to compete with challengers to the international order and reduce dependence on other “poles” in world order, including the United States, perceived as an unreliable ally during Trump administration, when earlier calls for a more robust German security policy were voiced (Kostić Šulejić, 2023, pp. 79, 100).

This dissatisfaction with the hegemon of the Western order expressed through calls for a rules-based order from the other side of the Atlantic is not a novel occurrence. The term (without “s” at the end of “rule”) was previously employed in the European Security Strategy in 2003: “Our

security and prosperity increasingly depend on an effective multilateral system. The development of a stronger international society, well functioning international institutions and a rule-based international order is our objective. We are committed to upholding and developing International Law. The fundamental framework for international relations is the UN Charter. The United Nations Security Council has the primary responsibility for the maintenance of international peace and security” (Council of the European Union, 2003, p. 9). The adoption of this Strategy coincided with the U.S. invasion of Iraq without UNSC authorization, opposed by Germany and France. The document emphasized that “the end of the Cold War has left the United States in a dominant position as a military actor”, but highlighted that “no single country is able to tackle today’s complex problems on its own” (Council of the European Union, 2003, p. 3). From a German/European perspective, the United States two decades ago played a similar role to Russia today – a violator of international law whose unilateral actions undermined German and European security, necessitating adherence to a RBO founded on the UN Charter through “effective multilateralism”.

The state that most frequently officially employs the term RBO is not the United States but Australia. It was also the first to incorporate this term into its strategic document, the Defence White Paper from 2009: “The United Nations and the UN Charter are central to the rules-based global security order... Within the UN context, the ‘responsibility to protect’ principle, which is currently at an important stage of development, holds that states are responsible for the protection of their own citizens from mass atrocities... Australia supports the principle, and recognizes that, on occasion, it may be necessary for other states to intervene, under the auspices of a UN Security Council resolution, if a state cannot or will not protect its population... The global leadership role played by the United States since the end of World War II has provided the strategic underpinning for the postwar global order” (Australian Government, 2009, pp. 43-44). The link with the UN Charter and the supreme authority of the UNSC in matters of global security is evident, but also the support to R2P as a LIO addition to international law, and the acknowledgement of the indispensability of the U.S. leadership for a stable global order. While later editions of the document show a diminishing direct link with the UN Charter, aligning more closely with the U.S. concept of RBO, this evolution is attributed to political shifts in Australia (the Conservatives replacing the Australian Labour Party in power) (Lieberherr, 2023, p. 3; Raymond, 2019, pp. 221-222).

This alignment with the U.S. concept of RBO is motivated by Australia's specific regional security context, particularly the rising multipolarity in the Indo-Pacific region, and the perceived threat of an illiberal and increasingly assertive China. This introduces a contradiction, as Australia seeks to support international law against China's activities in the South China Sea while simultaneously endorsing the U.S. concept of RBO, which allows Washington the "right" to use force unilaterally, contravening international law (Raymond, 2019, pp. 222-224). Critics also highlight the inconsistency between Australia's support for international law and recent U.S. decisions such as exiting the Trans-Pacific Partnership, raising questions about the compatibility of Australia's stance with the U.S. approach to rules of global trade and investments (Rigby, 2018). This situation exemplifies a hedging strategy, by which "a small state can effectively establish the basis for pursuing its national priorities and managing the complexities of its relations with a larger neighbour" (Jović-Lazić, Bošković, 2024, p. 60). Regional imperatives lead Australia to strongly support international law in matters of security and economy, while simultaneously relying on the U.S. as an indispensable protector in a worst-case scenario, even if it means aligning with its concept of RBO.

In conclusion, despite the frequent use of the term RBO by both Germany/the European Union and Australia, along with their identification of the same actors as threats to it, variations in the congruence of meaning with the U.S. concept are revealed. This divergence primarily hinges on their respective national interests, geopolitical positions, and places in the global power structures. Perceiving the U.S. as an unreliable hegemon and facing a direct Russian and a looming Chinese threat, Germany wants to establish itself (and the European Union) as one of the poles in a global multipolar system and leans towards viewing the UN Charter and the international law as the foundations of RBO. On the other hand, Australia prioritizes regional multipolarity and aligns more strongly with the U.S. concept of RBO due to its reliance on the U.S. as an indispensable ally in the face of a powerful China. The difference in legal traditions further contributes to this variation, with Australia sharing the Anglo-Saxon rule of law doctrine with the U.S, while Germany's adherence to the doctrine of *Rechtsstaat* inclines it to emphasize the UN Charter and international law as the foundations of RBO. Assessing the credibility of these alternatives to the U.S. concept of RBO within the Western order, it becomes evident that in the case of Australia it is compromised by its strictly regional approach and reliance on a hedging strategy. In the case of Germany/European Union, the credibility concerns are twofold. First, the German RBO concept rests on its

ambitious vision that the EU – with all its external and internal limits of capacity – should play the role of an independent pole in a multipolar international system. Second, while much closer to international law compared to the U.S. concept, the German concept of RBO also includes some extra features of LIO (such as human rights), with uncertain borders. Why, for example, Germany resisted the invasion of Iraq, but supported NATO when it bombed Serbia in 1999? These borders are the issue which concerns external critics the most.

### **Alternatives on the outside: Russian “genuine multilateralism” and Chinese “community of common destiny”**

The United States identifies Russia and China as the primary violators of RBO, attributing breaches to its all three pillars (the UN-based security order, liberal economic order, and the Western democratic order) in 2022 Biden’s National Security Strategy relates to all three pillars of RBO: “The most pressing strategic challenge facing our vision is from powers that layer authoritarian governance with a revisionist foreign policy. It is their behaviour that poses a challenge to international peace and stability – especially waging or preparing for wars of aggression, actively undermining the democratic political processes of other countries, leveraging technology and supply chains for coercion and repression, and exporting an illiberal model of international order... Russia and the PRC pose different challenges. Russia poses an immediate threat to the free and open international system, recklessly flouting the basic laws of the international order today, as its brutal war of aggression against Ukraine has shown. The PRC, by contrast, is the only competitor with both the intent to reshape the international order and, increasingly, the economic, diplomatic, military, and technological power to advance that objective... And yet, they concluded that the success of a free and open rules-based international order posed a threat to their regimes and stifled their ambitions. In their own ways, they now seek to remake the international order to create a world conducive to their highly personalized and repressive type of autocracy” (The White House, 2022, pp. 8-9). This mirrors the Wilsonian idea at the core of the U.S. concept of RBO, of creating a world safe for democracy. Russia and China counter these accusations by accusing the U.S. of breaking international law and undermining the UN order, pledging their adherence to its principles. Despite the shared rhetoric of commitment to international law, the responses of Russia and China to the U.S. concept of RBO, as well as their respective visions of the legal order, exhibit significant differences.

Russia has consistently opposed the U.S. concept of RBO, as articulated in various strategic documents and officials' statements. Foreign minister Sergei Lavrov's article published in the *Russia in Global Affairs* journal in 2023, illustratively titled "Genuine Multilateralism and Diplomacy vs the 'Rules-Based Order'", serves as a notable expression of Russia's stance. The key point in this article is that the UN Charter-based post-World War II international order, considered as "an embodiment of true multilateralism", is now undergoing a deep crisis as a result of "the decision of certain UN members to replace international law and the UN Charter with some 'rules-based international order'", the rules of which remain "mysterious", for they "have never been the subject of transparent consultations, nor have they been laid out for everybody's attention" (Lavrov, 2023, pp. 104-105). By imposing a "rules-based order", the Western "minority" within humankind rejects "the key principle underlying the UN Charter, which is the sovereign equality of states" (Lavrov, 2023, p. 106). "One is left with the impression that today both the UN and the provisions of the UN Charter pose a threat to Washington's global ambitions" (Lavrov, 2023, p. 107). According to Lavrov (2023, pp. 111-112), "genuine multilateralism" implies "respect for the UN Charter and all of its interconnected principles", where "multilateralism and democracy should enjoy respect both within the member countries and in their relations with one another", contrary to the behaviour of the West, which imposes "its understanding of democracy on other nations", but "opposes the democratization of international relations based on respect for the sovereign equality of states". In addition, "genuine multilateralism" also "requires that the UN adapt to objective developments in the process of forming a multipolar architecture of international relations", through the expansion of the UNSC with new members from Asia, Africa and Latin America, because "the inordinate over-representation of the West in the UN's main body undermines the principle of multilateralism" (Lavrov, 2023, p. 112). How does Russia's 2022 unilateral invasion of Ukraine fit into this? Lavrov offers an answer: "Russia patiently tried to reach mutually beneficial multilateral agreements based on the principles of indivisible security", but its proposals were "haughtily rejected", so Russia then "clearly elaborated the goals of its special military operation, which are to remove threats to its security that have been instigated by NATO... and to protect the people who were stripped of their rights set forth in multilateral conventions" (Lavrov, 2023, pp. 107, 110-111). "In order to avoid double standards", Russia calls on everyone to follow the 1970 UN Declaration of Principles of International Law, which "declares the need to respect the sovereignty and territorial integrity of states that conduct

‘themselves in compliance with the principle of equal rights and self-determination of peoples... and thus possessed of a government representing the whole people belonging to the territory’”, which is not the case with the “Nazi Kiev regime” who unleashed the war against “the residents of the territories who refused to accept the results of the bloody February 2014 coup”, the same way that “Pristina cannot claim to represent the interests of the Kosovo Serbs” (Lavrov, 2023, p. 109).

Russia’s negative response to the U.S. concept of RBO is logically consistent with its self-perception as one of the world’s great powers (“greatpowerness”). The status of great power implies independence and equality with other great powers, and is thus incompatible with subordination to the hegemony of another power (Trapara, 2020, pp. 33-48). Given that the U.S. concept of RBO is inherently hegemonic, it is logical for Russia to resist it by emphasizing multilateral diplomacy and sovereign equality between states as one of the key principles of the UN Charter, as well as the central role of the UN Security Council (where it has a permanent seat with veto power, but is also open for this body’s reform). In a world order based on “genuine multilateralism” Russia envisions itself as a “rule-maker”, rather than a “rule-taker” under the U.S. RBO (Allison, 2019, pp. 7-8). However, Russia’s defense of its invasion of Ukraine, which according to Richard Sakwa (2023, p. 314) “more than any earlier crisis... threatened the very existence of the Charter international system”, employing quasi-legal and sometimes absurd arguments, suggests that its great power status is particularly tied to the possession of an exclusive geographic sphere of influence. Despite its commitment to the principle of sovereign equality in general, Russia applies a different set of rules within this sphere, characterized by clear subordination and rules akin to those of the U.S. RBO, albeit without the liberal content. In Russia’s vision, the principle of sovereign equality is valid only outside its exclusive sphere, protecting it from foreign interference. This stance results in a “zone of legal exceptionalism” for Russia in the most of the post-Soviet space, while in the broader international system “Moscow falls back on traditional UN Charter principles and deploys them to constrain Western power” (Allison, 2019, p. 18; Jović-Lazić, 2015, pp. 189-283). For example, back in 2015 Russia stood in defense of Syrian sovereignty at the expense of human rights approach (which the West adopted in siding with Syrian opposition rebels against the Assad regime), although a year before it annexed Crimea citing humanitarian concerns (Allison, 2019, p. 17). Furthermore, Russia leverages U.S. acting in accordance with its concept of RBO, rather than adhering

strictly to international law, to “justify” its own violations of the international law by citing precedents (Dugard, 2023, p. 229).

China, like Russia, rejects the replacement of international law with the U.S. concept of RBO. A Joint Statement by presidents Putin and Xi in February 2022 emphasized that their respective countries “strongly advocate the international system with the central coordinating role of the United Nations in international affairs, defend the world order based on international law, including the purposes and principles of the UN Charter”, while they “intend to resist attempts to substitute universally recognized formats and mechanisms that are consistent with international law for rules elaborated in private by certain nations and blocs of nations, and are addressing international problems indirectly and without consensus” (President of Russia, 2022). However, unlike Russia, China has not engaged in flagrant breaches of the UN Charter-based international law, such as military invasions of other sovereign countries, nor has it advocated alternative interpretations of Charter principles to legitimize such actions. This divergence prompts the question of whether China represents the only great power that genuinely upholds international law and the UN system as sufficient descriptors for an international order centred on sovereignty and non-interference (Lieberherr, 2023, p. 3). China actually presents its own view of multilateralism and international rules based on Confucian legal tradition, where the rule of law should be complemented with the “rule of virtue”, because the law itself is “powerless to defend itself against human manipulation” without “the virtuous man”, while multilateralism should aim to “complete” the existing international order by constructing a “community of common destiny” for humankind (Carty, Gu, 2021, pp. 6-7, 16, 20). Unlike Western liberal tradition, which sees rules as an “outcome of deliberate negotiation and conclusion of contract or treaty between separated autonomous individuals”, rules in Confucianism evolve through relations “among a group of persons or partners who are all the time developing a common life-world which they all come to inhabit” (Carty, Gu, 2021, p. 17). The “community of common destiny” should serve as a win-win model for integration of national interests, and is a “significant guiding influence in China’s foreign policy” regularly found in its strategic documents since 2011 (Carty, Gu, 2021, pp. 36-37). China’s approach to “completion” of the international legal order by “its own cultural heritage of ethical, social, and international organization” corresponds “to the role that the idea of a liberal, democratic order plays in Western aspirations to improve and complete the international legal order” (Carty, Gu, 2021, p. 73).

In summary, both Russia and China, as global actors seeking to maintain their great power status, naturally oppose U.S. hegemony and its RBO concept as a replacement for international law and the international institutional order built around the UN. However, the credibility of their alternatives is compromised as they introduce extra features to their respective visions of international order that may not align with the principles of the UN Charter they claim to respect. Russia's pursuit of a sphere of influence around its borders results in unilateral breaches and false interpretations of international law, mirroring some aspects of the U.S. approach. On the other hand, China, while not engaging in territorial expansion through the use of force, seeks to "complete" the international order with elements from its own legal tradition, such as the "rule of virtue", which mirrors the "completion" of a world order sought by the "exceptional" U.S. nation through the introduction of RBO concept. The questions arise of whether the CPC's officials are those "virtuous men" who should protect international rules from manipulation, and whether the "Middle Kingdom" is destined to be the center of a "community of common destiny" for humankind? The common ground between the U.S. concept of RBO and its alternatives, both on the inside and the outside, should apparently lie somewhere in between, requiring further exploration and understanding.

### **On the fence: Indian reformism and the (false) promise of international law**

India occupies a middle ground between the U.S.-led suborder and rival powers opposing it. It prioritizes sovereignty, refusing subordination to American hegemony, yet it also contends with security concerns and border disputes with China. It participates in "alternative" international institutions led by China and Russia, such as SCO and BRICS, while concurrently engaging with U.S. regional proto-alliance Quad and occupying an important place in Washington's Indo-Pacific Economic Framework (IPEF). India's dual approach manifests in its nuanced perspective on the U.S. concept of RBO. On the one hand, India is among the major proponents of RBO. Concerned with the rise of China and aware of the emergence of the Indo-Pacific as security and economic region, it joined the statement of the Quad (Quadrilateral Security Dialogue between the U.S, India, Japan and Australia) which reaffirmed its members' "resolve to uphold the international rules-based order where countries are free from all forms of



military, economic and political coercion” (Lieberherr, 2023, pp. 1, 3). On the other hand, India’s understanding of RBO extends beyond countering China to also address concerns regarding the dominance of the U.S. and its allies. Besides sovereignty and territorial integrity, this concept emphasizes the equality of all nations. RBO is understood as a process of evolution through dialogue which would strengthen the voice of lesser powers, so that, in Prime Minister Narendra Modi’s words, “the rules and norms should be based on the consent of all, not the power of the few” (Lieberherr, 2023, p. 3). Central to India’s vision of this evolution is the reform of international bodies like the UNSC, IMF, and World Bank, seeking better representation than the existing one dominated by the West, to achieve a “more perfect system of multilateral regulation of international relations” (Vylegzhanin et al, 2021, p. 45).

Despite India’s interest in securing a permanent seat in the UNSC, which compromises the credibility of its RBO concept, the idea that RBO is yet to be established through reforms of international rules and institutions resonates, and introduces the question of whether international law, conservatively interpreted, can serve as a credible alternative to the U.S. concept of RBO and its alternatives. The UN Charter-based international law is underpinned by two most important principles: self-determination of peoples and prohibition of aggression (Chalmers, 2019, p. 7). These principles, when combined, establish that the territorial integrity and sovereignty of states cannot be undermined by the threat or use of force. Changes to state borders should be consensual, excluding former colonies and socialist federations (Chalmers, 2019, pp. 7-9). In the latter two cases, self-determination is permitted only within the borders of previous colonial territories and federal units, following the *uti possidetis* principle. Any further alterations to borders, either by subunits acquiring independence or countries expanding territories at the expense of others through annexation, are forbidden. Instances of such changes most often result in *frozen conflicts*, as they fail to gain universal international recognition (with South Sudan being the only recent exception). Furthermore, the unacceptability of interfering in sovereign countries’ internal affairs by force (non-intervention principle) often clashes with the almost universally acknowledged human rights regime (Chalmers, 2019, p. 13).

If the UN Charter-based international law was flawless and promised a more stable and peaceful world, it would not prompt influential world powers to devise new concepts justifying deviations from it or advocate for its profound reform. This legal order emerged from a deal made by victorious

great powers during ongoing World War II, yet the balance of power and interests among these nations, as well as in relation to the rest of the world, has since undergone significant changes. This has fuelled dissatisfaction not only among the disenfranchised, but also among these very powers, making the threat and use of force analogous to illegal yet prevalent phenomena like drugs and prostitution. These issues are exemplified by the sanctity of the norm of territorial integrity inviolability and the absence of universal rules for state recognition (Newman, Visoka, 2023). In a world where interstate borders resulting from millennia of wars and the strong preying on the weak have frozen at some point, a question of whether this can be deemed a just world arises. Does the only hope for stateless peoples and oppressed minorities (or even majorities in autocratic countries) lie in friendly great powers supporting their cause through violations of international law, thereby alienating others? Or could an order based on rules be established without necessitating the deprivation of any party?

## Conclusion

The United States introduced its concept of a “rules-based order” to address two seemingly contradictory needs. The first is to establish international relations based on universally accepted rules that apply to all, replacing the voluntarism of great powers. The idea is that the U.S. and Western liberal and democratic societies can survive and thrive only within an order grounded in stable and predictable rules and institutions. The second need is to legitimize its own hegemony in the international order. In a world with two, three, or more equal powers, the U.S. would have to share leadership with illiberal states, and this would not be “a world safe for democracy”. The bridge between these two needs was provided by the legal tradition of the “rule of law”, which allows for the flexible combination of different orders, rules and interpretations. Some of the closest U.S. allies accepted RBO in principle but attached interpretations closer to the UN Charter-based international law. Germany adopted RBO as “international law plus”, driven by concerns about U.S. unreliable hegemony and the desire to establish Europe as one of the equal poles in “effective multilateral” diplomacy of a new multipolar world. Australia opted for hedging between the UN Charter, to contain China and other regional poles, and the U.S. concept of RBO, viewing U.S. hegemony as indispensable for preserving the regional balance of power. Russia posed a frontal challenge to the U.S. concept of RBO, viewing its deviations from international law as a threat to

its great power interests. It proposed “genuine multilateralism”, a concept of order with flexible interpretations of rules to ensure these interests, particularly Russia’s “right” to have a sphere of influence around its borders, and “justify” Moscow’s own deviations from international law. China stood by an existing UN Charter-based legal order but asked for its “completion” by its own tradition of the “rule of virtue” for the establishment of a “community of common destiny”. India, “on the fence” between the U.S. suborder and its opponents, embraced RBO as something yet to be established by an evolution of the existing legal and institutional order through reform, reflecting its ambition to use this reform for its own promotion into the ranks of great powers.

No single country’s concept of an order based on rules can fully address the need of the contemporary world for increased peace, security, and stability. The same holds true for international law based on the UN Charter. So, what kind of reform could meet this pressing need? The initial step would involve mutual recognition of the legitimacy of different powers’ national interests and legal traditions, upon which their respective concepts of the international legal order rest. Despite their compromised credibility, each of these concepts brings something valuable and compatible with others to the table. In theory, the U.S. “rule of law” and China’s “rule of virtue” do not necessarily exclude each other. Both provide a degree of flexibility in the interpretation of rules that could add substance rather than cancelling them out. Both German/European “effective” and Russian “genuine” multilateralism reflect a deeper truth: the world cannot be effectively governed from a single, unrestrained center. Australia underscores that nations harbour diverse domestic and regional concerns, while India emphasizes that RBO has yet to be fully constructed, for when the current one appeared, many members of the international society were not even present. What could be a common denominator among all these valuable inputs that would pave the way for successful reform? In our view, it is democracy, understood as free and limited governance both within and among states. In a world of consolidated democracies, the U.S. would no longer strive to be a hegemon to ensure the security of its domestic order but could embrace more multilateral governance. A democratic Russia would no longer tie its status as one of several equal great powers to restoring and maintaining an empire. Similarly, democratic governance in China could embody its professed “rule of virtue”, paving the way for a democratic “community of common destiny” worldwide. Like “order”, “rule” has two meanings. To be ordered by rules, and not ruled by orders, a rule should have a specific nature – a rule for the governed and by the

governed. Those who claim that such a rule is “not in the tradition” of their countries, only seek to perpetuate their own tyrannical order based on force and fear, rather than law and freedom.

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