



Threat To International Liberal Order: A Case Of China's Dismal Record In Adhering International Law With Reference To UNCLOS

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Abstract:

In international relations, the liberal international order illustrate a set of global, rule-based order, structured relationships based on equality, political liberalism, economic liberalism and liberal internationalism since the late 1940s. More specifically, it entails international cooperation through multilateral institutions like, the United Nations, International Monetary Fund, World Trade Organization, UNCLOS etc and is constituted by equality (freedom, rule of law and human rights), free and open economy, security cooperation, and monetary cooperation. The order was established in the aftermath of post war. Time and again, China's compliance with international law is a contentious issue between the People's Republic of China and the world society. China refers to law frequently and does not view it as trivial, in contrast to popular assumption in the West. China has a very different legal political tradition that does not treat legality as carrying normative value in itself. This paper review China's rhetorical reference to the law, its recent case of Chinese treatment of international legal obligations with reference to UNCLOS. Apparently, Chinese treatment and non-adherence of international law is a threat to international liberal order and hence this issue needs to be discussed in the international forums.

Keywords:

International Liberal Order, UNCLOS, International Law

International Liberal Order

Following the worst struggle in human history, World War II, nations made efforts to guarantee that such horrible bloodshed would never break out in the world again. In order to foster international collaboration, world leaders established a number of institutions and accords based on the liberal world order. For the past 75 years, the United States has supported that structure, encouraging collaboration on matters like as trade, health, security, and monetary policy. The world has seen unheard-of levels of peace and prosperity during that time. Since another country's ideology can impede the expansion of an ideological world order, as was demonstrated during the Cold War, the only reason the current liberal international order is conceivable is because the United States does not face competition from a great power. Unlike bipolar or multipolar systems, the contemporary unipolar system lacks a rival to subvert the ideologically grounded system in the United States. According to John J. Mearsheimer, only in a unipolar international system is an ideology liberal world order led by the US feasible. Accordingly, “the sole pole has little reason to create a bounded order” (Mearsheimer, 2019). In truth, the world order that the United States prefers may once again resemble the geographically limited system that prevailed during the Cold War as great power competition reappears.

Many academics wrote about the future of state government in the early 1990s, with liberal democracy being viewed by many as the most effective approach. Francis Fukuyama's *The End of History and the Last Man* (Fukuyama, 2006) is the most well-known example. Again, though, the United States' position at the top of the international system and efforts to fortify a liberal world order made the global promotion of liberal governance conceivable. The global democratic community expanded at the same time that the liberal order expanded, thus bolstering the liberal international order. Liberal ideals became more commonplace as the liberal world order grew, which prompted concerted attempts to advance and defend liberal ideas. According to one of these rules, the Responsibility to Protect (R2P)¹, the international community must step in when governments violate the human rights of their citizens. But history demonstrates that the international system is dynamic, and states need to adapt to stay relevant.

It is critical to comprehend how the liberal world order came to be and how it may succeed or fail, as the return of great power competition and the waning of unipolarity continue to cause tensions in the international system. The resurgence of great power competition raises the possibility that the liberal world order could devolve into a limited or regional system, a la Cold War. Because many nations, including the United States, uphold the principles and ideals upon which the current liberal world order is founded, it remains in place. The order must adapt to the system's ongoing changes, though, and change cannot succeed unless those involved in it have a thorough understanding of the current global order and can think of strategies to keep it intact while it changes.

¹ Assuming responsibility for oneself and one's community and respecting the basic rights of one another are key tenants of liberalism.

Evolution of Liberal Order

As John Ikenberry has demonstrated, the modern international order is actually a kind of hybrid of two distinct order-building projects: the first is the modern state system, which dates back to the 1648 Peace of Westphalia; the second is the liberal order, which was spearheaded by the United States and the United Kingdom for the last 200 years and was helped in the 20th century by the "liberal ascendancy," or the rise of liberal democratic states (IKENBERRY, 2011). The "liberal vision" of Western democracies, on the other hand, included "open markets, international institutions, cooperative security democratic community, progressive change, collective problem solving, shared sovereignty, [and] the rule of law." (IKENBERRY, 2011a)

Constituents of Liberal International Order

If one approach to understanding the complexity of the liberal international order is to look at how it has developed over time, another is to break it down into its component elements, either conceptually or by area of policy. The security order, the economic order, and the human rights order could be the three components of a simple typology of the liberal international order. (Kliman & Fontaine, 2012) By breaking down the liberal international order into these three components, we can better understand how one has changed since World War II and the effects that these changes have had on the other components. Additionally, it goes beyond the cynical description of a "open and rules-based order" and demonstrates the various contexts in which the liberal international order might be interpreted as "liberal," so highlighting the contradictions inherent in the idea of the liberal international order.

The Security Order

When commentators refer to the liberal international order as being "rules-based," they largely mean the security system. Ikenberry specifically states that a liberal system is one that is "organized into rival blocs or exclusive regional spheres," i.e., one that is "rules-based." (Ikenberry, 2012) This indicates that power alone does not dictate what a state can or cannot accomplish in this particular sequence. Instead, states' actions are restricted by international law. For instance, international law on maritime disputes is defined by the 1982 United Nations Convention on the Law of the Sea, which is particularly pertinent to the ongoing territorial disputes in the East and South China Seas (despite the fact that the United States has not yet ratified it). The ultimate decision-making body that determines what governments can and cannot do is the United Nations Security Council.

But in the post-Cold War era, the West frequently "broke the rules" of the security arrangement. Specifically, many people, especially those outside of the West, believed that the 1999 NATO military operation against Serbia², which was conducted without a UN Security Council mandate, violated international law. The

² On March 24, 1999, NATO forces initiated an air war against Serbia in an effort to put an end to the human rights abuses that were then being perpetrated against the ethnic Albanian population in Kosovo.

American-led invasion of Iraq in 2003³ came after this. It is not at all clear whether these interventions—each of which had different justifications—were correct or incorrect in this case. It's also critical to stress that no area was annexed as part of these initiatives. However, they show that Western countries were willing to disobey the law when they felt there was a good reason to. Western nations have only recently insisted on the critical relevance of the "rules-based" system in response to other states breaking the rules.

The Economic Order

When Western scholars allude to a "open" liberal international order, they are implicitly referring to the economic order. Ikenberry thus states that "openness is manifest when states trade and exchange on the basis of mutual gain,"(Ikenberry, 2012a) or, to put it another way, when liberal ideals form the foundation of state-to-state economic contacts. Globalization is thus closely related to the "openness" of the economic order, which is a fundamental component of the "liberalism" of the liberal international order - that is, the "breaking down of artificial barriers to the flow of goods, services, capital, knowledge, and (to a lesser extent), people across borders."(Stiglitz, 2003) Globalization and the liberal international order are actually so intertwined that it is become harder to distinguish between the two.

In the early postwar era, known as the GATT⁴ era, there was little economic liberalism. John Ruggie dubbed this compromise, which allowed states to maintain significant policy autonomy while liberalizing trade, "embedded liberalism."(Ruggie, 2017) However, the economic system has changed significantly since the end of the Cold War, especially with the establishment of the World Trade Organization (WTO) in 1994. Ikenberry refers to the WTO as "the most formal and developed institution of the liberal international order."(Ikenberry, 2011) WTO regulations are a crucial component of what is meant when Western analysts refer to a "rules-based" system, in addition to the regulations governing the security order.

Perspectives from the West and the East

The disparities in how the liberal international order is viewed by Westerners and non-Westerners highlight the need for more consistent and precise thought about what it is. Many people outside of the West have quite different perspectives than those inside the West regarding the liberal international order, particularly with regard to the US's place within it. For instance, Fu Ying, the Chinese National People's Congress Foreign Affairs Committee chairwoman, distinguished three components of the "U.S.-led world order" at the Munich Security Conference in 2016: "the American value system," "the U.S. military alignment system," and "the international institutions including the UN system."(Munich Security Report 2016, 2016) She clarified that when Chinese officials spoke of their support for the international order, they meant the third component; that is, they were in favour of liberalism in the sense of a "rules-based" order but not in the sense of a system founded on Western principles, such as democracy.

³ The invasion phase, which saw a combined force of troops from the United States, the United Kingdom, Australia, and Poland enter Iraq, started on March 19, 2003 (ground), and lasted little over one month, involving 26 days of intense combat activities.

⁴ The General Agreement on Tariffs and Trade (GATT), signed in 1947 by 23 countries, is a treaty minimizing barriers to international trade by eliminating or reducing quotas, tariffs, and subsidies. It was intended to boost economic recovery after World War II.

But perceptions of the liberal international order and American "hegemony" differ from those in the West not only in totalitarian nations like China and Russia. Indeed, many seem relatively unconcerned about what is perceived in the West as a crisis of the liberal international order in what Dan Kliman and Richard Fontaine called "global swing states" — that is, democracies like Brazil and India that are crucial for the future of the liberal international order. Some even see a chance when the liberal world order collapses. In the spring of 2016, for instance, Neelam Deo and Aditya Phatak contended that Donald Trump's election as US president may cause "the dismantling of the geopolitical Bretton Woods" and consequently "energize a multipolar world." As a result, "Trump might be the unintentional sparkplug for a more just era." (Deo & Phatak, 2016)

Right now, finding some common ground is the challenge. The elites of Western foreign policy need to consider the liberal international order and its flaws more carefully, as well as potential solutions to make the world more equitable. However, the Western case for public goods must be taken seriously by those outside the West as well as by those in the West who oppose American hegemony. If the United States were to stop providing some public goods, such freedom of navigation, other powers would still find it difficult to offer them. For many people outside of the West, a world without these public goods might be catastrophic. Therefore, for the liberal international order to survive, Western and non-Western states must come to an agreement on how to modify it.

China: The beginning of the challenge to the international liberal order (in crisis)

China's conventional approach has been to portray itself as a power experiencing a "peaceful rise"—a two-pronged rise. On the one hand, the new power adapted to the structures and regulations of the liberal order and, in exchange, anticipated that the other players would progressively modify the game's rules to account for shifts in the balance of power and influence across international borders. China portrayed itself as a moderate "reformist revisionist" nation. It never concealed, nevertheless, its disapproval of a few of the main institutions of global society. It acknowledges things like market forces, diplomacy, sovereignty, non-intervention, and multilateralism, but historically, it has opposed liberal political institutions like democracy, human rights, and environmental principles. These oppositions and the rhetorical focus on the inconsistencies of the dominant Western order hinted that China would make a significant move in the direction of creating a hybrid alternative political-economic system.

However, China has clearly risen in the international power hierarchy over the past few decades, but it has shown no sign of being willing to take on the counter-hegemonic leading role that increasingly corresponds to it. China only asked for increased engagement in the norms controlling the liberal order and advocated the creation of new international organizations prior to Donald Trump's first-ever election to the presidency and the subsequent rise of COVID-19 (Segura, 2017). In this regard, China has essentially committed substantial financial resources during the previous ten years to the establishment of alternative international organizations, regional forums, security agencies, and infrastructure development initiatives. China profited as a result of this strategy, which increased its involvement in the liberal system and helped it diversify its alternatives.

In summary, prior to the onset of the worldwide health crisis, China's increased assimilation into the liberal order and, more importantly, the market, was inadvertently aiding in the advancement of a substitute paradigm that upholds authoritarian rule while merging it with liberal components like trade promotion, collaboration, and backing for multilateralism. Despite having strong roots in the current international system, China and the US are developing more distinct models, which is causing the positions of many actors in the international order to shift. If this is the case, the paradigm dominated by the West will need to deal with internal disintegration. Before COVID-19, the concept of a multiplex international order with competing or coexisting political-economic models was starting to take shape.

UN Convention of Law of Seas (UNCLOS)

The 1982 United Nations Convention on the Law of the Sea (UNCLOS), which became operative on November 16, 1994, is an international agreement that establishes a set of rules for the use of the seas and oceans around the world. These rules aim to protect and preserve the sea's living resources as well as to ensure the conservation and equitable use of resources and the marine environment. Other issues covered by UNCLOS include navigational rights, sovereignty, and usage rights in maritime zones. 166 States had ratified, acceded to, or succeeded to UNCLOS as of January 10, 2014. The United Nations Division for Oceans Affairs and the Law of the Sea has access to the complete text and status of UNCLOS. Inspired by the goal of resolving all disputes pertaining to the law of the sea in an atmosphere of mutual respect and collaboration, and cognizant of the historic importance of this Convention as a crucial component in preserving justice, peace, and advancement for all global citizens. (UNCLOS Preamble, n.d.)

According to the Preamble of the UNCLOS, an archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1. 2. The length of such baselines shall not exceed 100 nautical miles, except that up to 3 per cent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles. (UNCLOS Preamble, Article 47, n.d.)

South China Sea – Dispute Background

Approximately one-third of global maritime trade, or trade including oceans, passes via the South China Sea. About half of all Middle Eastern oil and gas tankers enter it en route to China, Japan, the United States, and other destinations. Land features in the South China Sea are usually the focal point of disputes between countries. More specifically, they argue over who is in charge of the surrounding seas. There are many fish in the sea itself. There are substantial quantities of natural gas and oil beneath the sea floor. The Sea is strategically important militarily and is important for national security because of its location. China's expansive claims of sovereignty over the sea have enraged rival claimants Brunei, Indonesia, Malaysia, the Philippines, Taiwan, and Vietnam. The sea is thought to contain 11 billion barrels of undiscovered oil and 190 trillion cubic feet of natural gas. Countries started claiming islands and different areas in the South China Sea, like the fishing grounds and abundant natural resources of the Spratly Islands, as early as the 1970s.

Six nations actively claim parts or all of the South China Sea and its land features. These disputes include Paracels by China, Taiwan and Vietnam. Spratlys by China, Taiwan, Vietnam, Brunei, Malaysia and Philippines and almost all the South China Sea, its land features, and resources by China. China asserts that it once controlled islands in the South China Sea. The Republic of China released a map featuring nine dashes in 1947. The dashes join to form a U that encompasses the majority of the South China Sea. The Republic of China could not, however, provide a clear explanation of this "nine dash line."

According to China's position, foreign armies are prohibited by international law from conducting intelligence-gathering operations, including reconnaissance flights, within its exclusive economic zone (EEZ) (U.S.-China Strategic Competition in South and East China Seas: Background and Issues for Congress, 2023). The United States asserts that claimant nations are exempt from notification requirements for military operations and are entitled to freedom of navigation across their Exclusive Economic Zones (EEZs) in the sea under the UN Convention on the Law of the Sea (Panda, 2018).

The South China Sea Arbitration Case in the UNCLOS

The Philippines appealed to a special arbitration court established by the Convention on the Law of the Sea in 2013 in the wake of the Scarborough Shoal stalemate. These tribunals render judgments that are binding on the parties concerned in terms of international law. The Philippines case was restricted to determining the legal standing of waters emanating from many reefs and other geographical features under Chinese sovereignty, such as Scarborough Shoal.

In accordance with Annex VII to the United Nations Convention on the Law of the Sea (the "Convention"), the Republic of the Philippines initiated arbitral proceedings against the People's Republic of China on January 22, 2013. The issues raised in the arbitration included the South China Sea's historical rights, the origin of maritime entitlements there, the legality of certain Chinese actions there that the Philippines claimed violated the Convention, and the status of specific marine features there. China decided not to tolerate the situation and to take part in the proceedings. In this arbitration, the Permanent Court of Arbitration functioned as the Registry. The Permanent Court of Arbitration in The Hague ruled in favour of the Philippines on nearly all counts in July 2016 over a UNCLOS lawsuit that the Philippines had filed against China.

The law of the sea arbitration court's ruling was released on July 12, 2016. China suffered greatly from the two major rulings. First Six of the contested land features, including Scarborough Shoal, were ruled by the court to be "rocks" that rise above the water at high tide. They are therefore eligible for territorial seas of 14 miles, but not for EEZs of 230 miles. In their natural state, five land features, including Mischief Reef, are only visible above water during low tide. As a result, neither territorial seas nor EEZs apply to them. Second The court further declared that China's "nine dash line" is "without lawful effect" since the Convention on the Law of the Sea does not acknowledge past claims to oceans and seas.

Responses to the UNCLOS Ruling

Despite having signed the treaty creating the tribunal, China does not recognize the court's jurisdiction (The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China), n.d.). The court ruling was referred to as "illegitimate" by the Chinese. They then choose to disregard it. "We are strongly committed to safeguarding the country's sovereignty and security, as well as defending our territorial integrity," said Chinese President Xi Jinping.

The Chinese persisted in their chosen dispute resolution strategy, holding separate negotiations with each of the other claims. They did pick up the discussions on a "Code of Conduct" for the South China Sea with the other claimants. However, this has persisted for many years. The United States was accused by China of "meddling" in the conflict.

The U.S. observed that China accelerated the construction and militarization of its seven man-made islands in the Spratly Islands following the arbitration court's decision. Airbases at Mischief Reef and two other locations. Most concerning for the United States was China's reaffirmation of its "nine dash line."

Consequences of China's Complicated Views on International Order

Scholars and strategists on both sides of the Pacific have been saying for the past few years that China is posing a threat to the world order on a regional and global scale. Actually, Beijing has been more vocal about its intention to alter the liberal international system that the US established. Observers tend to link the discontent of rising powers with threats to the political status quo and a determination to overthrow the established system. As new great powers emerge, the distribution of rewards in international politics frequently does not reflect the distribution of power. China would surely be viewed as a serious threat to the United States if it were perceived as a revolutionary power that was looking to topple the laws of various world regimes. However, China's approach to the regional and global orders is significantly more nuanced.

Some foreign observers contend that rather than trying to completely overthrow the system, China is a revisionist power that wants to expand its influence, modify certain laws to its advantage, and alter elements of the established order that it sees as being detrimental to its interests. Beijing is not "revolutionary," but it is "revisionist."⁵ China, on the other hand, says that while it does not support the U.S. alliance system or the international promotion of human rights, it does accept the parts of the current order that revolve around the UN and related organizations. China is "offering its own ideas and initiatives to improve the international order system," according to Chinese envoy Fu Ying (China Daily, 2016).

Despite this, many Chinese academics maintain that the notion of a unified liberal international order is unreal and that the term "liberal" suggests that this system aims to democratize China while endangering the one-party rule of the Chinese Communist Party. Beijing, on the other hand, usually uses the future tense when discussing regional order, talking about creating "a more just, equitable, fair, democratic and representative international political and economic order," (Hooper et al., 2019) a vision that China hopes to play a

⁵ Revisionist state attempt to reevaluate and restate the past based on newly acquired standards.

significant role in assisting in the implementation of. In order to support their claim that hegemony has the luxury of hypocrisy, many Chinese academics also cite various incidents in which the US has disregarded or broken the law, including the US invasion of Iraq in 2003 and Washington's refusal to ratify the UN Convention on the Law of the Sea (UNCLOS). This characterization is widely held regardless of its accuracy. This suggests that a growing China will try to improve Beijing's relationship with the international order without completely defying it.

TABLE 1: CHINA'S APPROACHES TO INTERNATIONAL ORDER

	Economic	Security
Global	Reformist World Trade Organization, International Monetary Fund, G20	Increasing Contributor UN budget, peacekeeping, climate change
Regional	Entrepreneur Asian Infrastructure Investment Bank, Belt and Road Initiative, BRICS Bank, Shanghai Cooperation Organization	Challenger/Spoiler UNCLOS/maritime disputes, East and South China Seas, North Korea, ASEAN, U.S. alliances

Source: Carnegie Endowment For International Peace

Table 1 identifies the main domains that China's views on international order may have adverse effects on, particularly with regard to regional security. In addition, depending on how the disparities between the Chinese and allied approaches to international order are lessened or resolved, the table shows potential prospects in the areas of global security and the economy.

China's progress globally depends on achieving regional hegemony; hence its regional actions may be more overtly revisionist. Beijing is also eager to point out how much the global economic order has benefited it, but it has also been bold in claiming sovereignty and is spending heavily on a historic military modernization. China has specifically pressed its claims in the East and South China Seas through its involvement in grey zone activities. Furthermore, Beijing has traditionally accepted a variety of international orders without necessarily endorsing all of the standards that go along with them, especially those that are associated with liberal democracy (like human rights). According to each of these criteria, China is most likely to develop a very complicated strategy toward international order and aim to further its interests without necessarily—at least from its subjective perspective—provoking retaliation from other international actors. But such a tactic might not bear fruit and instead fuel escalating hostilities or even wars with neighbouring nations.

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