

47th Meeting Report –‘Rules-based Order’- meanings, perspectives, processes.

The 47th meeting of AusCSCAP was held at University House, ANU on Tuesday 3 October, 2017 on the theme of the ‘Rules-based Order’. The meeting booklet is also available on the website setting out in detail the agenda, participants, and our overseas guests.

SUMMARY OF MEETING

As with individuals, a body of rules, regulations, laws and conventions have been developed, (largely by western nations) to guide the behaviour of nation states. Few contest that most states comply with most of the rules most of the time, confirming that they are considered fundamental to the stability and predictability of relationships among states. The set of the accumulated understandings and arrangements between states, and the global institutions that administer these international rules, in areas as diverse as trade, commerce, environment, investment, finance, security and sovereignty, are captured under the term ‘Rules-based Order’ (RBO). The discussion at this meeting focused mainly on the rules associated with security, strategy and sovereignty.

The prevailing rules-based order in Asia, an order founded on US primacy and infused with western ideology, has guided the development of Asia and beyond since 1945. With the changing balance of power in Asia, and a perceived weakening of US resolve to maintain its central position in preserving this order, AusCSCAP considered it timely to discuss whether a consensus exists; what is understood by the term RBO; whether a new consensus was needed, and how such a new consensus might be forged. We invited several colleagues from across the CSCAP diaspora to give us their perspective on the issue.

The concept of a rules-based order, applying globally as well as regionally, and underwritten by both soft and hard power, has been well understood since the end of WWII, but until recently it has more often been assumed than talked about in regional discourse. Now however, the sweeping changes in power relationships which have affected the region are generating the perception that the extant order is under challenge. This is resulting in a surge of interest in the subject in a number of quarters, and frequent references to it in international discourse.

It was also pointed out that Australian Governments, and sometimes those of Japan and (less often) India tended to use the expression ‘*liberal* rules-based order’. The use of the term ‘liberal’, together with other contextual indications, raises the question of whether this advocacy was directed at those who appear to oppose liberal values - particularly China, Russia and – in regard to economic policy at least – even the Trump Administration.

The term RBO seems to be used in a range of ways. It is open to different interpretations. In some liberal democracies, it references individual human rights, democratic processes, the rule of law, unfettered market forces, and peaceful resolution of disputes. Other polities however see the concept more darkly as questioning the legitimacy of their more authoritarian traditions, which emphasize national sovereignty, independence, non-interference and social advancement above individual human rights. This alternative approach to RBO includes China’s preferred interpretation, which sees sovereignty, security, social progress, economic development and decolonisation as fundamental to any understanding of RBO. Further complexity is inferred by the suggestion that Russia in particular, but also China, appear to want to qualify their own principle of non-*interference* to the extent necessary to allow major powers to create ‘spheres of influence’. Those that seemed to be agitating

most for change in emphasis, tended to deflect criticism by pointing out that they had played little or no role in framing the extant 'order'.

China's relationship with RBO - tellingly, a term it rarely uses preferring to simply refer to international law - was described as an 'a la carte' approach, where different emphasis was placed on the various underlying principles according to the perceived national interest. For example, adherence to individual human rights gave way to social and community development, and democratisation to national security and sovereignty. It was argued that China felt no hypocrisy in a 'cherry-picking' approach, since the order itself was complicated and full of contradiction, and because all great powers cherry-picked when it suited, complying with the RBO selectively. Examples were given where all states, large and small (including the US and Australia), rejected aspects of the RBO when their national interest demanded. Outside of Asia, Russia was said to regard RBO more through a Tsarist style lens, and akin to American thinking about the Monroe Doctrine, introduced in the early nineteenth century. To some countries, democratisation and individual human rights have been overplayed, and a more pragmatic approach was needed. The 'responsibility to protect' (R2P) concept was adopted with apparent unanimity early in the century, but ambivalence to it now may reflect changing attitudes to the RBO.

In essence, there were several rule-based orders, all with competing conceptual foundations claiming international legitimacy. One prominent commentator, quoted at the meeting, suggested that the apparent cleavage in approach toward the RBO could be summarized best as western countries applying the **rule of law**, while other rising countries preferred to apply **rule by law**. One issue discussed related to how far the concept of the formal equality of nations is applied in practical situations, and some felt that when push comes to shove in international relations, the concept of equality between nations may be suspended. While major powers may pay lip-service to the concept of all nations being equal, they often argue that their decisive economic and political status warrants a stronger voice in applying and even defining the rules. In the case of China, one observation was that although the Chinese leadership acknowledged the RBO, in 'their hearts' some of the leaders continue to view neighbouring states in a manner influenced by the pre-modern tributary system, in which China was central and superior.

ASEAN may illustrate yet another form of RBO. The U.S. Secretary of Defence, James Mattis, has acknowledged the contribution of ASEAN to setting the RBO. By institutionalising soft law and formalising informality and consensus, it sees rules not necessarily as enforceable by sanctions, but more as concepts around which persuasion and consensus-building can take place. ASEAN principles and guideline therefore may be better typified as 'conventions' rather than rules. As mentioned below, the ambivalence shown in some parts of Asia to the Rohingya crisis, especially the cleavage in Muslim /Buddhist relations, has repositioned religion as a reference point for international behaviour - supplementing the interests of the nation state.

General terminology and the language of security used when referring to RBO was not universally agreed, and apart from the deliberation regarding the parameters of the rules and their specifics, there was considerable disagreement on their application. Some participants felt that smaller and weaker states were prepared to uphold the RBO line, mainly for self-protection from the bullying major powers. Debates on these matters were typically abstract – until real world situations entered – like the current Rohingya crisis and the Korean Peninsula tensions. It was suggested by some at the meeting that the intention of the Burmese military is to rid itself of the Rohingya population in its entirety, and to exploit the present opportunity to achieve its objective of 'ethnic cleansing'. At the same time, some felt that ASEAN's response has demonstrated the lack of cohesion in the Association

given their Muslim and Buddhist cultures. The idea that religion was not important to interpretations of the RBO was now highly contestable.

Reference was made to Indonesia and its approach to RBO. The term itself was rarely used in Indonesian discourse, and when it was, it was seen as a hollow concept put forward by the United States and others, who themselves didn't necessarily follow the rules. Examples abounded: the US non-ratification of UNCLOS and the Convention of the Rights of the Child (CRC), and rejection of the Criminal Court, Kyoto, Paris Accords, and now the TPP. For Australia, the example of the East Timor Sea boundary issue was given.

A new consensus

Australia has played a significant role in upholding and actually developing the RBO, especially in its formative stages immediately following the Second World War. While Australia was not without influence during the framing of the original, but failed, League of Nations principles following the First World War, our role in the framing of the San Francisco Conference and the founding of the United Nations, the gold standard in international rules, was much more significant. Australia, through H.V. Evatt and others, played a significant role in developing the post WWII RBO, seeing it as a means to shore up the interests of smaller states like itself.

In essence, and despite the clear examples of 'selective' approach by many in implementing RBO, the meeting agreed that the vast majority of states followed the vast majority of the rules (less so in the case of national security and sovereignty) the vast majority of the time. Participants seemed confident that most states would wish to retain the overwhelming bulk of the laws and rules that comprise the RBO, especially those states that have benefitted so much from economic and trade rules. Equally, there appeared to be significant support for the contention that the RBO consisted of two basic elements – the body of laws and rules referred to above, and a second element consisting of norms, conventions and guidelines that inform the interpretation and implementation of this body of law. To illustrate this point, the prevailing liberal interpretation of the RBO involved a stress on liberal democracy and the market economy. It was suggested that, while recasting the laws and rules may not be necessary, there could be advantages in seeking a consensus definition of the RBO stripped of a specific liberal ideology.

While it is clearly difficult for states to discern a way forward at the present time, there may be scope for Track 2. While a refreshed or recast RBO may want to preserve the linkage of the strategic and economic dimension, a liberal economic order is likely to have broader appeal if separated from liberal values and beliefs regarding cultural, social and sovereignty issues. A revamped order needs to be cognative of the balance of cultural, religious and societal values operating in the region. Track 2, and perhaps especially CSCAP, has the capacity to look down this road. Almost all countries see a RBO as being in their national interest, but the challenge now is to formulate an order that attracts the widest possible acceptance.