

The Rules-Based International Order: Catalyst or Hurdle for International Law?

Dr Julinda Beqiraj

The increased use and references to the "rules-based international order" (RBIO) in political statements and declarations prompt questions about the meaning and scope of this concept. The RBIO can be a good thing, as it rests on desirable common values, such as multilateralism, peace, development, human rights. However, due to different understandings of the concept and its content, there is not always clarity on what proponents mean when they refer to the concept, and what we as 'consumers' - from different disciplines - imply of the concept. In turn, it can mean a world order based on public international law (PIL), or something which is different from the world order based on PIL. However, a common message whenever the concept is used is the refusal of negative unilateralism and the desire to exclude the possibility of legitimising arbitrary actions of some states through abuse of the existing rules of international law. The issue nevertheless remains, that because of the fragmented understanding of RBIO this positive idea may be easily subject to political instrumentalization and weaken PIL by creating leeway for governments to selectively choose some (but not others) parts of public international law to uphold.

This blog post summarises some of the ideas and considerations in a [BIICL discussion](#) paper, developed in the framework of a research project "[Benefits of the Rules-Based International Order?](#)". The paper discusses the meaning of the RBIO concept and its relationship with PIL and spells out the reasons/conditions when such an order is beneficial, taking perspectives from the Global South into consideration, with the African region as a case study.

What is the RBIO?

The RBIO concept has been explained ([here](#)) as a system in which countries adhere to established norms, treaties, and agreements to govern their interactions. It seeks to establish a fair, just, open and predictable system of governance on the global stage by relying on 'core principles' such as "economic stability, nonaggression, and coordinated activity on shared challenges" (see [here](#)). The concept historically refers to the rules, norms and institutions assembled into a coherent system of global governance in the immediate post-World War II era and becoming fully globalized in the aftermath of the Cold War. However, it is also argued ([here](#)) that there is no single rules-based order or system, but rather that there are distinct orders stemming from the post-1945 international settlement. Indeed, there are narrower understandings of the concept, and the criticism most often heard in these regards is that the RBIO is a "central narrative in the US foreign policy" and there is an "imagined community populated by Western liberal democracies and the (US) allies and aggregate institutions that share such a common understanding, including Australia, New Zealand, Japan, Canada, France, Germany, Kenya, and the EU" (from the discussions at a BIICL conference, video link [here](#)).

Supporting the idea of one RBIO rather than distinct ones is not just a doctrinal issue, but has concrete consequences, because each order (if it is accepted that multiple orders exist) reflects power-based bargains between their members and tensions between the different orders/systems. One example is the difficulties associated with the implementation of humanitarian military intervention to prevent atrocities such as genocide, war crimes, ethnic cleansing and crimes against humanity - embodied in the Responsibility to Protect (R2P) doctrine. Another example is the wide use of the RBIO concept in US policy documents and public speeches as a means to attempt justifying the US invasion of Iraq, which had taken place without a Security Council authorisation, as required by the UN Charter. A third example is the use of economic sanctions as a response to the behaviour of some states, which may in turn conflict with international law rules on trade.

What is the relationship between RBIO and PIL?

Considering the 'relative silence' among international law scholars and practitioners on the specific meaning and content of the RBIO, it is often considered as the term used by political scientists and politicians for international law. However, the emphasis that lawyers and political scientists/politicians place on 'rules' is different.

This has prompted scholars to raise the question of "The choice before us: International law or a 'rules-based international order'?" -

citing the title of an article by John Dugard that addresses the core of the issue ([here](#)). According to the distinguished author there are two ways of looking at the rules-based order. In a first understanding, it may be seen as a concept that is synonymous with international law. According to this view the RBIO is a normative concept, rooted in the system of laws, rules, and norms, centred on the United Nations and its Charter and the institutions that were set up in the aftermath of WWII. 193 countries have acceded to the UN Charter as member states, confirming their participation in the community of nations and committing themselves to follow the fundamental principles and provisions that extend from the Charter, and subsequent agreements. In a second interpretation, the concept may be understood as involving only a partial overlap with PIL, with an emphasis on certain values - for instance importance of human rights, self-determination, territorial integrity, economic cooperation, and other core principles of international law - but without a close consideration of how such principles translate in concrete rights and obligations in international law, by reference to multilateral treaties, customary rules, or the mechanisms for their enforcement. The amorphous rules of the RBIO in this second understanding make it easier for governments to selectively enact or condone violations of international law, thus "enjoying legitimacy through association" (discussions at a BIICL conference, video link [here](#)).

In essence, the lack of understanding about the contours and content of the rules based international order makes it difficult to conceptualise and use it. "States frequently 'imply' that the RBIO enjoys the legitimacy of international law because it upholds the international legal order, but they are very careful not to say that RBIO actually applies international law 'wholly and exclusively'" (discussions at a BIICL conference, video link [here](#)). Instead, the utility of a RBIO 'wholly and exclusively' premised on PIL comes down to three points: (i) 'rules' are a fundamental feature of human existence, and PIL has aimed and managed (to a certain extent) to meet the challenge of applying rules to bigger and more diverse groups - states and international organisations; (ii) despite limitations, a RBIO resting on PIL commitments also offers mechanisms for addressing violations of the rulesets and enforcing the rules - a feature that the RBIO itself does not necessarily have; (iii) a RBIO grounded in international law also includes predictable mechanisms for updating and amending existing rulesets in an orderly manner, rather than by unilateral action.

RBIO and the Global South

There has been in recent years a growing recognition of the economic, political, and cultural significance of the Global South, including African States, in defining and putting forward proposals for amendments to the existing principles, values and rules that better work for them. Significant economic growth and development, demographic shifts affecting consumer markets, trade and investments, and regional integration have enabled a better coordination of positions allowing countries in the Global South to amplify their voices in international negotiations, and in the calls for greater representation and participation in global governance structures.

With a close focus on the African region, the paper highlights through examples that the African perspective on the RBIO features a general recognition of the importance of a RBIO grounded in international commitments and institutions, which at the same time is matched by efforts to address some of the shortcomings of that order and correct some of the existing global imbalances at the regional level. Overall, such perspectives are multifaceted and shaped by historical experiences, diverse cultural backgrounds, and geopolitical realities, and are pursued also in the framework of and by the African Union (AU), where support and commitment to international law, multilateralism, peace and security initiatives, promotion of African solutions, and advocacy for reform is evident.

The paper shows that Africa has demonstrated to value both the concept of RBIO and PIL (including all its rules and mechanisms) and has sought to implement global norms into its regional system. However, in Africa, as in the rest of the world, the use by politicians of the RBIO concept without a clear specification of the substantive content, carries the risk of undermining the commitment to PIL. While the appeal of RBIO can be understood in particular by new(er) states which continue to suffer from the effects of colonialism, it can eventually be detrimental if used at the expense of PIL, as in the case of the attempts of some African states to withdraw from the ICC Statute, and the related consequences (actual or potential) on the state of the rule of law in those countries and on the justice delivered to victims.

Author

[Dr Julinda Beqiraj](#), Maurice Wohl Senior Fellow in European Law, Bingham Centre of the Rule of Law, BIICL

URL: <https://www.biicl.org/blog/73/the-rules-based-international-order-catalyst-or-hurdle-for-international-law>