



EU-Australia Leadership Forum

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# EU-Australia Leadership Forum

## Sectoral Policy Workshop: Rules-Based International Order

### Background Papers

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# Background papers prepared for the EU-Australia Leadership Forum Sectoral Policy Workshop on a Rules- Based International Order

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# Threats to a Rules-Based International Order

By Quentin Peel

Judging by the volume of high-profile speeches and articles of the past few years, there is a broad consensus in the western world that the rules-based order that has governed international relations for the past 70 years is under unprecedented strain. There is less agreement on where the most serious threats are coming from, how fundamental they may prove, and how to deal with them.

Both the European Union and Australia are great believers in the rules-based order as the essential core of global governance. The post-1945 multilateral system, centred on the United Nations and all its related treaties and agencies, as well as the World Trade Organisation, the Bretton Woods institutions, the Paris agreement on climate change, and the framework of legal agreements such as the Law of the Sea, is fundamental to their international engagement.

As far as the EU is concerned, multilateralism and a rules-based order is written into its DNA. As a Chatham House paper put it in 2015(), the EU is “perhaps the most rules-based and rules-observant of all branches of the current international order.”<sup>1</sup> Faced with an international crisis, the instinct of the EU is to reach for the rule-book.

For Australia, the rules-based order is embraced for more pragmatic reasons: a guarantee that the interests of mid-sized countries will not be ignored by the rival superpowers of the 21<sup>st</sup> century – meaning China and the US, in particular. “As a medium power, Australia has a profound interest in promoting multilateral diplomacy and actions to preserve and strengthen the rules-based international order,” as the UN Association of Australia wrote last year.<sup>2</sup>

Where Australia and the EU may differ is in their behaviour regarding international trade rules. Although the EU shares Australia’s interest in restraining other superpowers on questions of security and geopolitics, in trade matters it is itself virtually a superpower, and therefore more inclined to bend the rules when it can get away with it.

One other distinction is necessary to draw before looking at the various analyses of where the threats lie to the rules-based order. Are we talking about the “liberal” rules-based order, which is seen as US-dominated, free market-oriented, and democracy-based order, or a rules-based order without the “liberal” tag? The former would appear to imply a fear for the future of western leadership, and US hegemony, rather than simply a lack of respect for international rules. The

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<sup>1</sup> *London Conference 2015: Background Papers - Challenges to the Rules-Based International Order*, Chatham House, available at: [www.chathamhouse.org/london-conference-2015/background-papers/challenges-to-rules-based-international-order](http://www.chathamhouse.org/london-conference-2015/background-papers/challenges-to-rules-based-international-order).

<sup>2</sup> *The United Nations & The Rules-Based International Order*, United Nations Association of Australia, available at: [www.unaa.org.au/wp-content/uploads/2015/07/UNAA\\_RulesBasedOrder\\_ARTweb3.pdf](http://www.unaa.org.au/wp-content/uploads/2015/07/UNAA_RulesBasedOrder_ARTweb3.pdf).

latter is concerned rather with a backlash against more broadly-defined multilateralism, and a tendency amongst the most powerful member states to opt for bilateral deals instead.

While significant parts of the post-war rules-based order have long been dominated by a western-defined liberal agenda, including the WTO and the Bretton Woods institutions, the same cannot be said for all the agencies and elements of the UN system, which sought to balance the protagonists of the Cold War by granting vetoes in the UN Security Council to all five original nuclear powers including Russia and China. Russia and China may be keen to counter the excessive influence of the “West” in setting the international economic and human rights agenda, however they are equally determined to preserve a rules-based system in which they both enjoy vital vetoes.

Fears for the future of the rules-based order, and a determination to preserve it, have been expressed in the most recent UK and Australian security and foreign policy doctrines, as well as the EU Global Strategy. But different leaders have put a different emphasis on the sources of the threat. Some see it as coming from the rising nationalism of China, the revanchism of Russia, and the America First doctrine of President Trump. Others fear rogue states and non-state players. The threat of dramatic technological change, with an essentially unregulated cyber-space, is another key factor undermining a rules-based order.

In her speech at the Lord Mayor’s banquet in London last autumn, Theresa May declared that “we meet here at a moment when the international order as we know it – the rules-based system that the UK helped to pioneer in the aftermath of the Second World War – is in danger of being eroded.” She went on to single out Russia as the worst offender. “It is Russia’s actions which threaten the international order on which we all depend,” she said, citing the illegal annexation of Crimea, fomenting conflict in the Donbas, repeated violation of national airspace of several European countries, and “a sustained campaign of cyber espionage and disruption.”

The only other country mentioned by Mrs May in her list of “irresponsible states” seeking to erode the rules-based order was North Korea. But she did single out non-state actors in the Middle East, including “Daesh and Islamist terrorism”.

Julie Bishop, Australia’s Minister for Foreign Affairs, also singled out North Korea and non-state actors as threats to the rules-based order when she addressed the UN General Assembly last September. But neither she nor Mrs. May dared to mention the man most responsible for the sharp increase in alarm in Europe, and in the Asia-Pacific region, about the sustainability of the rules-based order: US President Donald J. Trump. It has been left to commentators to spell out the danger.

“For the first time since the 1930s, the United States has elected a president who is actively hostile to liberal internationalism,” says John Ikenberry in the latest issue of *International Affairs*: “Trade, alliance, international law, multilateralism, environment, torture and human rights – on all these

issues, President Trump has made statements that, if acted upon, would effectively bring to an end America's role as leader of the liberal world order."<sup>3</sup>

Professor Ikenberry does not stop there. He goes on to warn that "Britain's decision to leave the EU, and a myriad other troubles besetting Europe, appear to mark an end to the long postwar project of building a greater [European] union.... The uncertainties of Europe, as the quiet bulwark of the wider liberal international order, have global significance...Across the liberal democratic world, populist, nationalist and xenophobic strands of backlash politics have proliferated."

Ikenberry's concern is very clearly focused on the threat to the liberal version of a rules-based international order. What he fears is that the internal populist backlash in the western world – as expressed by the election of Donald Trump, the Brexit vote in the UK, and the rise of populist nationalism in countries such as Hungary, Poland, Turkey and the Philippines – is a greater threat to the rules-based order than revanchist Russia, nationalist China, or the unpredictability of rogue states such as North Korea. If the architects of the system have lost faith in its capacity to deliver fair regulation, it is indeed sorely endangered.

The 2015 Chatham House paper previously mentioned,<sup>4</sup> written well before both Brexit and the election of Donald Trump, singled out three interconnected problems of the rules-based international order to be resolved if it was to survive. It identified them as legitimacy, equity and self-confidence, or complacency.

First, "for a system based on rules to have effect, these rules must be visibly observed by their principal and most powerful advocates," it argued. But US legitimacy was undermined by the decision of President George W. Bush and his allies to invade Iraq "under a contested UN authorisation." Challenges to the legitimacy of US leadership continued under Barack Obama, with the failure to close Guantanamo Bay; the US Senate report on the use of torture; the use of presidential authority to order lethal drone strikes on adversaries in the Middle East and Pakistan; and the exposure by whistle-blower Edward Snowden of illegal US espionage activities over the internet.

"The danger today is that this questioning of US global leadership has opened the space for other countries to pursue a 'might is right' approach to their own policy priorities," the paper concludes, citing Russia's annexation of Crimea and intervention in eastern Ukraine; and China's aggressive assertion of its contested claims to islands in the South China Sea.

Equity is called into question if a rules-based order is perceived to work for a minority, and not the majority. The world economic order had always distributed benefits unequally, but the global financial crisis of 2008-9 – after the phenomenal economic growth of the immediate post-Cold

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<sup>3</sup> G John Ikenberry, 'The end of liberal international order?', *International Affairs*, Vol. 94, No. 1, 1 January 2018, pp. 7-23, available at: <https://doi.org/10.1093/ia/iix241>

<sup>4</sup> *London Conference 2015: Background Papers - Challenges to the Rules-Based International Order*, Chatham House, available at: [www.chathamhouse.org/london-conference-2015/background-papers/challenges-to-rules-based-international-order](http://www.chathamhouse.org/london-conference-2015/background-papers/challenges-to-rules-based-international-order).

War period – had made the structural weaknesses of the system, and the unfairness of income distribution and austerity, much more apparent. That was particularly true in the European Union, where the backlash against austerity compounded dissatisfaction with EU migration policies. The rise of populist nationalism was one result.

As for complacency, it was found in the sheer success and longevity of the rules-based order as the “natural order of things” for seven decades. “Global free trade regimes, UN Security Council-sanctioned interventionism, human rights activism on issues such as gay rights, and anti-censorship campaigns are elements of a transformative agenda being actively pursued by western states and societies. What many in the West see as an attempt to spread the benefits of modernity is perceived elsewhere as an aggressive bid for dominance by Western economic and political interests.” The backlash to the metropolitan liberal agenda has come not only from more conservative and authoritarian regimes abroad, but also from conservative electorates at home.

The paper concludes that the three issues are serious but need not be fatal to the survival of the rules-based order. They suggest that “the rules need to be revised to ensure they remain relevant, and that they need to be applied consistently and extensively as possible...Who decides the agenda, and what it should contain, remain open questions.” That remains as true today as it was in 2015.

Finally, a paper written by Philip Shetler-Jones, international security programme leader at the World Economic Forum, warns about the substitution of a new “deal-based order” for the existing “rules-based order”.<sup>5</sup> He argues that a rules-based order can only work if two conditions are fulfilled. First, at a minimum, the rules need the consent of those people who have enough power to feel they might get away with breaking the rules. And second, the rules need to be policed and – in extremis – enforced. After World War Two, the US deliberately stepped into the role of enforcement, where the League of Nations had failed in the pre-war era.

The huge transfer of economic power from west to east, and reduction in the relative dominance of the US and Europe, has seen the US become “less willing, and perhaps also less able, to perform the global policing role.” That was already apparent under President Obama. Now President Trump has made it clear that ‘America First’ means reformulating alliance relations and trade deals “to give America a better deal”. In Europe, he has attacked Germany’s low defence spending and high trade surplus, implying that he might leverage trade relations to get the Europeans to increase their share of the defence burden. “A geopolitical relationship that has been anchored in treaties ... is now approached as a deal.”

“Something similar is happening in Asia... President Trump has said: “If China helps us [on North Korea] then I feel a lot differently towards trade”.

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<sup>5</sup> Philip Shetler-Jones, *Welcome to the new deal-based order*, World Economic Forum, 8 September 2017, available at: <https://www.weforum.org/agenda/2017/09/welcome-to-the-new-deal-based-order>.



Even the Europeans are behaving in a deal-based, not rules-based way. Their deal with Turkey on restraining the refugee flow was a blatant deal – and almost certainly an illegal one – negotiated primarily by Angela Merkel.

Deals are by definition “narrow, bilateral and transactional”, says Shetler-Jones. They are more fragile, and compliance is much harder to monitor or enforce. Deals are less transparent and accountable, and they are more blatantly open to shaping by power dynamics.

Replacing a rules-based order with a deal-based order should be anathema to both the EU and Australia. But how can they avoid or prevent such a shift in behaviour? There lies the nub of their challenge.

# Whose Rules? In Which Order?

By Dr Carl Ungerer

Australia's recent defence of the rules-based international order is commendable, if somewhat a little erratic and nostalgic. The challenge to Australia's vision of a rules-based order, mostly from China and Russia, means that a more concerted response is needed from like-minded middle powers in both Asia and Europe.

## Aussie Rules

As an Asia-Pacific middle power, Australia is invested in promoting a rules-based international order. Like Europe, Australia relies on open, free access to markets and ideas for both its prosperity and security. So, it follows that Australia seeks an international order which is manageable and predictable, and one which suits our values as a Western liberal democracy.

But the recent *Foreign Policy White Paper* (2017) hinted at Australia's growing anxieties over the current state and future direction of the international order. It referred to the importance of 'rules' or a 'rules-based order' no fewer than fifty times. Although the term and the general orientation towards multilateralism it infers have been the mainstays of Australian foreign policy since 1945, no other official government statement has placed the concept of a 'rules-based international order' at the forefront of Australian foreign policy in quite the same way.

For the conservative government in Canberra – which historically has favoured bilateralism over multilateral modalities – this framing device is interesting. It hints at an earlier time when diplomacy and international law were more closely aligned. It also reflects the personalities involved – Australia tends to focus more closely on rules and laws when there is a lawyer in the foreign minister's chair (e.g. H. V. Evatt, Gareth Evans and Julie Bishop).

Since the formation of the post-World War international order, most Australian governments have taken a 'developmental' approach to order building in our region.<sup>6</sup> Policymakers promoted strategies of economic and political engagement across the Asia-Pacific region believing that growing economies and closer political ties would bring commensurate strategic advantages. These order-building instincts found expression in initiatives such as the APEC Leaders' Meeting, the expanded ASEAN Ministerial Meeting process and multilateral free trade agreements.

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<sup>6</sup> See Rod Lyon, 'Forks in the river: Australia's strategic options in a transformational Asia', ASPI Strategy Paper, June 2011.

The same instinct was at play in Prime Minister Kevin Rudd's initiative to create an Asia Pacific community in 2008. What Rudd received in response from his Asian counterparts at the time, however, was a polite but firm 'no'. It showed that Australia's order-building instincts were now on a different trajectory from the other middle powers in the region, who see a mix of realist power balancing and hedging strategies as the more appropriate response to China's rise.<sup>7</sup>

For over 70 years, Australia's order-building instincts were premised on three core foundations: continuing US military primacy and leadership in Asia; the maintenance of open and free markets; and the institutionalisation of democratic systems of government. In this way, the desired rules governing the 'international' order and the 'regional' order were the same. However, Australia looks out to an Asia-Pacific region today in which each of those foundational elements is under pressure, and in some cases, retreat.

Perhaps this is the reason for the Turnbull government's more strident public defence of the 'rules-based order' – it is just nostalgia wrapped up as strategy. But it fails to explain the government's repeated claim that the stability of the current order is one of Australia's 'core strategic interests' and that the Australian Defence Force (ADF) should be prepared to fight to defend this order.

This elevates the entire issue of promoting a 'rules-based order' from one of diplomacy to war. It clearly breaks with the past practice of seeing the evolution of international order building as a developmental problem ("less Geneva, more Jakarta" indeed.) International order building through military force would be a very different world than the one we currently live in. And it would also seem to undermine the normative principles upon which the current order is built.

Having rattled the sword, the *Foreign Policy White Paper* then canvasses an alternative approach to order-building, one that would accommodate the rise of emerging powers and accept incremental changes to the existing institutional arrangements.

*We do not seek to impose values on others...(T)he Government recognises that the way states interact has never been and never will be static. Institutions, rules and forms of cooperation can and do evolve. Australia believes the institutions that support global cooperation must accommodate the greater weight of emerging powers...Australia will therefore contribute constructively to the reform of international institutions. We will remain open to proposals that might address gaps in the institutional architecture.*

So all this begs the question: which rules are worth fighting over, and which ones can accommodate change? To date, no clear answer has emerged.

## Challenges and Responses

Australia's vision of an international order based on rules and not power politics is most directly challenged by three recent events: China's reclamation activities and militarisation of the South

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<sup>7</sup> See Bruce Gilley and Andrew O'Neill, eds., *Middle Powers and the Rise of China*, Washington, DC: Georgetown University Press, 2014.

China Sea, the breakdown of the normative barriers to chemical weapons use; and the potential destabilising effects of a trade war between China and the United States.

In each case, Australia had a direct hand in the establishment of the ordering principles which are now threatened by others (read China and Russia). It matters to Australia if international agreements such as the UN Convention on the Law of the Sea, the Chemical Weapons Convention or the World Trade Organization are undermined.

To those three, we should add a fourth: the rapid evolution of cyber-enabled interference in the political, economic and social fabric of the West. Whereas the maritime, arms control and trade dimensions of geopolitics are well defined by rules and norms, the same is not true of the cyber domain. This is perhaps why the Australian government has recently announced an offensive cyber-warfare capability.<sup>8</sup> In the absence of rules, we should get ready to fight. The cyber domain, and the polarisation it causes between competing visions of how rules should apply in contemporary international relations, is emblematic of the problems faced by Australia and Europe in trying to defend, let alone improve, the rules-based order.

China and Russia challenge the contemporary rules-based international order in similar ways. But there are also important distinctions to be made between how Beijing and Moscow are seeking to influence and shape the ‘post-polar’ world. China is a reluctant and selective participant in the rules-based order. For example, prior to the joining the Non-Proliferation Treaty in 1992, China was an enthusiastic proliferator of nuclear and other weapons of mass destruction to willing partners such as Pakistan.

Although China has never reached the status of the ‘responsible stakeholder’ that Robert Zoellick and many others had hoped it would become, nor has it abandoned the rule book altogether. Throughout the current tit-for-tat trade dispute with the White House, China has managed to position itself as the sole defender of the WTO rules – a remarkable position only the current Trump administration could achieve.

Such is the challenge posed by countries such as Russia and China, that Australia and other regional powers are contemplating the use of all instruments of national power to defend the current international order. But, short of war, how should Australia and other like-minded countries approach the challenges to the rules based international order?

We should start from first principles. At the heart of Australian foreign policy there has always been a bias towards what the academic T.B. Millar once described as a ‘dogged, low-gear idealism’. Australia faces the world with a mix of pragmatism and principle – calibrating responses to international problems with a strong emphasis on coalition-building with like-minded countries.

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<sup>8</sup> Fergus Hanson and Tom Uren, ‘Australia’s offensive cyber capability’, ASPI Policy Brief, 2018.



If the EU and Australia were looking to build a joint response to the problem of contemporary order building, initiatives such as the MIKTA grouping offer a glimpse of how this might be achieved. MIKTA is an informal meeting of foreign ministers from five middle powers (Mexico, Indonesia, (South) Korea, Turkey and Australia). It first met in the margins of the 2013 UN General Assembly.<sup>9</sup> A similar mechanism established between middle powers in Europe and Asia, or an expanded MIKTA process, would offer a potentially useful mechanism to ‘build consensus’ on a rules-based international order.

## Conclusion

The phrase ‘rules-based international order’ is a broad church under which many sins can be accommodated. And most countries will continue to take a selective approach to international rules. The fact is, like Orwell’s Napoleon, some ‘rules’ matter more than others.

Moreover, the rules of the new international order will not be determined by the actions of the major powers alone. The diffusion of power and prosperity across the world will mean that the second-tier states will hold increasingly strategic positions, making them capable of shaping the politics, economics and security of their regions.

Of course, the alternative to a rules-based order is anarchy. And no one, except perhaps Russian President Vladimir Putin, is arguing for that to be basis of contemporary international relations. But, as Hedley Bull noted, the international order has accommodated elements of both anarchy and society since the Treaty of Westphalia. And, regardless of the rules in place at any one time, it will continue to do so.

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<sup>9</sup> <http://www.mikta.org/>