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Logical analysis of the US “Rule-based Order in the South China Sea” - Taking freedom of navigation operations as an example

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Abstract

The proposition of "rule-based" international order originated from the specific international political context in the West, accompanied by two characteristics of "power" and "relationship". In the actual policy behavior, it is manifested as the United States "carrying its own interests" in the process of shaping the international order, adjusting the order with specific goals, rationalizing the order guided by values, and jointly consolidating the order with partner countries. In recent years, the United States has deepened its intervention in the South China Sea issue, taking "rules-based order" as the theoretical and policy basis, hoping to thereby construct a security order in the South China Sea region under the leadership of the United States. However, it can be seen from the United States' freedom of navigation actions in the South China Sea that contrary to its rhetoric, it has instead led to disorder and disorder in the South China Sea issue. China should adhere to the international order based on international law, clarify the essential differences between "rule-based order" and international law, enhance its soft power in rule-making, provide directional guidance for the future order in the South China Sea, and contribute together with other East Asian countries to building a fair and reasonable order in the South China Sea.

Keywords: International Order; International Rules; The South China Sea; Freedom of Navigation

1. Introduction

1.1. The concept elaboration of "rule-based international order"

1.1.1. The essence of the concept of international order: Power or Rules?

During the colonial period, the international order established by the Western world bore the distinct feature of "power is justice". Meanwhile, out of their own interests, Western countries dare not openly claim that what they pursue is an international order "based on power". Although the "power-based" international order can no longer exist independently from the rules, this does not mean that the tradition of "power hegemony" in the West has completely disappeared. The "rule-based" international order claimed by the West is proposed based on its own values and power status, and thus still bears the shadow of "power". At present, the term "rules-based international order" has become a common word in the government statements and joint communiqués of the United States and Western countries. For the above-mentioned countries, strengthening this order is a necessary condition for maintaining peace and prosperity. While some other countries, including China and Russia, believe that the "rule-based international order" is merely a tool for a few countries to realize their hegemonic or exploitative ambitions. However, no matter how the "rules-based international order" is viewed, a common point between the two sides is that neither defines exactly what the rules-based international order is nor why it is important. The "rules-based international order" is essentially determined by a stable and recognized relationship of power and rules. In the "rule-based" international order, even if powerful

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countries believe that the formulation of rules needs to "win consent" from "second-class countries", "the disparity in power will still give the hegemonic country an advantage".[1] In short, although rules and order have potential, their stability is ultimately subject to the dynamic balance of major powers, and changes in power may shake their foundation. The "rule-based" international order advocated by the West, under the intervention of its power politics logic, will evolve into the form of "institutional hegemony". In the international community, power hegemony and institutional hegemony are two necessary components when constructing and maintaining the international order dominated by the West. In the Western "rule-based" international order, no rule emerges out of thin air. Some Western scholars have proposed that the international order based on rules cannot survive independently and in fact can only be integrated with the international order based on power.[2] In conclusion, in today's world, "there truly exists an order based on rules and power." [3]

1.2. The Essence of the Concept of International Order: Rules or Relations?

History shows that without international rules, conflicts and chaos would arise until countries around the world once again realize that interactions must have boundaries. This is the lesson that the two World Wars have taught us. Rules have always been a fundamental feature of human existence since ancient times, whether they are commandments, laws or codes. The challenge that rules face has always been to apply narrow rules to larger and more diverse groups. Today's international rules are universal rules applicable to all members of the global society, ranging from the broad Universal Declaration of Human Rights to specific cooperation agreements among countries. This is not only important for guiding national behavior, but also for setting expectations that help reduce the risks of accidents, misunderstandings or misjudgments.

Some Western scholars define the "relationship-based" international order as the "servant" relationship between major and weak countries, but this relationship cannot be fully explained clearly. The definition of a "relationship-based" international order refers to the fact that when major powers determine their "relations" with other countries and establish an international order, they do not follow a uniform set of norms, but rather base their decisions on the closeness and distance, similarities and differences with themselves. Western countries represented by the United States classify each other into three types based on the degree of closeness in their strategic positions: "enemies", "rivals" and "friends". In each major category, further subdivision is made, and the "general rivals" and "strategic rivals" within the "rivals" are further classified. According to the differences in values, other countries are classified into two categories: "democratic countries" and "dictatorial countries". According to the differences in economic systems, other countries are classified as "market economy countries" and "non-market economy countries", etc. After dividing other countries, Western countries will treat them differently based on the differences in the "relations" they have established.

Under the background of Western hegemony, the "rule-based international order" with the attribute of "power" has become an offensive weapon. By leveraging the attribute of "relationship" of the international order, it increases the power to suppress dissidents. China has always been regarded as an "outsider" by the Western world, whether at the strategic level, the ideological level, the political system level, or the social system level. So, when the West uses rules to suppress other countries, China must be the first to suffer. The West will uphold the "rules-based" international order. Whether it is China or other countries, if they attempt to challenge or undermine the "rules-based" order and fail to fulfill their commitments to the world, then we will step forward and jointly safeguard it.[4]

2. The realistic policy manifestations of the United States in shaping a "rules-based international order"

2.1. Adjust the order with specific goals

When formulating the "rules-based order", the US government usually identifies and responds to challenges and threats, and constructs an interaction model to pursue specific outcomes. Kiohan believes that a "rule" is a specific artificial arrangement that defines the role of the actor, restricts the actor's behavior, and determines the actor's expectations. With the changes in the international landscape, the targeted goals of the "rules-based order" have also been adjusted accordingly to meet the special needs of specific regions.[5] The United States often claims a "rules-based order", which is to maintain the power balance among world powers under American hegemony. The United States aims to curb China's growing maritime power in response to China's rise, thereby exaggerating the long-term challenges it faces on a regional or global scale. When defining the threats to the "rule-based order", US Secretary of State Antony Blinken once publicly condemned China's attempt to threaten freedom of navigation through military means, militarize the South China Sea, and pose a threat to the common interests and values of the United States and its Allies in terms of technology, economy and information.[6]

In terms of the referred object, "order based on rules" is politically oriented in usage, and its connotation and significance are both artificially shaped. At present, there are significant differences among countries regarding the basic characteristics and principles of international rules. Among them, the most remarkable one is the divergence between the West and Russia and China. The West emphasizes democratic governance, human rights, environmentalism and globalization, while Russia and China stress national sovereign equality, non-interference in national internal affairs, settlement of disputes through mechanisms agreed by the state, immunity enjoyed by the state and its officials, and condemnation of double standards against the state. The United States actively exploits this ideological difference to achieve the goal of "isolating" competing countries. The Biden administration's "National Security Strategy" released in October 2022 stated that China is committed to establishing a larger sphere of influence in the "Indo-Pacific" region and becoming a leading world power. By leveraging its technological capabilities and growing influence over international institutions, it aims to create more lenient conditions for its authoritarian model and shape the use and norms of global technology and to highlight its interests and values.[7] Australian scholar Rebecca Stratton pointed out that Australia regards China as a major competitor in maritime security and economic order. The term "rules-based order" allows people to use it to discuss China, and it can also be said that China is a "revisicist" force, but it does not directly mention China.[8]

2.2. Rationalize the order guided by values

Take maritime rules as an example. The report "Maintaining Order Based on Maritime Rules" published by the East-West Center of the United States emphasizes that in order to support the maritime order based on rules in the South China Sea, it is necessary to more closely integrate maritime claims with international law and put its "order based on rules" statement into practice. Failure to abide by international law will undermine the legitimacy of international law. Successive resolutions of the United Nations General Assembly on the ocean and the law of the sea have called on all countries to coordinate their legislation with the United Nations Convention on the Law of the Sea, including "like-minded" rule-upholding countries. Although "like-minded" countries call on other countries to abide by the "rules-based order", the expansion of their own jurisdiction may weaken their ability to persuade the rising China to respect international law in the South China Sea and counter China's "legal war" strategy.[9] Common interests and values have constructed national identity, and thereby formed the special interest groups "clubs" under the long-term rule of the United States. Liberal democratic values have become an important criterion for selectively constructing and exclusively restricting members, so as to ensure the legitimacy of their hegemonic will in the core areas of the regional order.[10]

The alliance system centered on the United States focuses on emphasizing common democratic values. Behind the pairing among countries lies political similarity and common identity recognition. It is believed that democracy and peace are merely coincidences that some external factors such as alliances and the Cold War create common interests among democratic countries.[11] In April 2021, Biden and Japanese Prime Minister Yoshihide Suga jointly issued the "Joint Statement of the Leaders of the United States and Japan", claiming that the US-Japan alliance has become the cornerstone of peace and security in the Indo-Pacific region and around the world. We jointly commit to proving that free and democratic countries can work together to address the global threats posed by the COVID-19 pandemic and climate change, while resisting challenges to the free and open rule-based international order. Through this new era of friendship between the United States and Japan, each of our democratic countries will become stronger.[12]

2.3. Jointly consolidate order with partner countries

The "rules based international order" was primarily established by the United States and its major allies after World War II. Over time, many other countries have also deepened and expanded this order, based on a set of norms and principles related to global security, economy, and governance, including: a set of rules that encourage peaceful, predictable, and cooperative behavior among countries that conform to liberal values and principles; Formal institutions such as the United Nations and NATO aim to legitimize and uphold these rules, and provide forums for discussion and dispute resolution; Democratic countries play a role in helping to maintain and defend the system. In the field of security, the "rule-based international order" is manifested as a formal alliance between Europe and Asia, in addition to rules that protect national sovereignty and territorial integrity, restrict the use of military force, and limit the proliferation of weapons of mass destruction. In the economic field, the "rule-based international order" is manifested as a global economy based on free markets, open trade, and financial interconnectivity. Finally, in the field of governance, the "rule-based international order" is manifested as defending Western democratic values and human rights. This order has never been fixed and unchanging, but has evolved over time, experiencing significant adjustments and expansions at major turning points after World War II and the end of the Cold War.

The United States eliminates unilateral threats by shaping a multilateral cooperation framework based on a rules-based order. Under Trump's "America First" policy, liberals widely accuse him of withdrawing from multiple international organizations, which undermines the credibility of American strategy and undermines the legitimacy of the multilateral

rule system that the United States relies on to maintain hegemony. The Biden administration places more emphasis on playing the role of allies. The "rule-based international order" of the United States is essentially a self-adjustment of the "liberal order" constructed by the Western world represented by the United States, and mainly includes three meanings: protecting sovereignty, maintaining peace, curbing excessive use of power, and promoting rules for international trade and investment; International standards related to health and epidemics, transportation, telecommunications, and other issues that support the global economy; The norms that support universal human rights, gender equality, and the rule of law.[13]

3. Characteristics of the US' Rule Based South China Sea Order

3.1. The South China Sea order is not entirely based on rules

There are differences in the understanding of the international order between China and the United States, which is a concentrated manifestation of the structural contradictions between the two countries and a key factor in the inability to properly handle the South China Sea issue. The advocacy of a "rules based international order" by the United States and the West is actually the politicization of international law by placing domestic and regional laws above international law. In May 2021, when US Secretary of State Antony Blinken attended the video conference of the United Nations Security Council, he simply took the "rules" in "rule based" as a legally binding commitment, including the Charter of the United Nations, treaties, Security Council resolutions, and rules and standards formulated by international organizations.[14] These "rules" have significant ambiguity, but their essence is still that the United States and Western countries are trying to use their own advantageous strength to formulate rules, ignoring, weakening, or even abusing existing rules, using their own strength to resist changes in the international order, especially to contain challenges from rising countries like China to the international order. The South China Sea issue, as a regional maritime security order, requires comprehensive consideration of factors such as national strength, international and regional rules, and values of each country.

In today's world, the balance of international power and the power structure in the South China Sea are undergoing profound changes. The United States is attempting to continuously strengthen its influence in the South China Sea region, while China's influence in the South China Sea is also expanding. There is a complex and intricate transformation relationship between the two. In recent years, the United States has vigorously promoted the "Indo Pacific Strategy" and jointly constructed the "Quad Security Dialogue Mechanism" with Japan, India, and Australia, further strengthening the influence of the United States in the "Indo Pacific" region and intertwining the international and regional power structures. In May 2018, the US military officially renamed the "Pacific Command" to the "Indian Ocean Pacific Command", fully reflecting the US intention to strengthen control over the South China Sea and surrounding waters.[15] On the other hand, the South China Sea region faces differences in security values, making it difficult for various stakeholders to form a unified and coordinated security consensus. In March 2021, US Secretary of State Antony Blinken pointed out that China has brought serious challenges to the stable and open international order. The US China relations are the biggest geopolitical test facing the 21st century. The US will regard China as a competitor according to the actual situation. [16] This has made the "zero sum game" relationship between China and the United States more complex, and the gap in regional security concepts between the two countries is constantly deepening.

In summary, the various influencing factors shaping the order in the South China Sea region are currently in flux and exhibit instability. These factors working together inevitably lead to turbulence and adjustments in the security order in the South China Sea region.

3.2. The order in the South China Sea has been undergoing long-term changes

At the international level, although the United Nations Convention on the Law of the Sea can provide certain regulations for navigation parties in the South China Sea, the Convention has not yet made clear provisions on whether ships need to apply for approval when safely passing through its territorial waters. There are also fundamental differences among countries on the issue of freedom of navigation, making it difficult to reach consensus in a short period of time. However, it should also be noted that due to the long-standing regional alliance system established by the United States, some Southeast Asian countries that have sovereignty disputes with China and are influenced by the United States also have different positions. In terms of the fields involved in the order of the South China Sea region, it mainly includes two levels: first, the navigation guidelines for ships in the territorial sea and exclusive economic zone, and second, the demarcation methods of the parties to the South China Sea for their territorial sea and exclusive economic zone. There are conflicts between China and some neighboring countries in the South China Sea, and the contradiction lies in the rules for dividing territorial waters. In recent years, countries such as Vietnam and the Philippines have had intense friction with China over the issue of actual jurisdiction over disputed waters in the South China Sea. In February 2020,

311 Vietnamese fishing boats engaged in illegal activities in the waters, territorial waters, and exclusive economic zones of Guangxi, Hainan, Guangdong, and other places.[17] Their reasons for intrusion included illegal, unreported, and unregulated fishing, or conducting close in investigations for military security purposes. In terms of the degree of national recognition of the order in the South China Sea region, China is gradually approaching ASEAN related countries, while the cognitive differences between China and the United States are becoming increasingly distant. All parties want to push the order in the South China Sea region in a direction that is beneficial to themselves. Considering the conflicting interests between China, the United States, and some countries near the South China Sea, it will take a long time to shape an order that is in line with the interests of all parties, making it easier for the order in the South China Sea region to change. During this period, the debate between China and the United States over the applicability of the "freedom of navigation principle" in the South China Sea, as well as the confrontation between the two sides against the United States' "freedom of navigation actions", will become increasingly intense.

4. The disruption of the South China Sea order by the US' freedom of navigation operation

The advocacy of "freedom of navigation" by the United States can be traced back to the treaty signed with France in 1778, which established freedom of navigation as a bilateral legal practice. In the 20th century, Woodrow Wilson advocated for freedom of navigation and made it the second of his fourteen principles (see Freedom of the Sea). The United States has not yet ratified the 1982 United Nations Convention on the Law of the Sea, but it is a party to the 1958 Convention on the High Seas. Although the United States has not formally ratified the United Nations Convention on the Law of the Sea, it now considers it a part of customary international law and is committed to complying with and enforcing that law. The Freedom of Navigation Operation is one of the main tools used by the United States to challenge international law. Although the US Navy has been conducting "freedom of navigation operations" around the world for nearly 40 years, its actions in China's territorial waters have attracted unprecedented attention as competition between China and the US intensifies, becoming a friction point in the South China Sea dispute with China.

Before the illegal award of the "South China Sea Arbitration Case", the United States had carried out the so-called "freedom of navigation action" in the the Nansha Islands, claiming that this was a protest and challenge to the requirement that the innocent passage of other countries' warships through the territorial sea must be approved in advance. However, when the United States attempts to challenge the restrictions on navigation freedom and rights imposed by China's island and reef construction activities, its boundaries appear blurred. In October 2015, the USS Larson carried out the so-called "transit" operation in the waters near Zhubi Reef in the the Nansha Islands, which was described by the US Department of Defense as an activity within 12 nautical miles. Regarding this, some American scholars have stated that restricting the actions of the USS Larson to "innocent passage" is equivalent to indirectly recognizing China's sovereignty over the 12 nautical mile waters surrounding Zhubi Reef.[18] In November 2015, the Chairman of the Senate Armed Services Committee, John McCain, sent a letter to Defense Secretary Ashton Carter inquiring about multiple details regarding the USS Larson operation. The main questions include: What excessive maritime claims does the Larson aim to challenge? Does its action follow the principle of harmless passage? If so, on what basis? If not, what measures have been taken within 12 nautical miles around artificial reefs to indicate non innocent passage? Did you notify the Chinese side before taking action? Is the term used for notification "innocent passage," "freedom of navigation," or other? Furthermore, did the action also target the excessive claims of other countries?[19] Ashton Carter replied on December 15, 2015 that the "Larsen" operation was intended to challenge China, Vietnam, the Philippines and other countries' restrictive claims on freedom of navigation and the right of navigation around specific islands and reefs in the the Nansha Islands, especially for the requirement of innocent passage that requires prior approval or notice.[20]

After the illegal ruling of the South China Sea arbitration case, the United States used its content as the "legal basis" for "freedom of navigation operations". Since 2017, US ships have frequently challenged China's sovereignty near the Meiji Reef, questioning China's territorial claims to the "low tide high ground", claiming that the Meiji Reef is not affected by other countries' territorial claims, and citing arbitration awards to support its position. The report from the US Department of Defense shows that its focus of action has shifted from protesting against "approval for innocent passage through territorial waters" to simultaneously challenging territorial claims against "non territorial features," a shift particularly evident in the 2017 Dewey operation. Since 2019, the United States has claimed the right to "freedom of the high seas" within 12 nautical miles of Mischief Reef. In both the 2019 "Giffords" and 2021 "Bendford" operations, the United States considers the waters surrounding Mischief Reef as "international waters" and emphasizes that conducting "normal operations" in this area is a legitimate exercise of freedom of the high seas.[21] This position is consistent with the recommendations of American think tanks, such as the Congressional Research Service report suggesting that relevant features be considered "unclaimed" and granting US ships the right not only to pass through these areas but also to enjoy extensive freedom of the high seas. The United States has translated these suggestions into actual freedom of navigation operations.[22]

5. Conclusion

Like any order, the 'rules based international order' is not perfect. There is no law that is not challenged, no rule that is not violated, and no norm that is not followed. There is no overall law enforcement agency to supervise the implementation of these laws, rules, and norms. China should adhere to the international order based on international law, remain sober about the US strategy of "slander words" and "regulation", believe that its "rules" are selective standards that serve its own interests and are not universally applicable international law, emphasize the importance of the United Nations system and international law, call for equal rights and opportunities, share development opportunities, actively participate in diplomacy and integrate into the international system, advocate multilateralism, especially through the "the Belt and Road" Cooperation platforms such as RCEP and China ASEAN Free Trade Area promote regional economic prosperity and political stability, demonstrating China's ability and willingness to provide regional public goods. China should not only elevate its status in existing international rules, but also work with neighboring countries to build a more democratic and fair international maritime system and order to address challenges, safeguard legitimate maritime rights and interests, and promote the transformation and development of the maritime governance system.

Compliance with ethical standards

Disclosure of conflict of interest

No conflict of interest to be disclosed.

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