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**China and the Rules-Based International Order:
Challenges and Compliance**

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INTRODUCTION

As the United States of America's (US) internal politics become more polarized and its role in the international community wavers between administrations, there is increasing anxiety over a potential change in the international hierarchy. China's impressive increase in economic and military power leads scholars and non-scholars alike to question whether the US will be able to maintain its hegemony in the face of rising competitors. Thus, this study seeks to answer the following research question: have China's actions in the South China Sea challenged the rules-based international order? The limited scope of this question reduces the applicability of the study's findings to the stability of the rules-based international order (RBIO) more generally but provides interesting insights into the state of the order within the Indo-Pacific. To begin, an explanation of the concepts and theories that will be relied upon to answer the research question will be provided. The subsequent section will detail the historical context necessary for understanding China's current position on the politics of the South China Sea. He and Feng's framework for determining if an order transition has occurred within the RBIO will be employed in unison with the theories of liberal institutionalism and realism to determine whether China's actions constitute a challenge to the existing order. The study will conclude with a reiteration of its findings.

CONCEPTUAL FRAMEWORK

There are a number of definitions that must be established to ensure a shared understanding of the later discussion. Beginning with the research question, 'rules-based international order' is often interchangeable with 'liberal international order' and 'liberal rules-based international order'. Each variation refers to the overarching system of institutions and

norms, which attempt to govern or shape the actions of the international community.¹ This system was established after World War II, open to all states and egalitarian in theory.² In practice, the system favors the more powerful states, with the US position as the hegemonic ruler. Scholars and politicians debate the existence of the rules-based international order (RBIO), what it constitutes, and how to define it; however, this study will assume the RBIO does exist and in the form that has been established. Contained in that definition of the RBIO are the concepts of ‘institutions’ and ‘norms’, which will be defined in this study by Mearsheimer’s understanding. Institutions are defined as “a set of rules that stipulate the ways in which states should cooperate and compete with each other, [prescribing] acceptable forms of behavior, and proscribe[ing] unacceptable kinds of behavior.”³ Mearsheimer defines norms as “standards of behavior defined in terms of rights and obligations.”⁴ This study employs Mearsheimer’s definitions because he is a leading scholar of realism – one of the two used theories.

Realism makes five basic assumptions about international relations: (1) there exists no higher authority to govern states, so the international system is anarchic; (2) states are dangerous to each other because of their inherent military capabilities; (3) the intentions of other states can never be ascertained; (4) states are driven by survival and the desire to keep their sovereignty; and (5) survival is a matter of strategic calculation by states.⁵ From these five assumptions, realists interpret three patterns of state behaviour: (1) states fear one another; (2) the goal of each state is to ensure its survival; and (3) each state is trying to maximize its relative power position in comparison to other states to increase security.⁶ These assumptions and patterns are what

¹ Kai He and Huiyun Feng, “International Order Transition and US-China Strategic Competition in the Indo Pacific,” *Pacific review* 36, no. 2 (2023): 235.

² *Ibid.*

³ John J. Mearsheimer, “The False Promise of International Institutions,” *International Security* 19, no. 3 (1995): 8.

⁴ *Ibid.*

⁵ Mearsheimer, “The False Promise of International Institutions,” 1995, p. 10.

⁶ Mearsheimer, “The False Promise of International Institutions,” 1995, p. 11.

shape realism's interpretation of the international system, creating numerous sub-theories which will not be detailed, but important to this study is realists' view of institutions. Quoting Mearsheimer, institutions are considered to be "based on the self-interested calculations of the [states with] great powers, and they have no independent effect on state behavior."⁷ Realists do not consider institutions to be an authority above states, but rather diplomatic tools that are manipulated by states to achieve their goals.⁸

Liberal institutionalism does not reject the assumptions and patterns asserted by realists; however, the theory reaches a different conclusion on the role of institutions in the international order. Liberal institutionalists argue that institutions are "embedded in the order" not "instruments or means for states to maximize their interests."⁹ States create institutions to reduce fear of each other, and facilitate cooperation by minimizing the potential of cheating and making transparent the relative gains of that cooperation.¹⁰ Liberal institutionalism does not expect institutions to form unless states will benefit but once formed, the rules of those institutions are considered to guide and constrain states' behaviour in the international order.¹¹

Realism and liberal institutionalism will be employed to assess China's challenge (or lack thereof) to the RBIO in the confines of He and Feng's framework. To determine if an order transition has taken place within the RBIO, He and Feng look at three pillars or areas: power distribution, institutional arrangements, and norms diffusion.¹² Each pillar will be examined

⁷ Mearsheimer, "The False Promise of International Institutions," 1995, p.7.

⁸ He and Feng, "International Order Transition and US-China Strategic Competition in the Indo Pacific," 2023, p.237.

⁹ He and Feng, "International Order Transition and US-China Strategic Competition in the Indo Pacific," 2023, p.238.

¹⁰ Robert O. Keohane and Lisa L. Martin, "The Promise of Institutionalist Theory," *International Security* 20, no. 1 (1995): 45.

¹¹ Keohane and Martin, "The Promise of Institutionalist Theory," 1995, p.41; Mearsheimer, "The False Promise of International Institutions," 1995, p.14.

¹² He and Feng, "International Order Transition and US-China Strategic Competition in the Indo Pacific," 2023, p.240

within the discussion section, but ‘order transition’ requires a definition. The term refers to a change to the RBIO, which He and Feng consider having occurred when two of the pillars undergo “fundamental change”.¹³ Realists consider a power transition – the hegemonic state is supplanted – to constitute an order transition.¹⁴ Liberal institutionalists would only agree with realists if the new hegemonic state did not willingly exist within the confines of the RBIO; it would not be an order transition if power transitioned to a state that was satisfied with the existing order.¹⁵

Finally, Figure 1 depicts Govella’s framework, which is used to classify states’ behavior within the RBIO. While the figure efficiently explains the four categories for actions, ‘systemic subversion’ warrants more specific definition as it will be referenced within each subsection of the discussion. Quoting Govella, the term refers to actions by a state with the intention “to undermine a regime through non-compliance by demonstrating its ineffectiveness and setting a precedent for other states to engage in similar non-compliance.”¹⁶

Figure 1¹⁷

		Is the action intended to change existing rules/norms?	
		Yes	No
Does the action take place via existing institutional channels?	Yes	<i>Contestation</i>	<i>Compliance</i>
	No	<i>Systemic subversion</i>	<i>Targeted subversion</i>

HISTORICAL CONTEXT

¹³ He and Feng, “International Order Transition and US-China Strategic Competition in the Indo Pacific,” 2023, p.240.

¹⁴ He and Feng, “International Order Transition and US-China Strategic Competition in the Indo Pacific,” 2023, p.237.

¹⁵ He and Feng, “International Order Transition and US-China Strategic Competition in the Indo Pacific,” 2023, p.239.

¹⁶ Kristi Govella, “China’s Challenge to the Global Commons: Compliance, Contestation, and Subversion in the Maritime and Cyber Domains,” *International Relations* 35, no. 3 (2021): 452.

¹⁷ Govella, “China’s Challenge to the Global Commons,” 2021, p.450.

The 1983 United Nations Convention on the Law of the Sea (UNCLOS) entered into force in 1994 with China a Party to it.¹⁸ The Convention is a legally binding international treaty that defines the rights and responsibilities of states and rules governing the world's oceans.¹⁹ The previous iteration had codified the existing international norm of state sovereignty over the 12 nautical mile territorial waters, which extended from baselines that had to adhere to various requirements, and "affirmed state jurisdiction over seabed resources on their continental shelf."²⁰ UNCLOS (1983) added exclusive economic zones (EEZs), extending 200 nautical miles from a state's baselines and granting said state with "sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources whether living or non-living".²¹ In advance of its entry into force, countries with claims to the South China Sea began occupying features within it to ensure access to its significant resources.²² In 2009, China submitted its 'nine-dash-line' map to the United Nations Commission on the Limits of the Continental Shelf in response to Vietnam and Malaysia's declarations to the Commission.²³ The nine-dash-line map had been created in 1947 by the Chinese government, encompassing 85% of the South China Sea (see Figure 2), and the contemporary government asset that it "was intended to be the median line between China and the other coastal states in the region."²⁴ This assertion is contested given

¹⁸ Mark Beeson and Andrew Chubb, "Australia, China and the Maritime 'rules-Based International Order': Comparing the South China Sea and Timor Sea Disputes," *International Relations of the Asia-Pacific* 21, no. 2 (2021): 246.

¹⁹ Beeson and Chubb. "Australia, China and the Maritime 'rules-Based International Order'," 2021, p.240.

²⁰ *Ibid.*

²¹ United Nations. *United Nations Convention on the Law of the Sea*. Montego Bay, Jamaica: United Nations. 1982, Article 56(1)(a).

²² "Competing Visions of International Order in the South China Sea," International Crisis Group, 29 November 2021.

²³ *Ibid.*

²⁴ Kevin Leddy, "Competing Claims: The Developing Role of International Law and Unilateral Challenges to Maritime Claims in the South China Sea," *Vanderbilt Journal of Transnational Law* 54, no. 3 (2021): 790; "Competing Visions of International Order in the South China Sea," 2021.

its delayed introduction to official discussions and inconsistent references to the map to justify China's claims.²⁵

Figure 2²⁶



Features/Occupied by:

- | | | |
|-----------------------------|-------------------------|---------------------------|
| 1. Woody Island (CHI) | 5. Subi Reef (CHI) | 9. Fiery Cross Reef (CHI) |
| 2. Commodore Reef (PHI) | 6. Itu Aba Island (TAI) | 10. Swallow Reef (MAL) |
| 3. Amboyna Cay (VIE) | 7. Mischief Reef (CHI) | |
| 4. Investigator Shoal (MAL) | 8. Erica Reef (MAL) | |

Crisis Group research

DISCUSSION

Power Distribution

To assess if China's actions in the South China Sea constitute a challenge to the rules-based international order (RBIO), it must be determined if an order transition has taken place. Beginning with He and Feng's power distribution pillar, a fundamental change would require the

²⁵ Leddy, "Competing Claims," 2021, p.801-803.

²⁶ "Competing Visions of International Order in the South China Sea," 2021.

hegemonic state (the US) to lose its dominance to a rising great power (China). In the South China Sea, this dominance can be measured in terms of military might. Although US defence expenditure was more than double that of China in 2020 (778 billion USD and 252 billion USD, respectively), China's People's Liberation Army Navy's fleet surpassed the US Navy's that same year.²⁷ In 2021, China was estimated to have 59 more deployable vessels than the US, with an expected 40 warships to be added within two years.²⁸ However, these figures do not prove China has achieved maritime dominance, as the US continues to have superior technology and weapon capabilities.²⁹ Furthermore, the hegemonic state cannot retain its position without the support of allies, of which the US has a formidable network. This claim that China has not overtaken the US is reinforced by a recent incident in the South China Sea.

Following the announcement of an agreement with the Philippines in April 2023, the international community was informed that the Philippines granted the US access to an additional four of its navy bases in the Indo-Pacific.³⁰ US forces will rotate between a total of nine Filipino bases, one of which is located in the South China Sea.³¹ This announcement came after the US stated its plans to share technology with India and deploy new marine units to Japanese islands within the region.³² Shortly thereafter, the US emphasized its continued maritime dominance when an American guided-missile destroyer intentionally sailed within 12 nautical miles of Mischief Reef, located in the Spratly Islands.³³ Chinese officials condemned the

²⁷ He and Feng, "International Order Transition and US-China Strategic Competition in the Indo Pacific," 2023, p.242; Brad Lendon, "Expert's Warning to US Navy on China: Bigger fleet almost always wins," CNN, 17 January 2023.

²⁸ "How is China Modernizing its Navy?" CSIS, 2021; Lendon, "Expert's Warning to US Navy on China," 2023.

²⁹ He and Feng, "International Order Transition and US-China Strategic Competition in the Indo Pacific," 2023, p.242.

³⁰ Brad Lendon, "US Gains Military Access to Philippine Bases Close to Taiwan and South China Sea," CNN, 4 April 2023.

³¹ *Ibid.*

³² *Ibid.*

³³ Brad Lendon, "US Navy Sails near South China Sea Island Militarized by China," CNN, 10 April 2023.

voyage as having “illegally intruded” into Chinese territorial waters, “undermining peace and stability in the South China Sea”.³⁴ US officials reiterated that under UNCLOS, despite China’s expansion of the reef and construction of military infrastructure, Mischief Reef does not constitute an island from which China can claim the rights of territorial waters.³⁵ China did not take any physical action to stop or redirect the US ship.

Govella would classify China’s response to this incident as a contestation to the RBIO. China’s accusations of illegality adhere to the existing institutional norms that dictate contestation to such actions, while indicating China’s desire to change the existing institutional rules established under UNCLOS, which do not prohibit the US’s actions. Given this classification, liberal institutionalists would argue that China is not challenging the RBIO, employing hegemonic stability theory. The theory states that the international system will remain stable as long as the hegemon is “satisfied to the degree that they continue to be cooperative with the hegemonic state and committed to the maintenance of the existing order.”³⁶ As China did not use force to illegally prohibit the US voyage, liberal institutionalists would consider it to still be satisfied with the RBIO and maintaining its existence. Realists would disagree based on power transition theory, which also considers international stability to be determined by rising powers’ degree of satisfaction and willingness to cooperate with the existing order; however, realists contend that a dissatisfied rising state is more likely to overtly revolt against the existing order when its power nears that of the hegemonic state.³⁷ As has been established, China’s maritime power does not yet equal that of the US, so realists would not have expected it to use illegal force

³⁴ Lendon, “US Navy Sails near South China Sea Island Militarized by China,” 2023.

³⁵ *Ibid.*

³⁶ Serafettin Yilmaz and Wang Xiangyu, “Power Transition Theory Revisited: When Rising China Meets Dissatisfied United States,” *China Quarterly of International Strategic Studies* 5, no. 3 (2019): 318.

³⁷ Yilmaz and Xiangyu, “Power Transition Theory Revisited,” 2019, p.319.

to prohibit the US's voyage. Nevertheless, realism would constitute China's behavior as a challenge to the RBIO, arguing that it used the order's institutions (UNCLOS) as a diplomatic tool to help it achieve the changes within the RBIO that would further its power.

Institutional Arrangements

Multiple institutions exist that define acceptable and unacceptable behaviour by states when acting in a maritime context. However, to evaluate if He and Feng's institutional arrangements pillar has undergone a fundamental change, this study limits its focus to the dominant institution – UNCLOS. Article 287 of the Convention outlines states' options for "the settlement of disputes concerning the interpretation or application of [UNCLOS]".³⁸ Article 287(5) clarifies that when disputing states cannot agree on which procedure to use, arbitration becomes the only option available to a state for the submission of a dispute.³⁹ In accordance with this article, the Philippines submitted its dispute with China to the Permanent Court of Arbitration in January 2013.⁴⁰ After the Arbitral Tribunal determined the Court held jurisdiction over the dispute, China submitted a position paper (December 2014), rejecting this determination and refusing to participate in proceedings.⁴¹

Employing Govella's definition, China's position constituted compliance with the RBIO. Three main points were asserted by China to justify its refusal to participate in proceedings, with each legally grounded in UNCLOS. Firstly, China attributed the allegations against it as stemming from its dispute with the Philippines over competing sovereignty claims to the Spratly Islands and Scarborough Reef.⁴² Per article 298(1)(a)(i), submissions to the Arbitral Tribunal

³⁸ United Nations, *United Nations Convention on the Law of the Sea*, 1982.

³⁹ *Ibid.*

⁴⁰ Beeson and Chubb. "Australia, China and the Maritime 'rules-Based International Order'," 2021, p.248.

⁴¹ Beeson and Chubb. "Australia, China and the Maritime 'rules-Based International Order'," 2021, p.249; / 7:231

⁴² Alex G. Oude Elferink, "Arguing International Law in the South China Sea Disputes: The Haiyang Shiyou 981 and USS Lassen Incidents and the Philippines V. China Arbitration," *The International Journal of Marine and Coastal Law* 31, no. 2 (2016): 231.

cannot include “unsettled disputes concerning sovereignty or other rights over continental or insular land territory”, as the Tribunal does not hold authority over such issues.⁴³ Should this point be rejected, China argued that the Tribunal did not have jurisdiction over the dispute because of the Declaration on the Conduct of Parties in the South China Sea (DOC).⁴⁴ UNCLOS article 298(1)(a)(iii) states that if there exists applicable bilateral or multilateral agreements, sea boundary disputes are to be settled in accordance with said agreement.⁴⁵ As Parties to the DOC, China and the Philippines had agreed “to settle their disputes through negotiations, excluding recourse to third-party settlement”; thus, China argued the Philippines submission was in contradiction to its obligations under DOC and that article 298(1)(a)(iii) removed jurisdiction over the matter from the Tribunal.⁴⁶ Finally, should both these points be rejected, China referenced its 2006 declaration under UNCLOS article 298, which was in accordance with the Convention and exempted China from compulsory dispute resolution procedures for disputes related to the delimitation of maritime boundaries.⁴⁷

Liberal institutionalists would not consider China’s actions to that point as constituting a challenge to the RBIO. While China’s actions were self-interested (lending credence to a realist interpretation), it worked within the existing institution and did not appear to be challenging the established rules (as realists would expect). Instead, China would be viewed as reinforcing the legitimacy of the RBIO by using it as the basis for its rejection of the Arbitral Tribunal’s jurisdiction. China’s compliance changed to systemic subversion after the Arbitral Tribunal’s award (2016) found that the Spratly Islands did not meet UNCLOS’s definition of an island from

⁴³ United Nations, *United Nations Convention on the Law of the Sea*, 1982.

⁴⁴ Oude Elferink, “Arguing International Law in the South China Sea Disputes,” 2016, p.231.

⁴⁵ United Nations, *United Nations Convention on the Law of the Sea*, 1982.

⁴⁶ Oude Elferink, “Arguing International Law in the South China Sea Disputes,” 2016, p.231-232.

⁴⁷ Oude Elferink, “Arguing International Law in the South China Sea Disputes,” 2016, p.232.

which a state could claim exclusive economic zone (EEZ) or continental shelf rights. In a statement, China reiterated its rejection of the validity of the Tribunal's decision and asserted it held sovereignty over the Spratly Islands and other land features in the South China Sea.⁴⁸ Through aggressive means that will be discussed in the subsequent section, China continues to claim sovereignty over the Spratly Islands. This overt non-compliance with the Tribunal's decision and lack of repercussions has shown the ineffectiveness of UNCLOS's dispute settlement mechanisms, serving to undermine the legitimacy of the institution. Realists would consider this as evidence of China's challenge to the RBIO, arguing that China was a dissatisfied state when the dispute was submitted but lacked the power to revolt against the hegemon. Contrary to the liberal institutionalist understanding, China was not willingly constrained by the existing institutions but rather manipulating those rules as a diplomatic tool to achieve its goal. As has been established, China's maritime power has grown but not enough to allow it to overtly compete against the hegemonic rule. Therefore, realists would view China's use of systemic subversion tactics as its way of challenging the RBIO without a heightened risk of consequences that would jeopardize its rising position.

Norms Diffusion

He and Feng's norms diffusion pillar does not refer to a rising state encouraging the spread of the established norms within the RBIO; instead, it should be understood as referring to the spread of the norms that the rising state would like to see established either replacing those in the existing order or by creating a new order. The institutional rules established by UNCLOS do not grant China sovereignty over the Spratly Islands nor the ability for any state to claim the rights of territorial waters, EEZ or continental shelf using the Spratly Islands as a baseline. To

⁴⁸ "Competing Visions of International Order in the South China Sea," 2021.

protect its national security and gain exclusive access to the significant resources of the South China Sea, China is attempting to change maritime norms. Deploying a mixture of forces including the China Marine Surveillance, Chinese Coast Guard, People's Liberation Army Navy, and People's Armed Forces Maritime Militia, China has used aggressive tactics to stop "illegal encroachment" by foreign vessels into the waters it claims (as defined in its nine-dash-line map).⁴⁹ This aggression is largely targeted at foreign countries (particularly those with competing claims) that are attempting to undertake natural resource exploration or exploitation.⁵⁰ Per article 74(3) of UNCLOS, states with unresolved competing claims to EEZs are expected "not to jeopardize or hamper the reaching of [a] final agreement", making China's action reprehensible but not illegal under UNCLOS.⁵¹ Its forces have partaken in internationally illegal manoeuvres against competing claimant states' vessels, but China has strategically deployed a mix of actors that make it difficult to hold the Chinese state accountable.⁵²

Govella would classify China's aggressive tactics as systemic subversion. In its overt defiance of maritime law, with little punishment by the hegemonic state (the US), China is highlighting weaknesses within the existing order and setting a precedent of challenging the RBIO. Similar to the previous section, realists would argue that China is not directly challenging the US's hegemony, as it recognizes it does not yet have sufficient power parity to win. Instead, China employs systemic subversion to undermine the existing order without jeopardizing its rising position within the RBIO. If it successfully changed the institution governing its behavior in the South China Sea, China would significantly benefit from UNCLOS. Thus, it would not

⁴⁹ Govella, "China's Challenge to the Global Commons," 2021, p.456; Beeson and Chubb. "Australia, China and the Maritime 'rules-Based International Order'," 2021, p.247; Gregory B. Poling, Tabitha Grace Mallory and Harrison Pretat, *Pulling Back the Curtain on China's Maritime Militia*, Report, CSIS, November 2021, p.12.

⁵⁰ Leddy, "Competing Claims," 2021, p.805.

⁵¹ United Nations, *United Nations Convention on the Law of the Sea*, 1982.

⁵² Govella, "China's Challenge to the Global Commons," 2021, p.456.

seek to destroy the RBIO, but rather grow powerful enough to effectively manipulate its institutions to establish China as the hegemonic state.

Liberal institutionalists may disagree with this realist analysis based on China's attempts to legitimize its claims to the Spratly Islands within the framework of international law. Previously, China justified its claim to sovereignty over the area contained in its nine-dash-line map through an argument of historic title.⁵³ In recent years, it has become evident that international law prioritizes occupation and effective legal administration over historic title when evaluating sovereignty.⁵⁴ China's guarding of what would be the Spratly Islands' territorial waters and EEZ could allow it to claim effective legal administration, while its artificial expansion of existing features has enabled China to build military infrastructure that could be used as evidence of Chinese occupation.⁵⁵ Liberal institutionalists would argue that China is aware of the credibility attached to the institutions of the existing order and is working to have its claims conform with those institutions. Although China requires a change to certain interpretations of UNCLOS, liberal institutionalism suggests China would not undermine UNCLOS's position as an institution of the RBIO because it seeks to benefit from the cooperation created by UNCLOS's territorial waters, EEZ, and continental shelf classifications. Therefore, China may be challenging maritime norms, but liberal institutionalists would not consider China to be challenging the RBIO.

CONCLUSION

This study aimed to answer the research question: have China's actions in the South China Sea challenged the rules-based international order? He and Feng's three pillars were used

⁵³ "Competing Visions of International Order in the South China Sea," 2021.

⁵⁴ Leddy, "Competing Claims," 2021, p.804.

⁵⁵ "Competing Visions of International Order in the South China Sea," 2021.

as the framework for evaluating if an order transition had already taken place. It is evident that China has failed to fundamentally change the power distribution, institutional arrangements, or norms diffusion within the examined examples, but it remains questionable whether China has effectively challenged the RBIO within each of the three pillars. Based on China's lack of physical action against a US Navy ship's voyage through what it considers to be its territorial waters, its verbal rebuke constitutes contestation. Liberal institutionalists would equate contestation to satisfaction with and maintenance of the existing order, yet realists would see Chinese lack of action as a calculated move – China lacks power parity with the hegemonic state (the US), so it is attempting to challenge the hegemon by changing the 'rules of the game'. China's opposition the Arbitral Tribunal's decision on the dispute brought against it by the Philippines would not be considered a challenge to the RBIO by liberal institutionalists but rather compliance because it justified its rejection of the proceedings by using UNCLOS. Realists would counter this view, again arguing that China could not overtly challenge the RBIO because it lacked sufficient power, but it was attempting to manipulate the existing institutions to its advantage. China's subsequent change to tactics of systemic subversion to undermine the legitimacy of UNCLOS lends credence to the realist interpretation. Finally, China's guarding and development of the Spratly Islands would be considered a challenge to the RBIO by realists again on the grounds that it lacks the power to directly challenge the US and effectively claim sovereignty of the Islands. However, liberal institutionalism offers a more compelling argument that China recognizes the credibility attached to the RBIO's institutions, so while it is using norms to change institutions, it is not challenging the existing order. Without knowledge of the motivations driving China's actions, it is difficult to determine if it is attempting to challenge the RBIO or simply attempting to change it. China does though benefit immensely from the existing

order, so this study concludes in favor of a liberal institutionalist interpretation – China's desire for change does not equate a challenge to the order as a whole.

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