



**British Institute of
International and
Comparative Law**

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

Discussion Paper

Dr. Julinda Beqiraj | Iris Anastasiadou | Anna Darnopykh



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Table of Contents

About BIICL.....	4
About the authors.....	4
Acknowledgements.....	4
Introduction.....	5
1. RBIO - the concept.....	7
2. RBIO and Public International Law (PIL) – ‘harmless synonyms’ or alternative concepts?.....	10
3. Perspectives from the Global South on the RBIO: focus on the African region.....	14
3.1. Emphasis on sovereignty and non-interference.....	14
3.2. Support for regional and global multilateralism.....	17
3.3. Promotion of collective security and conflict resolution.....	19
3.4. Advocacy for reform of international institutions.....	20
3.5. Focus on development and economic justice.....	22
4. Conclusions.....	25

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About the authors

*Dr. Julinda Beqiraj is Maurice Wohl Senior Fellow in European Law, Bingham Centre for the Rule of Law, BIICL

*Iris Anastasiadou is Researcher in Public International Law and Migration at BIICL

*Anna Darnopykh, Volunteer researcher at BIICL, Humboldt University, Berlin

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Introduction

The increased use and references to the “rules-based international order” (RBIO) in political statements and declarations prompts questions about the meaning and scope of this concept.¹ A notable example is the debate that took place at the House of Lords on the RBIO in January 2024, where the Secretary of State for Foreign, Commonwealth and Development Affairs was questioned on the steps taken to champion a rules-based international order.² The discussion clearly highlighted differing views on the understanding of ‘championing the RBIO’ and the selective ‘upholding international law’ (e.g. with regard to the contested Rwanda Bill in the UK and the impact on refugee rights).³ The catchy phrase ‘rules-based international order’ does not raise immediate suspicion, because of the key positive words it relies on: ‘rules’ and ‘order’. Nevertheless, it raises questions about the legal consequences associated with the use of this term, and the grounds for using it. International lawyers may perceive the RBIO concept as the political equivalent to ‘Public International Law’, i.e. the system of laws governing relations between states and other subjects of international law. However, at a closer look, invoking the RBIO may be a deliberate choice to allow governments to occasionally bypass their international law commitments and be able to pick and choose rules depending on changes to the political situation.

This paper was developed following a roundtable discussion on this topic held under Chatham House rule, and a follow-up public conference which expanded on some of the issues raised during the roundtable.⁴ A total of about 30 experts in the field, with both legal and political sciences background, including voices representing the Global South, discussed questions such as: How does the term RBIO correlate with the internationally recognised concept of ‘Public International Law’ (PIL)? What does RBIO add to PIL (if anything) – e.g. institutional aspects or soft undertakings? What factors contribute to states’

¹ See references to such uses in John Dugard SC, “The choice before us: International law or a ‘rules-based international order’?”, *Leiden Journal of International Law* (2023) 36, 223-232; Alexander N. Vylegzhanin et al., “The Concept “Rules-Based Order” in International Legal Discourses”, *Moscow Journal of International Law*, no. 2, 2021; Malcolm Chalmers, “Which Rules? Why There is No Single ‘Rules-Based International System’”, *RUSI Occasional paper*, April 2019.

² Rules-based International Order, Volume 835: debated on Tuesday 16 January 2024, [Rules-based International Order - Hansard - UK Parliament](#).

³ For a preliminary analysis on the problematic aspects of the Bill regarding its compliance with the rule of law and international commitments, see M. Hunt, ‘Safety of Rwanda (Asylum and Immigration) Bill: A Preliminary Rule of Law Analysis for House of Commons Second Reading’, *Bingham Centre for the Rule of Law*, December 2023, https://binghamcentre.biicl.org/documents/160_bingham_centre_report_on_safety_of_rwanda_bill_11_december_2023.pdf

⁴ Programme of the public conference and video link can be found here: [Benefits of the Rules-Based International Order \(biicl.org\)](#)

compliance or non-compliance with international rules and agreements, and how can compliance be promoted? Does the RBIO have a role to play in the enforcement of PIL and in holding states accountable for violations thereof? Might the RBIO concept be regarded as one of the numerous attempts to apply international law to new geopolitical, technological, and environmental challenges?

Another group of questions addressed regional aspects, such as: How do regional organisations and arrangements contribute to or challenge the rules-based international order in different regions? What are the interactions and tensions between regional and global governance structures in maintaining stability and promoting cooperation?

This paper aims to first discuss the meaning of the RBIO concept and its relationship with Public International Law, and then spell 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. The paper explores and discusses these issues with regard to areas such as conflict resolution, trade, human rights, and sustainable development, contributing to the discourse on shaping an inclusive global order while also highlighting African views on possible reforms of the RBIO grounded in Public International Law commitments.

1. RBIO - the concept

At both the roundtable and the public conference, speakers and participants shared the view that there are various questions around the concept of RBIO that should be asked, including: what it is and why do we know so little about it? What purpose does it serve or is intended to serve and what are the rules that are being applied? What systems, institutions, norms, and principles, are part of this framework? Who are the members of such an order, and what role do they serve? Are there, within the structure of the RBIO, rule-makers and rule-takers, or is its structure egalitarian?

The RBIO concept has been explained as a system in which countries adhere to established norms, treaties, and agreements to govern their interactions.⁵ 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".⁶ In regions often characterised by diverse cultures, histories, and socio-economic challenges, the pursuit of the RBIO can thus be deemed as crucial for fostering stability, promoting human rights, and facilitating sustainable development.⁷

There are, however, narrower understandings of the concept, which were shared by some of the experts and participants in both our roundtable and conference. Such views, reflect the criticism most often heard that the RBIO is a "central narrative in the US foreign policy" and 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".⁸

In the literature and in official documents, reference is also made to concepts, such as, 'liberal international order', 'free and open international order based on the rule of law', 'rules based international system', 'multilateral order', 'international legal order' – all of which aim at achieving similar objectives and

⁵ The Rules-Based International Order explained, Parley Policy Cable No. 29 (May 3, 2023), at <https://www.parleypolicy.com/post/the-rules-based-international-order-explained>

⁶ Mazarr M. J. [et al.]. Understanding the current international order, Rand Corporation, 2016, p. 15 https://www.rand.org/pubs/research_reports/RR1598.html; Ikenberry G. J. The Future of the Liberal World Order. – Foreign Affairs. 2011, May-June, p. 56; Ikenberry, G. J., "After Victory: Institutions, Strategic Restraint, and the Rebuilding of Order after Major Wars", Princeton, N.J., Princeton University Press, 2001, p. 30-31.

⁷ Scott, Ben "Rules-based order: What's in a name?" (2021-06-30), at www.lowyinstitute.org: "Challenges to the Rules-Based International Order", Chatham House background note, The London Conference, Royal Institute of International Affairs, 2015, <https://shorturl.at/fRU49>.

⁸ Dr. Kenneth Chan, Research Associate, Walther Schücking Institute of International Law, University of Kiel, see conference link in fn. 4.

benefits in terms of cooperation, peaceful resolution of conflicts, facilitating economic development, and addressing global challenges.⁹

Rules, however, are not neutral but reflect the interests and values of the states that sustain them. 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 that there is no single rules-based order or system. Authors put forward that the RBIO consists of several strands chronologically developed (economic order, security order,¹⁰ human rights and liberal political values, and protection of global commons)¹¹ or recognise at least three distinct orders stemming from the post-1945 international settlement - a Universal Security System (USS), a Universal Economic System (UES) and a more exclusive Western System (WS) – alongside a set of Major Power Relations (MPR).¹²

Each of these reflects power-based bargains between their members and there have been 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.¹³ In relation to the use of force, one of the speakers at the public conference noted that the RBIO was not a term that was very strongly engaged with until the turn of the century but that it was thereafter widely used 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.¹⁴ Another example is the use of economic sanctions as a response to the behaviour of some states, which may in turn conflict with international trade rules.

With international rules being increasingly challenged, there is a growing need to understand the meaning of the RBIO concept when it is invoked. Indeed, the point was made during the discussions that took place at the events that:

⁹ Jain A., Kroenig M., "Present at the re-creation: A global strategy for revitalizing, adapting, and defending a rules-based international system", Washington, DC: Atlantic Council, 2019, p. 11. See also sources cited in fn. 1.

¹⁰ The rules regulating warfare, however, i.e. the Hague Regulations adopted in 1899 and 1907 preceded the UN charter and the establishment of the Bretton Woods institutions.

¹¹ Nye J.S., Jr, "The rise and fall of American hegemony from Wilson to Trump", in *International Affairs*, 2019, Vol. 95, issue 1, p. 71.

¹² Malcolm Chalmers, cit. fn 1.

¹³ 2005 World Summit Outcome A/60/L.1 and UN Secretary-General report on implementing the Responsibility to Protect, Resolution 63/308 (The responsibility to protect) A/RES/63/308

¹⁴ Dr. Kenneth Chan, Research Associate, Walther Schücking Institute of International Law, University of Kiel, see conference link in fn. 4.

“we do not really know yet what the full scope and substance of the rules based international order actually is because some of the countries within the order are currently and actively in the process of creating, interpreting and redefining the rules and institutions that make up its substance”.¹⁵

¹⁵ Ibid.

2. RBIO and Public International Law (PIL) – ‘harmless synonyms’ or alternative concepts?

There is ‘relative silence’ among international law scholars and practitioners on the specific meaning and content of the RBIO, and it is often considered as the term used by political scientists and politicians for international law.¹⁶ However, the emphasis that lawyers and political scientists/politicians place on ‘rules’ is different. The use of the term RBIO without a precise definition may be dangerous if the concept is employed to replace or promote a system that is only partially or selectively premised on international law, and which may ultimately weaken PIL. The attractiveness of the RBIO concept relies on the fact that, being born and used in political discourse, it may be employed as detached from the ‘substantive attributes’ and ‘legal requirements’ that constitute the proper normativity of international law. Indeed, one speaker at the conference characterised it as “resistance to the idea of a consensual structure of international law”.¹⁷

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.¹⁸ According to the author there are two ways of looking at the rules-based order. On the one hand, it may be seen as a concept that is synonymous with international law. Indeed, it may be used interchangeably with international law as in the statement of the Heads of State at the conclusion of the 2022 Madrid summit of NATO: “[w]e adhere to international law and to the purposes and principles of the charter of the United Nations. We are committed to upholding the rules based international order”.¹⁹ Another example discussed in detail by one of the participants at the conference is the use of the term in the context of the WTO, where there seems to be broad acceptance among members and at the level of the institution that the ‘rules-based’ trading system relies on the rules set out in the negotiated agreements, as also set out in the WTO jurisprudence.²⁰

¹⁶ Dugard, cit. above fn. 1.

¹⁷ Dr. Kenneth Chan, Research Associate, Walther Schücking Institute of International Law, University of Kiel, see conference link in fn. 4.

¹⁸ Dugard, cit. above fn. 1.

¹⁹ NATO Head of State and Government, Madrid Summit Declaration, press release 095 (2022).

²⁰ Prof. Aya Iino, College of Commerce, Nihon University, Japan (Tokyo), see conference link in fn. 4. WTO jurisprudence interprets the meaning of the concept “based” or “on the basis of”. The EC – Sardines, AB Report (paras. 240-245, 248) sets out that “there must be a very strong and very close relationship between two things in order to be able to say that one is ‘the basis for’ the other” and that “in our view, it can certainly

In this view, the RBIO is based on the principles and norms that constitute the foundations of international law and, in addition, takes account of broader sources of international law and includes soft-law, standards and recommendations of international standard-setting organisations and conferences, as well as rules made by non-state actors. In common with international law, it is premised on the values and norms of the international community enshrined in the Charter of the United Nations, in multilateral treaties and customary rules that give effect to those values.

Thus, the RBIO according to this view is a normative concept, rooted in a system of laws, rules, and norms, centered 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. The same applies for the 164 members of the WTO, or the 185 members of the ILO, etc. There is a complex web of multilateral and bilateral rules and norms (with varying levels of binding influence or effect) that stem from the system established in the immediate post-World War II era, and there is no single 'code' that clearly lays out every rule or norm; however, it is possible to identify core international laws, rules, and norms—particularly by subject area or sector.

On the other hand, 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, or customary rules, or the mechanisms for their enforcement.²¹ The reference is to general values as 'rules' which are not 'the rules' as usually understood by lawyers, thus leaving room for political manipulation and double standards. The amorphous rules of the RBIO in this understanding make it easier for governments to selectively enact or condone violations of international law, thus 'enjoying legitimacy through association' as effectively put by one of the speakers at the conference.²² In other words, "the "uncertainty" of the concept becomes not just a shortcoming

be said – at a minimum – that something cannot be considered a 'basis' for something else if the two are contradictory."

²¹ Interestingly, one of the participants at the conference discussed the relationship between treaty law and customary law and the significance for RBIO. See presentation by Dr. Yurika Ishii, Associate Professor, National Defence Academy of Japan, conference link available in fn. 4

²² Dr. Kenneth Chan, Research Associate, Walther Schücking Institute of International Law, University of Kiel, see conference link in fn. 4.

(if such is assumed), but the danger of “erosion” of the very core of the current international legal system”.²³

In the absence of a global enforcement authority, it is incumbent upon the members of the international community themselves to work together in establishing the rules and upholding them. The RBIO concept underscores the interconnectedness of the world, but it is only if premised on public international law rules, principles and institutions that it provides the opportunity to shape a more inclusive and equitable global order that reflects the aspirations and contributions of all nations.

There is no legal rule or principle of PIL that has gone unbroken. Nevertheless, the adoption of treaties has thus far led to relative global stability and development since their adoption following WWII. Despite challenges to the rules of international law it is important to remain clear about what the obligations of states under PIL are, so that violators can be held accountable. Paraphrasing one of the comments during the roundtable event, when violations of international law occur, these can be considered and addressed as such, and the uncertainties of concepts that refer to systems or orders based on otherwise non-specified ‘rules’ can be avoided.

In essence, the lack of understanding about the contours and shape of the rules based international order makes it difficult to conceptualise and use it. As one of the speakers noted during the public conference, “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’”.²⁴ Instead, the utility of a RBIO ‘wholly and exclusively’ premised on PIL comes down to the following three points:

- ‘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. Rules are important not only for guiding behaviours, but for setting expectations that help mitigate the risk of conflicts or misinterpretation. A system that is predicated on international law, rules, as well as norms and mechanisms for upholding them, is desirable because history has demonstrated that its absence creates space for conflict and chaos (a lesson learned through two world wars).
- Despite limitations, the RBIO resting on PIL commitments also offers mechanisms for addressing violations of the rulesets and enforcing the rules – a

²³ Vylegzhanin et al., cit. above fn. 1.

²⁴ Dr. Kenneth Chan, Research Associate, Walther Schücking Institute of International Law, University of Kiel, see conference link in fn. 4.

feature that the RBIO itself does not necessarily have. Indeed, PIL provides for an internal hierarchy through which conflicts of norms can be solved and hard law and soft law can be implemented. For instance, there have been collective security mandates provided by the UN Security Council in response to certain acts of unilateral aggression and UN resolutions have imposed or provided a basis for other punitive measures such as sanctions. The ICJ, the UNCLOS tribunal, the ICC, and the dispute settlement system in the context of the WTO provide additional examples of such mechanisms.

- A RBIO grounded in international law also includes predictable mechanisms for updating and amending existing rulesets. While the claim can be made that the RBIO is one of the numerous attempts to adapt the current international law to new challenges and needs, PIL already provides means to the international community to change the existing rules and to address potential sources of conflict or environmental, social, or economic problems before they escalate further.

Regarding this last point, there has been in recent years a growing recognition of the economic, political, and cultural significance of the Global South 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. Furthermore, emerging economies such as China, India, Brazil, and South Africa have become key players in shaping global economic policies and rules.

Against this background, the remaining part of the paper takes a focus on the African region to highlight both the steady support to the rules of public international law, as well as views on possible reforms of the rules and institutions of the existing order, grounded in public international law commitments.

3. Perspectives from the Global South on the RBIO: focus on the African region

The African perspective on the RBIO features a general recognition of its importance grounded in international commitments and institutions, which 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. It emphasises sovereignty, multilateralism, collective security, conflict resolution, institutional reform, and development, and reflects the continent's aspirations for greater autonomy, inclusivity, and equitable participation in the global governance system.²⁵ However, Africa faces similar challenges as those in other parts of the world where the use by politicians of the RBIO concept without a clear substantive content, presents the risk of undermining the commitment to PIL.

Overall, these aims 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.²⁶ While challenges remain, the AU continues to encourage member states to abide by international treaties, conventions, and agreements and advocates for multilateral approaches to global governance and diplomacy on issues ranging from peace and security to sustainable development and human rights.

We discuss below some of these aspects.

3.1. Emphasis on sovereignty and non-interference

An essential facet characterising the African stance within the framework of the RBIO pertains to the emphasis placed on the principles of sovereignty and non-

²⁵ These are reflected in various statements by African leaders. Cyril Ramaphosa, President of South Africa: "South Africa is committed to multilateralism and the rule of law as the only viable means to address the global challenges we face." [Source: President Cyril Ramaphosa's statement during the 75th United Nations General Assembly, September 2020]; Uhuru Kenyatta, President of Kenya: "Kenya remains committed to the principles of a rules-based international order and multilateralism in addressing global challenges." [Source: President Uhuru Kenyatta's speech at the United Nations General Assembly, September 2019]; Abdel Fattah el-Sisi, President of Egypt: "Egypt remains committed to the rules-based international order, recognizing the importance of upholding sovereignty and promoting cooperation for global prosperity." [Source: President Abdel Fattah el-Sisi's address at the United Nations General Assembly, September 2019]. These statements can also be seen as evidence of a political use of the RBIO term, detached from PIL, especially if considering the attempts by some African States to withdraw the ICC Statute.

²⁶ See objectives and principles respectively set out in Articles 3 and 4 of the Constitutive Act of the African Union

interference. This stems from the legacy of colonialism and the struggle for self-determination. Indeed, in the period between 1951 and 1994, in Africa alone, more than fifty former colonies gained independence, and the United Nations General Assembly, through its resolution 1514 of 1960, was able to establish new legal obligations for colonial powers, who gradually came to accept that they had a legal obligation to allow colonised peoples to determine their political status, including through independence.²⁷ In a rather short period of time a great number of newly independent states emerged, and the composition of the international community was radically changed.

While continuing participating in global international organisations, such as the UN, African states organised themselves in the Organisation of African Unity (OAU) and in other regional organisations with the aim, among others, to eradicate colonialism while aiming to ensure non-interference by maintaining, at least formally, a policy of non-alignment with respect to the different political blocks.²⁸ Indeed, the principle of non-interference - including through military intervention, economic coercion, or attempts to influence domestic politics - resonates strongly in the African Charter on Human and Peoples' Rights and in the Constitutive Act of the African Union that replaced the OAU.²⁹

Participation in international and regional organisations ensures protection against threats to such principles and offers venues and access to mechanisms for conflict resolution and cooperation with regard to salient topics such as territorial disputes, conflicts over natural resource allocation, investment dynamics, and the protection of Indigenous rights.

For example, some African States have brought their territorial disputes before the International Court of Justice. This was the case of Burkina Faso against Niger (2013), a territorial dispute concerning a portion of land along their shared border, adjudicated by the International Court of Justice (ICJ).³⁰ Burkina Faso claimed ownership of the territory based on historical and customary use, while Niger argued for sovereignty based on colonial-era administrative boundaries. Ultimately, the ICJ issued a judgement affirming Niger's sovereignty over the disputed territory, emphasising the importance of respecting established colonial borders and international law in resolving territorial disputes between states. The decision underscored the significance of legal principles and

²⁷ UN General Assembly resolution 1514 "Declaration on the Granting of Independence to Colonial Countries and Peoples", 14 December 1960.

²⁸ Article 3(7), Charter of the Organisation of African Unity, Addis Ababa, 25 May 1963 <https://treaties.un.org/doc/Publication/UNTS/Volume%20479/volume-479-I-6947-English.pdf>

²⁹ The Constitutive Act of African Union, 2001 https://au.int/sites/default/files/pages/34873-file-constitutiveact_en.pdf

³⁰ Case of Frontier Dispute (Burkina Faso/Niger), judgement of 16 April 2013, [149-20130416-JUD-01-00-EN.pdf](https://www.icj-cij.org/149-20130416-JUD-01-00-EN.pdf) ([icj-cij.org](https://www.icj-cij.org)).

historical context in determining territorial rights and solving territorial disputes within the framework of international law.

Other cases concerning territorial disputes that were brought to the ICJ include that of Cameroon and Nigeria, the border dispute over the Bakassi Peninsula.³¹ Cameroon brought the case to the ICJ in 1998, which ruled in 2002 that the peninsula belonged to Cameroon. Nigeria initially rejected the ruling, but it later agreed to abide by it, and the transfer of sovereignty took place in 2008. The dispute between Kenya and Somalia over their maritime boundary in the Indian Ocean was brought before the International Court of Justice (ICJ) by Somalia in 2014, seeking to redraw the maritime border; more recently the ICJ delivered its judgement on the merits, by which it determined the maritime boundary between Somalia and Kenya.³²

African states have also brought cases to the ICJ with regard to erga omnes obligations, i.e. obligations that are owed to all even if they are not direct victims of the violations of those obligations. This is the case of The Gambia's application of the Convention on the Prevention and Punishment of the Crime of Genocide against Myanmar, which focuses on the abuses of Myanmar's military towards the Rohingyas,³³ and South Africa's similar application against Israel with regard to Israel's conduct in the Gaza Strip.³⁴

One final area that is worth mentioning in this context is that of international criminal law. Building (among others) on the work of the *ad hoc* International Criminal Tribunal for Rwanda (ICTR) established by the UN Security Council in 1994 to prosecute individuals responsible for genocide and other serious violations of international humanitarian law, the International Criminal Court (ICC) became operative in 2002.³⁵ Among its 124 State parties, the ICC Statute counts 33 African States, the region with most State parties. In Africa, the ICC has opened several investigations and prosecutions related to conflicts and atrocities, with several African states having self-referred their situation to the Court, such as the Democratic Republic of the Congo, Mali, Uganda and the Central African Republic. It is worth noting that reparations which may be ordered by the ICC can be of direct benefit to the victims. Indeed, the ICC places a strong emphasis on providing justice for victims of atrocities, by giving

³¹ Case concerning Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening), judgement of 10 October 2002, [094-20021010-JUD-01-00-EN.pdf \(ici-cij.org\)](#).

³² Case of Maritime Delimitation in the Indian Ocean (Somalia v. Kenya), judgment of 12 October 2021, [161-20211012-JUD-01-00-EN.pdf \(ici-cij.org\)](#).

³³ Case of Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), judgement on preliminary objections of 22 July 2022, [Judgment of 22 July 2023 \(ici-cij.org\)](#).

³⁴ Case of Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), <https://www.ici-cij.org/case/192>.

³⁵ Rome Statute of 1998; entry into force July 2002.

them the unusual opportunity (in a criminal process) to participate in its proceedings, present their views, and seek reparations. This victim-centered approach can empower survivors and contribute to healing and reconciliation in the affected communities.

Despite self-referrals by African states, which show trust in the ICC as an international institution, the Court has been criticised for not being able to bring a lot of cases from other regions and thus for the 'exclusive' geographical focus of its activities, leading even to accusations of bias and neo-colonialism. This led Burundi, The Gambia and South Africa to seek to withdraw from the ICC Statute, decisions which were eventually overturned with regard to The Gambia and South Africa. Another criticism is that the justice delivered by the ICC is far from the place where the violations took place in cases concerned with an African situation, with some victims feeling disenfranchised from the justice being handed in The Hague. Another issue is the focus on the highest-ranking perpetrators (under the doctrine of command responsibility) with many victims wanting to see the low-level perpetrators be prosecuted too. This is however an inherent limitation of an international court based on the complementarity principle.

3.2. Support for regional and global multilateralism

African countries are strong supporters of multilateral approaches to international relations and governance. In the words of Cyril Ramaphosa, President of South Africa: "South Africa is committed to multilateralism and the rule of law as the only viable means to address the global challenges we face." and according to Uhuru Kenyatta, President of Kenya: "Kenya remains committed to the principles of a rules-based international order and multilateralism in addressing global challenges."³⁶

Firstly, as relatively smaller, and new states in the international arena, African states recognise the importance of collective action to amplify their voices and influence global debates and decisions. Secondly, multilateralism aligns with the principles of sovereignty, equality, and non-interference, which are highly valued by African nations. Thirdly, multilateral approaches offer African countries opportunities for cooperation, resource-sharing, and mutual

³⁶ See sources cited in fn 14. Reiterating the point made earlier in support of an RBIO understanding that is grounded in PIL rules and obligations, it should be noted that the use of the broad expression RBIO by some political leaders, has not been translated in practice into support to international mechanisms of justice. Examples include the ICC case against Kenyatta which eventually led to Kenya's attempt to undermine the court or the South African attempt to leave the ICC.

assistance, particularly in addressing common challenges such as poverty, conflict, and development.

The historical context of multilateralism in Africa can be traced back to the decolonisation period, during which African countries sought collective action to assert their independence and sovereignty. This period saw the formation of regional organisations like the Organisation of African Unity (OAU), the precursor to the AU, aimed at promoting unity, cooperation, and solidarity among African states, alongside other regional organisations and bodies pursuing multilateral economic cooperation, such as the African Union (AU), the Economic Community of West African States (ECOWAS), the Southern African Development Community (SADC), and the East African Community (EAC).

A significant contribution to the promotion and protection of human rights in Africa has been made through the adoption of the African Charter on Human and People's Rights (Banjul Charter, 1981) which includes collective rights and has thus adopted a continental approach to human rights. The Charter has been implemented by the outward looking African Commission on Human and People's Rights (ACHPR) established in 1981 and the African Court of Human and People's Rights (ACtHPR) established in 2004, whose reports (the Commission) and rulings (the Court) have helped to hold governments accountable for human rights violations, advance the jurisprudence on human rights in Africa - including with a focus on people, alongside individuals - and provide redress to victims. The jurisprudence of the Court covers a wide range of issues, including political repression, freedom of expression, right to a fair trial, protection of minority rights, and socioeconomic rights. 34 African Union member states have ratified the Protocol establishing the ACtHPR, although only 12 have made declarations allowing individuals and NGOs to directly submit cases to the court (and four states, Tanzania, Rwanda, Cote d'Ivoire and Benin later withdrew their declarations). In terms of implementation of the opinions and decisions of these institutions, one of the speakers at the conference shared the research findings from a project claiming that "one of the most important roles that the African Commission and other human rights bodies can play, is to enable and mobilise others to induce implementation through greater dialogue, broad dissemination of their findings, and strategic institutional and domestic cooperation".³⁷

At the same time African countries value the role of international organisations, such as the United Nations Organisation and its bodies, which has played and continues to play a pivotal role in addressing African challenges through multilateral cooperation, providing platforms for dialogue, coordination, and

³⁷ Dr. Debra Long, International Policy Manager, The Law Society, see conference link in fn. 4.

action on various fronts. During the discussion of the Report of the International Court of Justice at the 64th session of the UN General Assembly on 29 October 2009 the representative of South Africa, Dire Tladi stated that: "My delegation is particularly pleased to hear of the frequent visits being made to the Court by national judges, senior legal officials, researchers and other members of the legal profession. We believe that it can only strengthen the understanding of and appreciation for international law, which is an important tool towards the creation of a rules-based international system."³⁸

African countries also actively participate in multilateral institutions such as the World Trade Organization (WTO), and the International Monetary Fund (IMF), among others, where they advocate for collective decision-making, respect for sovereignty, and cooperation among nations to address common challenges. In particular, in the context of the WTO, where no less than one quarter of the organisation's membership is African, and 40% of the funds under the WTO's flagship Aid for Trade programme go to Africa, states have been increasingly active in various joint initiatives including in discussions on e-commerce, with the aim to bridge the digital divide and use digital trade as an engine for development. In 2023 the adoption of the African Continental Free Trade Area's Protocol on Investment and the conclusion of the negotiations at the WTO of the Investment Facilitation for Development Agreement marked two important achievements that address some of the rigidities of the current system regarding the transition to climate-friendly investment opportunities.

In recent years, African countries have also been actively engaged in the multilateral efforts to address climate change and environmental challenges, advocating for global cooperation to mitigate the impacts of climate change, secure climate finance for adaptation and mitigation efforts, and promote sustainable development practices (see below section dedicated to development).

3.3. Promotion of collective security and conflict resolution

African countries support and advocate collective security mechanisms and peaceful conflict resolution processes within the framework of international law. One of the experts speaking at the public conference highlighted the advocacy role of the African Union and the decades long diplomatic push to reconceptualise the understanding of the primacy of the UN Security Council

³⁸ UN General Assembly: Sixty-fourth session 30th plenary meeting, 29 October 2009, Report of the International Court of Justice.

and the scope and role of regional arrangements on peace and security in the framework of Chapter VIII of the UN Charter.³⁹ In particular, it was noted that the AU has advocated for a shift of perspective from one of primacy to one of cooperation in the relationship between the UN Security Council and regional arrangements, which has resulted in instances of close cooperation on peace and security issues and in an “extension of our understanding of subsidiarity and how this applies to peace and security when dealing with conflict”.⁴⁰ In December 2023, for instance, the UN Security Council unanimously adopted a resolution that creates a framework for the funding of peace operations led by the African Union. The resolution meets a demand for sustainable predictable financing that the AU has been pressing upon the UN for years.

At the regional level, initiatives like the African Peace and Security Architecture (APSA) within the AU demonstrate the commitment to resolving conflicts on the continent through African-led and African-owned mechanisms, with support from the international community when necessary.

The APSA is a comprehensive framework for managing, preventing, and resolving conflicts on the continent, consisting of a number of components including:

- i. early warning systems at the continental, regional, and national levels to identify and evaluate possible conflicts and crises before they worsen;
- ii. preventive diplomacy, whereby the AU's Peace and Security Council (PSC) and the Panel of the Wise engage proactively in diplomatic initiatives, mediation efforts, and dialogue facilitation to address underlying grievances and tension;
- iii. peace support operations such as peacekeeping, peacebuilding, and peace enforcement missions, and
- iv. post-conflict reconstruction and development efforts to consolidate peace and prevent relapse into violence.

3.4. Advocacy for reform of international institutions

African countries frequently call for reforming international institutions, to better reflect contemporary global realities and give African states a more prominent role and voice. They advocate for making such institutions more inclusive, representative, and responsive to the needs and priorities of African countries,

³⁹ Dr. Kathryn Nash, Chancellor's Fellow, Edinburgh Law School, see conference link in fn. 4.

⁴⁰ Ibid.

as well as to address systemic inequalities and imbalances in the global governance architecture.

With regard to UN reform, African countries seek changes to address for instance longstanding concerns about geopolitical representation, proposing to increase the number of permanent and non-permanent seats at the UN Security Council with a particular emphasis on granting permanent seats to African countries. The argument made is that Africa, as a continent with a significant portion of the world's population and resources, deserves greater representation, as this diminishes the Council's legitimacy and effectiveness. Ancillary to these claims, is the request for a more equitable distribution of resources within the UN system, including funding, personnel, and leadership positions to enable support for African-led initiatives and priorities. A third claim is related to enhancing the effectiveness and efficiency of peacekeeping operations, through improvements in training, equipment, and logistical support for peacekeepers, given that African countries, are significant contributors to UN peacekeeping missions.

Another set of reform requests regards the two key international financial institutions, the International Monetary Fund (IMF) and the World Bank Group. The role of these institutions is essential to aid and debt management and debt relief efforts, and more broadly the development efforts in the continent. A Carnegie study reports that in 2022, the WB Group committed \$104.4 billion, with sub-Saharan Africa receiving 37 percent; and the IDA's financial commitments have been largely concentrated in Africa, with 83% of these deployed in forty-eight sub-Saharan African countries.⁴¹ In particular, African countries advocate for more flexible lending terms, including lower interest rates and longer repayment periods, to make financing more accessible and sustainable for African economies. Also, a reform of the policy conditionality attached to IMF and World Bank loans is auspicated, namely structural adjustment programs that are aligned with national development priorities and support inclusive and sustainable growth. A third strong claim is the call for reforms to address the issue of debt sustainability and the provision of greater support for debt relief initiatives, including debt restructuring and innovative financing mechanisms to alleviate debt pressures that hinder the ability of African countries to invest in critical development priorities.

In the framework of the World Trade Organisation (WTO), African countries have put forth various reform claims, seeking to address imbalances and ensure that the global trading system is more equitable and beneficial for African

⁴¹ Carnegie Africa analysis from World Bank Annual Reports and Financial Statements for FY 2000-2022, <https://carnegieendowment.org/files/Africa%20-%20World%20Bank%20Reforms.pdf>

economies. One particular in area of concern is agriculture, where subsidies and trade barriers in developed countries distort markets and hinder the competitiveness of African producers. Another point is the emphasis on the importance of integrating the development dimension into WTO negotiations and agreements, alongside capacity-building initiatives such as technical assistance, training programs, and support for institutional strengthening to help building the necessary expertise and infrastructure to engage in trade negotiations, comply with trade rules, and take advantage of trade opportunities. Finally with regard to the WTO Dispute Settlement Mechanism, African countries call for greater capacity-building support for African countries to participate effectively in dispute resolution processes and ensure that their interests are adequately represented. It should be noted however, that among African countries only Benin - alongside big economic actors, such as China, the EU, Canada, Japan, Australia - is currently a member of the Multi-party Interim Appeal Arbitration Arrangement (MPIA) which was set up in response to the WTO Appellate body impasse.

3.5. Focus on development and economic justice

African states prioritise issues related to development, poverty alleviation, and economic justice within the rules-based international order. The claim in relation to improvement of the status quo regards fairer trade practices, increased development assistance, debt relief, and technology transfer to support sustainable development efforts.

Historically the UN Conference on Trade and Development (UNCTAD) established by General Assembly in 1964, has played a significant role during and after the decolonisation process to address the economic inequalities and dependencies that persisted after the formal end of colonial rule. Despite being established after many African countries had gained independence, UNCTAD has actively advocated for the economic sovereignty of newly independent nations and for addressing the legacies of colonialism in global trade and development. It did so through emphasising, within the UN framework, the importance of economic policies that allowed newly independent nations to control their resources and develop their industries, and through advocating for policies that promoted economic sovereignty and reduced dependence on former colonial powers.

UNCTAD also conducts policy research and analysis with valuable insights for policymakers (e.g. the annual Economic Development in Africa Report), and provides technical assistance, and capacity-building support to newly independent nations to help them formulate and implement trade and development policies (incl. in the framework of the African Continental Free Trade Area (AfCFTA)). UNCTAD has also vouched for special treatment and

preferences for developing countries, including those in Africa, in international trade agreements, pushing for measures such as preferential market access, tariff reductions, and technical assistance to support the industrialisation and economic development of newly independent nations. The 'Aid for Trade Initiative for Africa' and the 'African e-Trade Initiative' are two examples in these regards.

At the regional level, as one of the participants to the conference commented, the AU has shown itself as the leader in international trade and investment, by re-conceptualising investment law through promoting value-based policies taking into account climate goals, as set out in its constitutive act.⁴² This has inspired the adoption of the African Continental Free Trade Area's Protocol on Investment in February 2023, mentioned above, which contains key, innovative provisions on climate change that protect climate sustainability investments.

In relation to sustainable development, the AU Agenda 2063: The Africa We Want adopted in 2013, and the Sustainable Development Goals (SDGs) set out in the UN 2030 Sustainable Agenda unanimously adopted at the General Assembly in 2015 have provided a comprehensive framework for addressing various socio-economic and environmental challenges in Africa. While progress varies across countries and regions, the "one framework, two agendas" initiative has undoubtedly contributed to shaping development agendas and mobilising efforts towards achieving sustainable development through policy alignment and resource mobilisation which has increased international cooperation and partnerships for development in Africa. The 2023 Africa Sustainable Development report produced jointly by UN and AU institutions, highlights the progress, challenges, and opportunities for improving Africa's development prospects, with a focus on five key SDGs, namely SDG6 on clean water and sanitation, SDG7 on affordable and clean energy, SDG9 on industry innovation and infrastructure, SDG11 on sustainable cities and communities, and SDG17 on partnerships for the goals. Findings from the report suggest steady progress on these key SDG targets, particularly on 4G mobile network coverage, access to safe drinking water, and electrification rates.

While the SDGs as such are not binding on States, there is an important role for soft law norms as it was evidenced in the discussions at the public conference and by one of the speakers – "soft law, helps by, at least, interpreting the existing rules".⁴³ Specifically about the SDGs, one important aspect is their emphasis on the importance of data collection, monitoring, and evaluation to track progress accurately and enable evidence-based decision-making and targeted

⁴² Dr. Oke Ejims, Senior Lecturer, University of Bedfordshire, see conference link in fn. 4.

⁴³ Prof. Alexandra Xanthaki, UN Special Rapporteur on Cultural Rights, see conference link in fn. 4.

interventions in areas where progress is lagging. From a normative, hard law perspective, building on the UN 1986 Declaration on the Right to Development, there are currently ongoing discussions and negotiations at the UN level, after the Human Rights Council submitted the Draft Covenant on the Right to Development to the United Nations General Assembly for negotiation and eventual adoption. Two key aspects of the draft are the focus on the critical role of international cooperation and collaboration in advancing the right to development and the emphasis on both the collective and individual dimension of the right to development.

The latter has traditionally been a distinctive feature of the human rights protection in Africa, despite challenges, for instance in the case against the Republic of Kenya lodged by the African Commission on Human and People's Rights (Application No. 006/212).⁴⁴ The complaint regarded the eviction of the Indigenous Ogiek people from their ancestral land in the Mau Forest. In its judgement, the African Court on Human and Peoples' Rights (AfCHPR) found Kenya to be in violation of its obligations under the African Charter, ruling that the eviction of the Ogiek people constituted a violation of their rights to property, culture, and participation, and ultimately of their right to development. While still awaiting to be enforced, the judgement underscored the importance of protecting the rights of Indigenous peoples and respecting their ancestral land rights within the framework of international human rights law, including with regard to soft law, such as the UN Declaration on the Rights of Indigenous Peoples of 2007.

⁴⁴ African Commission on Human and People's Rights v. Republic of Kenya. Application No. 006/212, <https://www.escri-net.org/caselaw/2023/african-commission-human-and-peoples-rights-v-republic-kenya-judgment-application-no>

4. Conclusions

As announced and claimed by political leaders and diplomats the RBIO can be a good thing, as it rests on common values and universal global public goods that we generally would consider quite desirable, 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 international law, or something which is different from the world order based on international law, but 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 however remains, that because of fragmented understanding of RBIO this positive idea may be easily subject to political instrumentalisation, therefore it is important to agree on the basic content of the concept which must rely on adherence to international law.

With a growing recognition in recent years of the economic, political, and cultural significance of the Global South these countries, including African States, have become key players in defining and putting forward proposals for amendments to the existing principles, values, and rules of international law.

Africa has demonstrated that it values 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 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.

Charles Clore House
17 Russell Square
London WC1B 5JP

T 020 7862 5151
F 020 7862 5152
E info@biicl.org

www.biicl.org

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