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## Chinese Border Disputes Revisited: Toward a Better Interdisciplinary Sythesis

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# CHINESE BORDER DISPUTES REVISITED: TOWARD A BETTER INTERDISCIPLINARY SYNTHESIS

*Roda Mushkat\**

## ABSTRACT

China has long been embroiled in a wide array of territorial disputes and has occasionally flexed its military muscle in the process. Its conduct in such situations has been of great theoretical and practical relevance and has attracted considerable attention from scholars across the socio-legal spectrum. Researchers in the field of international law have carefully surveyed official and semi-official Chinese pronouncements and practices, while their social science counterparts have rigorously dissected key behavioral patterns. This is an inherently complex subject that this two-pronged approach has not yet been able to comprehensively address, however, because scholars engaged in the enterprise have only completed a partial exploration of a multifaceted phenomenon and insufficient interdisciplinary alignment. A potentially richer investigative platform, and more effective conceptual bridge building, may help narrow the gaps in the explanatory architecture.

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## I. INTRODUCTION

As is amply documented, China's relations with its neighbors have been characterized by great complexity and have given rise to

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serious practical challenges.<sup>1</sup> This conceptually intricate and strategically vital subject has attracted much attention from students of Chinese history who are fascinated by the notion of an East Asian system of tributary linkages revolving around China—commonly equated with the “Chinese world order.”<sup>2</sup> The construct possesses Sino-centric underpinnings in that it rests on the premise that China has traditionally sought to establish its centrality and superiority in the regional context. Its proponents have argued that Chinese relations with surrounding states have generally been hierarchical and ironically unequal, two salient features of the country’s domestic structure.<sup>3</sup>

This seemingly deeply entrenched model of international organization is believed to owe its coherence to the universal pre-eminence of the Son of Heaven.<sup>4</sup> Rather than entailing the division of territories among sovereign authorities of equal status, it is thought to involve the subordination of all local political units to the central and formidable power of the emperor.<sup>5</sup> An unambiguous acknowledgement of the inviolability of the principles underlying this configuration and strict adherence to the regional hierarchy embodying them have been absolute requirements for entering into and sustaining meaningful relations with China.<sup>6</sup>

Embracing additional perspectives, which, if incorporated into a multi-dimensional theoretical scheme, may either narrow the formulation’s scope or broaden it, may rework the tributary system formulation. A shrinkage occurs when the focus is confined to the distinct bureaucratic practices relied upon by the foreign policy establishment

<sup>1</sup> See generally Robert A. Scalapino, *China’s Relations with Its Neighbors*, 38 PROC. ACAD. POL. SCI. 63-74 (1991); Ross H. Munro, *China’s Relations with Its Neighbors: Some Observations Regarding Its Strategy and Tactics*, 61 INT’L J. 320-28 (2006); Zheng Fang, *Rethinking the “Tribute System”: Broadening the Conceptual Horizon of Historical East Asian Politics*, 2 CHINESE J. INT’L POL. 545-74 (2009); CHIEN-PENG CHUNG, CHINA’S MULTILATERAL COOPERATION IN ASIA AND THE PACIFIC: INSTITUTIONALIZING BEIJING’S “GOOD NEIGHBOR POLICY” (2010).

<sup>2</sup> See generally John K. Fairbank & S.Y. Teng, *On the Ch’ing’s Tributary System*, 6 HARV. J. ASIATIC STUD. 135-246 (1941); John K. Fairbank, *Tributary Trade and China’s Relations with the West*, 1 FAR E. Q. 129-49 (1942) [hereinafter *Tributary Trade*]; JOHN K. FAIRBANK, TRADE AND DIPLOMACY ON THE CHINA COAST: THE OPENING OF THE TREATY PORTS, 1842-1854 (1953) [hereinafter TRADE AND DIPLOMACY]; THE CHINESE WORLD ORDER: TRADITIONAL CHINA’S FOREIGN RELATIONS (John K. Fairbank ed., 1968) [hereinafter CHINESE WORLD ORDER].

<sup>3</sup> See generally Fairbank & Teng, *supra* note 2; *Tributary Trade*, *supra* note 2; TRADE AND DIPLOMACY, *supra* note 2; CHINESE WORLD ORDER, *supra* note 2.

<sup>4</sup> See generally Fairbank & Teng, *supra* note 2

<sup>5</sup> See generally *id.*

<sup>6</sup> See generally *id.*; *Tributary Trade*, *supra* note 2; TRADE AND DIPLOMACY, *supra* note 2; CHINESE WORLD ORDER, *supra* note 2.

in its pursuit of an essentially Sino-centric strategy.<sup>7</sup> An expansion takes place when the hierarchical and uneven tributary structure is turned into an elaborate “institution” that reflects both the philosophical assumptions and organizational rituals pervading the Chinese world order. This in turn shapes relations and ensures cooperation between China and other participants in *Pax Sinica*.<sup>8</sup> The potential for movement in both directions may enhance the construct’s analytical versatility.

The geographical ambit of the tributary system model has also been redefined in a more limited fashion, rendering it less ambiguous than before. It has been asserted that China’s claim of being ‘ruler of the *tianxia*’ has not signaled a desire to dominate the known world.<sup>9</sup> Rather, it has been restricted to the areas adjacent to the Chinese empire, roughly corresponding to those currently referred to as Northeast Asia and Southeast Asia.<sup>10</sup> China has not aspired to control States lying outside this sphere of influence and has often treated them as equal.<sup>11</sup> Moreover, even East Asian States have not been targeted in a uniform manner, with some deemed to be more crucial than others.<sup>12</sup> This highlights the need to consistently maintain focus on China’s relations with its neighbors and to not be exclusively concerned with superpower ties, currently primarily the United States, but previously the Soviet Union as well.

By the same token, it is historically inappropriate to ascribe static qualities to the tributary structural configuration, whatever its manifestations and scope. There is evidence to suggest that the configuration’s robustness has varied over time, depending on real or apparent Chinese capabilities.<sup>13</sup> During periods characterized by relative strength vis-à-vis surrounding states, China has tended to embrace the paradigm more vigorously than during phases marked by compar-

<sup>7</sup> See generally A. DOAK BARNETT, *THE MAKING OF FOREIGN POLICY IN CHINA: STRUCTURE AND PROCESS* (1985).

<sup>8</sup> *Pax Sinica* means “Chinese Peace” and refers to periods in the country’s history when China maintained the dominant civilization in the region due to its political, economic, military, and cultural power. It is believed that a renewed *Pax Sinica* in central Asia may maintain stability in the region. See generally Yongjin Zhang, *System, Empire, and State in Chinese International Relations*, in *EMPIRES, SYSTEMS, AND STATES: GREAT TRANSFORMATION IN INTERNATIONAL POLITICS* 43-63 (Michael Cox, Tim Dunne & Ken Booth eds., 2002).

<sup>9</sup> See Zheng, *supra* note 1, at 554-55.

<sup>10</sup> See *id.*

<sup>11</sup> See *id.*

<sup>12</sup> An analysis of which East Asian states are more crucial centers on core versus periphery, inner vassal domain versus outer vassal domain, and so forth. See *id.*

<sup>13</sup> See *id.* at 555-57.

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ative weakness.<sup>14</sup> The corollary is that, other things being equal, relations with neighbors should presently loom large on the scholarly agenda because of Chinese economic dynamism and military resurgence.

Even the strength/weakness dichotomy ought to be employed cautiously, however, as merely one of several potentially relevant influences. Rapid output expansion, coupled with a rising standard of living and the ability to prevail in armed conflict, has not always predisposed China's leaders to act in accordance with the tributary system formulation.<sup>15</sup> Additional variables have entered into their decision calculus including the behavior of other States.<sup>16</sup> The augmented model should arguably extend beyond the socio-cultural realm, which features prominently in the tributary structure paradigm,<sup>17</sup> propelling the study of China's relations with its neighbors in a genuinely multifaceted direction.

The appeal of such an approach has become apparent during the post-1978 reform era, a period of relative strength, but one that has witnessed a discernible, if not wholesale, shift from staunch advocacy of sovereign rights, non-interference, and bilateral ties with hegemonic powers,<sup>18</sup> to a willingness to embrace cooperative multilateralism in the East Asian region and surrounding areas.<sup>19</sup>

<sup>14</sup> See *id.*

<sup>15</sup> See Zheng, *supra* note 1, at 556-57.

<sup>16</sup> One of the limitations of the original construct is that it is one-sided, overlooking inputs from non-Chinese sources and two-way interaction. See *id.* at 557.

<sup>17</sup> See *id.* at 557-58.

<sup>18</sup> See generally DAVID SCOTT, CHINA STANDS UP: THE PRC AND THE MODERN INTERNATIONAL SYSTEM (2007); DAVID SCOTT, CHINA AND THE INTERNATIONAL SYSTEM, 1840-1940: POWER, PRESENCE, AND PERCEPTIONS IN A CENTURY OF HUMILIATION (2008); DAVID SCOTT, THE CHINESE CENTURY? THE CHALLENGE TO GLOBAL ORDER (2008); JULIA LOVELL, THE OPIUM WARS: DRUGS, DREAMS, AND THE MAKING OF CHINA (2011).

<sup>19</sup> See generally CHUNG, *supra* note 1; NICHOLAS R. LARDY, CHINA IN THE WORLD ECONOMY (1994); NICHOLAS R. LARDY, INTEGRATING CHINA INTO THE GLOBAL ECONOMY (2002); KENNETH G. LIEBERTHAL, GOVERNING CHINA: FROM REVOLUTION TO REFORM (2d ed. 2004); JINGLIAN WU, UNDERSTANDING AND INTERPRETING CHINESE ECONOMIC REFORM (2005); BARRY NAUGHTON, THE CHINESE ECONOMY: TRANSITIONS AND GROWTH (2007); LOREN BRANDT & THOMAS G. RAWSKI, CHINA'S GREAT ECONOMIC TRANSFORMATION (2008); CHINA AND THE NEW INTERNATIONAL ORDER (Wang Gungwu & Zheng Yongnian eds., 2008) [hereinafter NEW INTERNATIONAL ORDER]; CHINA TURNS TO MULTILATERALISM: FOREIGN POLICY AND REGIONAL SECURITY (Guoguang Wu & Helen Landowne eds., 2008) [hereinafter CHINA TURNS TO MULTILATERALISM]; TONY SAICH, GOVERNANCE AND POLITICS OF CHINA (3d ed. 2011); GREGORY C. CHOW, CHINA AS A LEADER OF THE WORLD ECONOMY (2012); NICHOLAS R. LARDY, SUSTAINING CHINA'S ECONOMIC GROWTH AFTER THE GLOBAL FINANCIAL CRISIS (2012).

This has culminated in the “Good Neighbor Policy,” which has been pursued actively, rather than merely passively, on several fronts, albeit by no means single-mindedly and unreservedly.<sup>20</sup>

Chinese interactions with adjacent States are consequently no longer portrayed as a pure zero-sum game and are increasingly presented as an amalgam containing positive-sum elements.<sup>21</sup> Nor is it just a matter of collaboration or lack thereof. The exploration of China’s relations with its neighbors has inevitably evolved in the process of intellectual expansion into a more complex enterprise, incorporating diverse theoretical perspectives and drawing on an array of fields of academic inquiry, encompassing law and key branches of the social sciences – notably business, economics, politics, and sociology – and at times crossing established disciplinary lines.<sup>22</sup>

This reconfiguration is not adequately reflected in surveys of Chinese approaches to border issues, particularly those marked by disagreement and friction. From the middle phase of the reform era to the present, only a handful of in-depth empirical investigations have addressed the subject.<sup>23</sup> They have displayed positive-sum attributes<sup>24</sup> and analytical rigor,<sup>25</sup> but the output generated does not amount to a critical mass and considerable gaps remain. Some of the research conducted, although conceptually solid, has not been significantly extended beyond conventional legal boundaries.<sup>26</sup> Further, social science efforts have largely been directed toward examining specific propositions, some derived from a two-level model of international bargaining.<sup>27</sup>

<sup>20</sup> See generally CHUNG, *supra* note 1.

<sup>21</sup> See generally *id.*; NEW INTERNATIONAL ORDER, *supra* note 19; CHINA TURNS TO MULTILATERALISM, *supra* note 19.

<sup>22</sup> See generally NEW INTERNATIONAL ORDER, *supra* note 19; CHINA TURNS TO MULTILATERALISM, *supra* note 19; CHUNG, *supra* note 1.

<sup>23</sup> See generally BYRON N. TZOU, CHINA AND INTERNATIONAL LAW: THE BOUNDARY DISPUTES (1990); RAMES AMER, THE CHALLENGE OF MANAGING THE BORDER DISPUTES BETWEEN CHINA AND VIETNAM (1998); CHIEN-PENG CHUNG, DOMESTIC POLITICS, INTERNATIONAL BARGAINING, AND CHINA’S TERRITORIAL DISPUTES (2004) [hereinafter CHINA’S TERRITORIAL DISPUTES]; M. TAYLOR FRAVEL, STRONG BORDERS, SECURE NATION: COOPERATION AND CONFLICT IN CHINA’S TERRITORIAL DISPUTES (2008); JUNGWU PAN, TOWARDS A NEW FRAMEWORK FOR PEACEFUL SETTLEMENT OF CHINA’S TERRITORIAL AND BOUNDARY DISPUTES (2009).

<sup>24</sup> See generally TZOU, *supra* note 23; PAN, *supra* note 23.

<sup>25</sup> See generally CHINA’S TERRITORIAL DISPUTES, *supra* note 23; FRAVEL, *supra* note 23.

<sup>26</sup> See generally TZOU, *supra* note 23; PAN, *supra* note 23. *But cf.* FRAVEL, *supra* note 23.

<sup>27</sup> See generally CHINA’S TERRITORIAL DISPUTES, *supra* note 23; Chien-peng Chung, *Resolving China’s Island Disputes: A Two-Level Game Analysis*, 12 J. CHINESE POLI. SCI. 49-71 (2007) [hereinafter *Resolving China’s Island Disputes*].

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The corollary is that there is ample scope for delving further into the topic and producing additional insights. This is the aim of the present paper. A descriptive literature review is first performed, in two stages, with a view to outlining the principal strategies followed by scholars in this policy domain and their core findings. An evaluation of the same body of writings is then undertaken in order to provide, in a forward-looking section, potentially new observations and ones that may have not been fully developed by the original authors. The exploration is selective, rather than comprehensive, as this is an ongoing project.

The survey is in the form of a free-flowing narrative rather than a systematically structured one, meaning it is not conducted in accordance with predetermined criteria. The work reviewed consists of all notable, published materials on the topic, but it is modest in volume. Quality should not be equated with quantity, however, as collectively, the studies dissected exhibit such breadth and depth that they may legitimately be portrayed as exhaustive in nature. Moreover, although no attempt is made to provide a comprehensive account, their essence is conveyed here in considerable detail and key dimensions of the picture painted are subjected to close scrutiny. Additional lines of inquiry will doubtless be pursued in the future, but as matters stand there is a sufficiently solid foundation to assess to what extent international law specialists and social researchers fruitfully cross paths in addressing issues of mutual interest.

## II. DESCRIPTIVE SURVEY: LEGAL DIMENSION

The dissection of China's border disputes over the past two decades began within a framework bearing the hallmarks of tributary system formulations and ones closely wedded to the notion of a structurally-ingrained defensive Chinese posture. Substantial emphasis was placed on the People's Republic of China's ("PRC") early distinction between bourgeois and socialist international law.<sup>28</sup> The former was supposed to primarily govern relations among bourgeois, or capitalist, States and the latter was to govern relations among members of the socialist fraternity.<sup>29</sup> The bourgeois variant was perceived as an instrument geared toward serving entrenched capitalist interests.<sup>30</sup>

In this fundamentally adversarial context, great importance was attached to the virtually unfettered exercise of national sovereignty.<sup>31</sup> This coincided with the view that the bourgeois states aspired to perpetuate their dominant status by creating one layer of fully

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<sup>28</sup> See Tzou, *supra* note 23, at 7-9.

<sup>29</sup> See *id.*

<sup>30</sup> See *id.*

<sup>31</sup> See *id.* at 11-13.

sovereign states, and another layer of partially sovereign states.<sup>32</sup> The post-Second World War doctrine of limited sovereignty was thus categorically discarded.<sup>33</sup> While the doctrine of absolute sovereignty was not unambiguously embraced, the principle of mutual respect for national sovereignty was vigorously promoted.<sup>34</sup>

Bourgeois theories pertaining to territorial acquisition were also rejected because they were seen as legitimizing actions underpinned by an asymmetrical distribution of power.<sup>35</sup> Adjustments to the status quo, however, were deemed acceptable on certain grounds, notably if they were conducive to the self-determination of colonial peoples and the restoration of historical rights.<sup>36</sup> In this and other respects, state equality was regarded as a basic tenet of the international legal order and one expected to guide Chinese foreign policy on all fronts.<sup>37</sup> International law today should thus consistently and decisively be employed to that end.<sup>38</sup>

The applicability of such a doctrinal edifice was put to an empirical test in the Soviet Union, Burma, and India shortly after the Communist Party gained power in 1949.<sup>39</sup> The pattern that emerged was not clear-cut; rather, it reflected a mixture of strategic assertiveness and pragmatic accommodation.<sup>40</sup> For example, while recovery of territories to which historical claims could be established loomed large on the policy agenda, and force was resorted to for this purpose,<sup>41</sup> there was an unmistakable desire to achieve a modicum of regional stability, which was given expression in the good neighbor strategy and the five principles of peaceful coexistence.<sup>42</sup> Additionally, remarkable flexibility was displayed at times. For example, China did not insist on the prompt return of "lost territory" by Southwestern neighbors and even accepted arrangements such as conceding sovereignty over the Namwan Assigned Tract to Burma in exchange for three small villages.<sup>43</sup>

Such adaptations in the face of conflicting policy pressures did not prompt pioneering international legal researchers to relegate the

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<sup>32</sup> See *id.* at 11.

<sup>33</sup> Interestingly, this doctrine was selectively practiced by the Soviet Union. See *id.* at 11-12.

<sup>34</sup> See Tzou, *supra* note 23, at 12.

<sup>35</sup> See *id.* at 13.

<sup>36</sup> See *id.*

<sup>37</sup> See *id.* at 13-14.

<sup>38</sup> See *id.* at 14-16.

<sup>39</sup> See *id.* at 23-44.

<sup>40</sup> See *id.*

<sup>41</sup> See *id.*

<sup>42</sup> See *id.* at 29-35.

<sup>43</sup> See *id.* at 32.



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vastly important issue of unequal border treaties to the analytical periphery. The question of ceded or leased territories – potentially including, according to some counts, Annam (Vietnam), the Amur and Ussuri river basins, areas north of Ili, Bhutan, Borneo, Burma, Ceylon, Java, Kholand, Nepal, Penhu Archipelago (the Pescadores), Ryukyu (Okinawa), Sulu Archipelago, Taiwan, and Thailand – continued to loom large on the scholarly agenda.<sup>44</sup> Key unequal treaties – notably, the Outer Mongolian-Soviet, Sino-Burmese, and Sino-Russian Accords – failed to satisfy criteria of “mutual benefit and equality,” and were thus subjected to close scrutiny.<sup>45</sup>

Efforts to abrogate or revise such treaties, prior to and following the 1949 regime change, were carefully documented.<sup>46</sup> It can be said that, on the whole, they yielded distinctly modest results and, as indicated earlier, occasionally even culminated in possibly unfavorable agreements with scarcely formidable neighbors.<sup>47</sup> It is reasonable to argue, however, that traditional international law research did not produce, at least initially, an entirely clear and conceptually grounded picture in this respect. Essential facts were presented, but not necessarily in a truly coherent fashion, and theoretical construction was confined to elementary observations.

A less ambiguous and more structurally solid account was provided of the Chinese approach to the procedural and technical dimensions of international treaty formation involving border-related issues. Legal researchers operate comfortably within this intellectual and professional domain, and matters regarding definition, classification, procedure, interpretation and abrogation, third parties, state succession, change of government, estoppel, and acquiescence have been addressed in a detailed and insightful, albeit largely descriptive and non-explanatory, fashion.<sup>48</sup>

A review of the mechanics of border determination, underlying assumptions, and dispute settlement methods was conducted in an equally sound factual manner. Factors impinging on decisions pertaining to boundary demarcation and delimitation – such as former treaties, customary borders, national defense considerations, geographical elements, natural features, cultural influences, and geometrical patterns – were painstakingly highlighted.<sup>49</sup> Similar care was exercised in identifying the steps relied upon in the process – typically including the signing of a preliminary agreement, setting up a joint committee

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<sup>44</sup> See *id.* at 77.

<sup>45</sup> See *id.* at 79-83.

<sup>46</sup> See *id.* at 83-86.

<sup>47</sup> See *id.*

<sup>48</sup> See *id.* at 91-112.

<sup>49</sup> See *id.* at 113-20.

for investigations and survey, erecting permanent boundary markers, concluding a formal treaty, and exchanging a final protocol.<sup>50</sup>

Dispute settlement methods were divided into peaceful methods and those requiring the use of force.<sup>51</sup> The principal techniques placed in the former category were negotiation, inquiry and conciliation, mediation, adjudication, and arbitration.<sup>52</sup> These institutional channels for pursuing orderly accommodation attracted the bulk of scholarly attention, but recourse to violence, whether proactive or reactive, was not altogether overlooked because it was not an uncommon phenomenon during the 1949-78 revolutionary era, particularly on the Indian and Soviet fronts, where China faced determined and formidable adversaries.<sup>53</sup>

Certain features of this first, elaborate survey of the internationally relevant Chinese approaches to border management, as seen through a law-centered lens, stood out from an analytical perspective. While China had territorial disputes with virtually all of its numerous neighbors, it was inclined to avoid confrontation, notably of a military nature, and generally preferred to pursue its goals in an orderly fashion, readily engaging in give-and-take via formal and informal channels, provided it did not entail submission to third-party judgment. Nor did it persistently signal its opposition to well-established international legal principles, but instead often acted in accordance with them.<sup>54</sup>

By the same token, an insistence on recovery of lost territories, which regularly surfaced during international interactions, was rather muted. Indeed, there was a frequent willingness to accept prevailing realities, including circumstances where there was discomfort about the historical origins of the status quo. It appears that Chinese policy makers were more concerned about fairness in the process than with fairness in the outcome.<sup>55</sup> Alternatively, other strategic objectives, such as an overwhelming desire to achieve regional stability, may have overshadowed what proved to be a lesser consideration.

Treaties perceived as blatantly unequal posed considerable difficulties. In the case of the Sino-Russian boundary accords, China demanded that they be acknowledged as unequal and nullified, a step the Soviets, who went no further than offering minor adjustments to the existing configuration, refused to take.<sup>56</sup> It is noteworthy, how-

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<sup>50</sup> *See id.* at 120-21.

<sup>51</sup> *See id.* at 125-33.

<sup>52</sup> *See id.* at 125-32.

<sup>53</sup> *See id.* at 132-33.

<sup>54</sup> *See id.* at 71-72.

<sup>55</sup> *See id.*

<sup>56</sup> *See id.* at 86.

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ever, that accommodation was reached with Burma without any similar preconditions emerging as a stumbling block.<sup>57</sup> The overall pattern may consequently defy clear explanation, at least one that possesses a simple structure and leaves no room for 'random' fluctuations.

Notwithstanding evidence supporting arguments emphasizing Chinese pragmatism, there was no lack of manifestations of a reluctance to compromise or abandon certain fundamental positions. As observed earlier, engaging in armed conflict was deemed an acceptable option, although apparently not an attractive one. Additionally, the stance adopted regarding some pivotal issues either deviated from accepted norms or displayed a degree of formalism exceeding that shown by the other parties to the dispute. An example of the former was the claim that international organizations cannot conclude treaties,<sup>58</sup> coupled with the assertion that only fully sovereign states, as distinct from dependent political entities such as Tibet, enjoy this power.<sup>59</sup>

A significant measure of formalism was exhibited in relation to a broad array of questions. For instance, China contended that to qualify as definitive and complete, an agreement must be mutual,<sup>60</sup> contain specific provisions regarding border location,<sup>61</sup> and satisfy a wide range of conditions.<sup>62</sup> By the same token, the agreement ought to be the product of proper negotiations rather than merely consultations,<sup>63</sup> signed not initialed,<sup>64</sup> leave sufficient scope for reservation and abrogation,<sup>65</sup> and be reinforced by clear signs that it was put into effect.<sup>66</sup>

That said, the distinction between formalism and strategic flexibility motivated by a desire to maximize room for maneuver became blurred on occasion. The posture with respect to reservation and abrogation may thus be viewed as an indication of the latter rather than the former. The proposition that state succession and change of government may readily provide grounds for treaty nullification is another case in point. For example, it was invoked in relation to the McMahon Line drawn when India was under British rule and the Sino-Soviet boundary portrayed as the result of "Tsarist imperialist aggression."<sup>67</sup> The position that prolonged Chinese "silence" should not be

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<sup>57</sup> See *id.* at 86.

<sup>58</sup> See *id.* at 93.

<sup>59</sup> See *id.* at 93-95.

<sup>60</sup> A unilateral proposal does not amount to a mutual agreement. See *id.* at 93.

<sup>61</sup> See *id.* at 95-97.

<sup>62</sup> See *id.* at 97-98.

<sup>63</sup> See *id.* at 98-99.

<sup>64</sup> See *id.* at 99-100.

<sup>65</sup> See *id.* at 101-03.

<sup>66</sup> See *id.* at 100.

<sup>67</sup> See *id.* at 104-05.

seen as a reflection of acceptance of the territorial status quo may be looked at from a similar perspective.<sup>68</sup>

The unwillingness to submit to arbitration and adjudication may also be viewed as a manifestation of the quest for strategic flexibility or the pursuit of a high degree of policy autonomy. This is a complicated issue, however, and one with a salient cultural dimension influenced by positioning in the international system. The point is that the Confucian code of ethics prevailing in China has traditionally discouraged people from seeking redress of grievances through legal channels, even when legitimate.<sup>69</sup> Moreover, Chinese isolation during the revolutionary era and slow integration into the global community subsequently, as well as the sense of mistrust and vulnerability engendered by the Century of Humiliation, led to an ambivalent and cautious attitude toward institutional mechanisms for conflict resolution, such as arbitration and adjudication, because of reliance on third-party judgment and potentially problematic curtailment of strategic discretion, which in the final analysis is no different from loss of flexibility.<sup>70</sup>

The picture painted by legal scholars in the early 1990s was subjected to further scrutiny by students of international law two decades later. Despite the positive note struck in the earlier study, it was observed, without fundamentally challenging the overall validity of the previous assessment, that China still did not resolve all the border disputes with its neighbors. It may have settled the ones with Afghanistan, Burma, Kazakhstan, Kyrgyzstan, Mongolia, Pakistan, Russia, and (partly) Vietnam, but those with India, Japan, and Spratly Islands claimants (Brunei, Malaysia, the Philippines, and Vietnam) remained unresolved, notwithstanding the importance accorded to regional stability and a penchant for pragmatism.<sup>71</sup>

The more recent work on the topic has some illuminating technical features. The exclusion of maritime border disputes, commonly seen elsewhere, was scrupulously avoided because it was deemed to be arbitrary and unproductive, given their prevalence and the policy significance of land-sea linkages.<sup>72</sup> A useful distinction was also drawn between territorial disputes, which entail modes of acquiring title such as discovery, occupation, cessation, and so forth, and boundary disputes, which give rise to issues such as delimitation, demarcation, enforcement, and so forth, although the two categories are so closely

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<sup>68</sup> See *id.* at 105-07.

<sup>69</sup> See *id.* at 132.

<sup>70</sup> See generally *id.*

<sup>71</sup> See Pan, *supra* note 23, at 1.

<sup>72</sup> *Id.* at 2.

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intertwined that seeking rigid separation may not be a fruitful exercise.<sup>73</sup>

Interestingly, the Chinese approach to international legal matters, including those involving border disputes, as viewed by students of international law toward the end of the first decade of the 21st century, was not entirely devoid of traditional elements which gradually receded into the periphery in earlier writings on the subject. The difference between *Li* (Confucianism) and *Fa* (Legalism) was thus considered to be relevant for the 'new' China, a country fully, or almost fully, integrated into the global community and economy. *Li* refers to the use of moral precepts to regulate human behavior in conformity with natural law.<sup>74</sup> *Fa* was employed as an instrument to control criminal conduct and was regarded as a mechanism for establishing order rather than a vehicle for the protection of natural rights.<sup>75</sup>

The persistent superiority of *Li* over *Fa*, both in the domestic arena and in international society, was reaffirmed and its hierarchical, tributary-like character re-emphasized. The historic Sino-centric world order was accordingly portrayed as one underpinned by moral virtue and, at the same time, as non-egalitarian, or legitimately dominated by China.<sup>76</sup> The *Fa* component eroded further over the years, and remains simply a supplement to *Li*.<sup>77</sup>

Traces of traditional influences are seen elsewhere in the present Chinese handling of international legal issues, including boundary conflicts. The preference for informal over formal modes of dispute resolution is assumed to be an enduring phenomenon, attributable to *Li* and its promotion of free dialogue rather than mechanistic adjudication.<sup>78</sup> Indeed, the Confucian conception of minimum social order envisions the disappearance of both litigation and recourse to judicial intervention, favoring a quest for virtue through processes consistent with the natural order of social life.<sup>79</sup>

On balance, however, greater significance appears to have been accorded to the pragmatic proclivities of the new China. In fact, they are not viewed as entirely 'new' because their manifestations can be witnessed at previous historical junctures, such as in the form of the Qing government's responses to attempts in the mid-19th century by William A.P. Martin, an American missionary and Sinologist, to intro-

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<sup>73</sup> See generally *id.* at 19-68.

<sup>74</sup> *Id.* at 71-72.

<sup>75</sup> *Id.* at 72.

<sup>76</sup> Pan, *supra* note 23, at 73-74.

<sup>77</sup> *Id.* at 73.

<sup>78</sup> *Id.* at 75-76.

<sup>79</sup> *Id.*

duce international law and its potential merits to the country.<sup>80</sup> Whatever the origins of the attitude, it is perhaps best reflected in the posture that “all should start from actuality,”<sup>81</sup> which could be construed as providing justification for virtually any policy stance, including on the international legal front.<sup>82</sup>

Paradoxically, pragmatism was not posited to be always conducive to strict adherence to international law. The latter cannot be wholly situation-dependent (a pattern ultimately associated with pragmatic adaptation) as international legal norms and their application, although not static, do not vary substantially with circumstances.<sup>83</sup> If invoked liberally, unalloyed pragmatism may turn international law into a mere extension of foreign policy or international relations, a complex dynamic apparently not absent from traditional and contemporary Chinese international legal discourse and practice.<sup>84</sup>

The inherent tension between a culturally shaped worldview, reinforced by adverse historical experiences, and pragmatic impulses tainted by a tinge of *realpolitik*, was poignantly highlighted by illustrating the subtle interplay between these two factors in China’s ongoing responses to challenges impinging on its sovereignty, a concept intimately wedded to that of territory and at the heart of the Chinese international legal edifice.<sup>85</sup> On the one hand, attention was drawn to a wide array of official and semi-official documents and statements clearly indicating that China regards sovereignty as “absolute, indivisible, and perpetual”<sup>86</sup> (which implies a firm commitment to: “(1) sovereign equality; (2) political independence; (3) territorial integrity; (4) exclusive jurisdiction over a territory and the permanent population therein; (5) freedom from external intervention and the corresponding duty of non-intervention in areas of exclusive domestic jurisdiction of other States; (6) freedom to choose political, economic, social, and cultural systems; and (7) dependence of obligations arising from international law and treaties on the consent of States”).<sup>87</sup> On the other hand, it was emphatically noted that, in practice, the Chinese government has never scrupulously pursued this lofty doctrine.<sup>88</sup>

Evidence offered to support the flexibility displayed in concrete situations included the willingness to negotiate border accords in a va-

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<sup>80</sup> *Id.* at 76-77.

<sup>81</sup> *Id.* at 77.

<sup>82</sup> *Id.*

<sup>83</sup> See Pan, *supra* note 23, at 77-79.

<sup>84</sup> *Id.*

<sup>85</sup> See *id.* at 79-80.

<sup>86</sup> *Id.* at 81.

<sup>87</sup> *Id.* at 80.

<sup>88</sup> Pan, *supra* note 23, at 81.

riety of circumstances on the basis of unequal treaties declared null and void because they entailed a violation of China's sovereignty.<sup>89</sup> This Chinese duality—juxtaposing rhetorical aspirations with inescapable realities—was attributed to a desire to harmonize conflicting strategic agendas.<sup>90</sup> It led China in a direction whereby the country endeavored to creatively but problematically reconcile the imperatives of absolute and relative sovereignty or, to express it differently, “to hold up its wieldy shield of ‘absolute sovereignty’ for its political purposes, although the shield has already been perforated.”<sup>91</sup>

In this context, clinging to the notion of absolute sovereignty, even if it is characterized by a degree of inconsistency and selectivity, may have negative implications for the settlement of border disputes. The reason is that, by embracing this principle, States inevitably substitute policy for international law.<sup>92</sup> The resulting configuration is bound to diverge from the ideal of “creating a world ruled by law” rather than one “ruled by power,”<sup>93</sup> because attaining this ideal requires States to accept “the reality of relative sovereignty” and comprehensively incorporate international legal norms into their existing dispute resolution framework.<sup>94</sup>

Ambiguity, again the product of divergent cultural-historical forces and strategic orientations, was believed to pervade China's position regarding the sources of international law. Specifically, it was deemed to be significant that the customary element continued to be relegated to the intellectual periphery because it largely developed in the Western world without meaningful contribution from States not closely integrated into the hierarchically and unevenly structured international political system.<sup>95</sup> To make matters worse, many of the tenets to which it has given rise, such as *uti possidetis*, could legitimately be considered discriminatory and unfair to China and other marginalized countries.<sup>96</sup>

At the same time, when policy expediency dictated otherwise, the Chinese attitude could be more constructive in this respect. Indeed, even during the revolutionary pre-1978 era, it was not uncommon for China to invoke custom-derived international legal principles to further its interests.<sup>97</sup> Subsequent adjustments on that front have been mostly inspired by shifts in the country's position in the interna-

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<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at 83.

<sup>91</sup> *Id.* at 82.

<sup>92</sup> *Id.* at 83.

<sup>93</sup> *Id.*

<sup>94</sup> Pan, *supra* note 23, at 84.

<sup>95</sup> *See id.* at 85-86.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at 86.

tional community and corresponding strategic assessments.<sup>98</sup> This manifested itself in key policy domains, such as the stance toward international courts and tribunals, notably the International Court of Justice (ICJ), versus the post-1971 United Nations General Assembly resolutions.<sup>99</sup>

That said, the transition from revolution to reform was accompanied by a change in the balance between the traditional and pragmatic elements of the strategic equation, as well as a tendency to engage with international law in a distinctly selective or fundamentally broad-based fashion.<sup>100</sup> To the extent that the international legal architecture invariably possesses deep ideological underpinnings, such rebalancing was inevitable due to the marked ideological transformation that took place following the death of Mao Zedong in 1976 and the consolidation of power in the hands of liberally-minded leaders like Deng Xiaoping.<sup>101</sup> *Fa* started playing a more prominent role in foreign policy decision-making in subsequent years, albeit without completely overshadowing *Li*.<sup>102</sup>

In the new reformist climate, settling boundary disputes, preferably through peaceful means, became an economic imperative for China, but also increasingly so for the other parties involved given their growing propensity to embrace liberalization and to engage in globalization.<sup>103</sup> Challenging the territorial status quo and pursuing revisionist goals proved to be a potentially costly proposition not merely in terms of the disruption caused, but also in terms of foregone opportunities related to their inability to enter into cooperative cross-border ventures, notably in the form of joint development projects.<sup>104</sup> This evolving pattern has reinforced the trend toward greater reliance on established international legal mechanisms, including customary practices, in addressing boundary disputes.<sup>105</sup>

The most prominent manifestation of the shift was a less adverse posture toward the ICJ, although not so much that China accepted its compulsory jurisdiction.<sup>106</sup> Concrete steps were taken in the late-1980s and mid-1990s to give expression to this selectively more constructive stance.<sup>107</sup> Symbolically, the Chinese government sent a powerful accommodative signal in 1994 when the ICJ elected Shi

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<sup>98</sup> *Id.*

<sup>99</sup> *See id.* at 86-88.

<sup>100</sup> *See Pan, supra* note 23, at 91-94.

<sup>101</sup> *Id.*

<sup>102</sup> *See id.* at 94-98.

<sup>103</sup> *See id.* at 98-104.

<sup>104</sup> *See id.* at 104-07.

<sup>105</sup> *Id.*

<sup>106</sup> *Pan, supra* note 23, at 119.

<sup>107</sup> *Id.*



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Jiuyong, a leading international law authority, as a judge.<sup>108</sup> In the following years, China's legal experts began to consistently display an appreciation for the functions performed by the ICJ and to recognize the role it could play in facilitating the resolution of international disputes.<sup>109</sup>

Another significant development was the Chinese readiness to embrace the 1982 United Nations Convention on the Law of the Sea, which China ratified in 1996.<sup>110</sup> This instrument prescribes mandatory jurisdiction for conflicts stemming from the interpretation and application of its terms. Indeed, the 1982 UNCLOS features one of the strongest commitments to compulsory arbitration and adjudication in the realm of international law.<sup>111</sup> In keeping with the notion that any disputes between parties to the Convention should be settled by any peaceful means of their choice, it provides that no exceptions or reservations may be made to this principle unless expressly permitted by the Convention's other articles.<sup>112</sup> Stubborn Sino-Japanese territorial conflicts prompted China to seek ways to qualify its willingness to submit itself to dispute settlement procedures within this restrictive framework, but merely in a limited fashion, apparently suggesting yet again that *Fa* was gradually gaining the upper hand in its 'struggle' with *Li*.<sup>113</sup>

### III. DESCRIPTIVE SURVEY: SOCIAL SCIENCE DIMENSION

International legal literature constitutes the richest source of information regarding Chinese border disputes as, by virtue of its nature, the subject is often addressed by scholars in the field, in one form or another, in as comprehensive a manner as conventional methods allow. This is a topic, however, whose understanding may be enhanced by insights obtained by means typically employed by researchers associated with other academic disciplines, notably the social sciences, because students of international law tend to confine themselves to the

<sup>108</sup> *Id.*

<sup>109</sup> *Id.* at 120.

<sup>110</sup> *Id.* at 122; see also United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS].

<sup>111</sup> See UNCLOS, *supra* note 110.

<sup>112</sup> *Id.* part XV, art. 279 and part XV, art. 282.

<sup>113</sup> See Pan, *supra* note 23, at 123. See generally Suzanne Ogden, *Sovereignty and International Law: The Perspective of the People's Republic of China*, 7 N.Y.U. J. INT'L L. & POL. 1-32 (1974); Jacques deLisle, *China's Approach to International Law: A Historical Perspective*, 94 AM. SOC'Y INT'L L. PROC. 267-75 (2000); KEYUAN ZOU, CHINESE LEGAL REFORM: TOWARD THE RULE OF LAW (2006); Wang Zonglai & Hu Bin, *China's Reform and Opening-up and International Law*, 9 CHINESE J. INT'L L. 193-203 (2010); XUE HAQIN, CHINESE CONTEMPORARY PERSPECTIVES ON INTERNATIONAL LAW: HISTORY, CULTURE, AND INTERNATIONAL LAW (2012).

formal side of the picture. When they venture further, their explorations generally lack sufficient analytical complexity and are rather selective.

Two social scientists have examined China's border disputes in substantial detail and in a conceptually rigorous fashion,<sup>114</sup> one across a wider historical spectrum and within a broader theoretical framework than the other,<sup>115</sup> but both productively so. The more multifaceted study provides a painstaking dissection of twenty-three post-1949 Chinese boundary conflicts, both at land and at sea.<sup>116</sup> Surprisingly, extensive empirical evidence was presented to convincingly show that in seventeen of these episodes, China sought compromise and did not refrain from offering concessions.<sup>117</sup> The flexibility displayed was quite remarkable, as the territory gained in the final settlement normally amounted to less than half of that which was contested.<sup>118</sup>

The far-reaching compromises struck with often recalcitrant neighbors resulted in border accords in which China relinquished claims to more than 3.4 million square kilometers of land that were fully controlled by the Qing Empire at its height in the early nineteenth century, for all intents and purposes a staggering volte-face for a once-great power proudly re-emerging following a decades-long decline and international marginalization.<sup>119</sup> Again the facts are difficult to reconcile with beliefs commonly held in this respect for, "In total, the People's Republic of China. . .contested roughly 238,000 square kilometers or just seven percent of the territory once part of the Qing."<sup>120</sup>

Nevertheless, it cannot be overlooked that the Chinese engaged in armed confrontation in six of the border disputes explored.<sup>121</sup> Some of these conflicts, notably the ones with India and Vietnam, were intensely violent.<sup>122</sup> Others, such as those over Taiwan in the 1950s and with the Soviet Union in the late 1960s, occurred at the height of the Cold War and involved threats of recourse to nuclear weapons.<sup>123</sup> That said, the belligerent rhetoric and military maneuvers yielded scanty

<sup>114</sup> See generally FRAVEL, *supra* note 23.

<sup>115</sup> See generally CHINA'S TERRITORIAL DISPUTES, *supra* note 23; *Resolving China's Island Disputes*, *supra* note 27.

<sup>116</sup> FRAVEL, *supra* note 23, at 321–34 (providing an overview of China's territorial disputes).

<sup>117</sup> *Id.* at 2.

<sup>118</sup> *Id.*

<sup>119</sup> See *id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> See FRAVEL, *supra* note 23, at 173–219.

<sup>123</sup> See *id.*

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benefits for China.<sup>124</sup> Despite its exertions and the inevitable costs incurred, China gained little land that it did not control before the outbreak of hostilities.<sup>125</sup>

These variations in Chinese behavior went largely unnoticed in the international legal community, which typically does not delve deeply into the dynamics of State conduct and inter-State interactions. Social scientists, on the other hand, found this pattern theoretically intriguing.<sup>126</sup> Leading schools of thought in the field of international relations, such as realism and neo-realism, would not effectively account for most of the initiatives and responses observed in the 23-case sample.<sup>127</sup> After all, one could legitimately “expect a [S]tate with China’s characteristics to be uncompromising and prone to using force in international disputes, not conciliatory,”<sup>128</sup> yet this regional power “rarely exploited its military superiority to bargain hard for the territory it claims or to seize it by force.”<sup>129</sup>

Nor did the growth of Chinese strategic capabilities post-1949, and even more so post-1978, lead to greater assertiveness vis-à-vis neighboring countries, implying that the accumulation of relative power may not always have a corresponding impact on State behavior.<sup>130</sup> Analytical propositions employing key nationalistic and institutional frameworks proved equally problematic. The fact is that the Chinese were “quite willing to offer territorial concessions despite historical legacies of external victimization and territorial dismemberment under the Qing.”<sup>131</sup> By the same token, China “escalated only a minority of its territorial conflicts even with a highly centralized, authoritarian political system that places few internal constraints on the use of force.”<sup>132</sup>

Chinese state conduct in this specific domain may of course be viewed simply as a conceptual outlier, not consistent with overall historical trends and thus requiring no further theoretical elaboration. However, this is too large a sample, extending over too long a period, and involving too many imponderables, to be relegated to the analytical periphery.<sup>133</sup> There is also some variation within the set, with seventeen seemingly baffling cases versus six less puzzling ones.<sup>134</sup> The

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<sup>124</sup> *Id.*

<sup>125</sup> *See id.*

<sup>126</sup> *See id.*

<sup>127</sup> *See id.*

<sup>128</sup> FRAVEL, *supra* note 23, at 2.

<sup>129</sup> *Id.* at 2.

<sup>130</sup> *See id.*

<sup>131</sup> *Id.* at 2.

<sup>132</sup> *Id.* at 2.

<sup>133</sup> *See* FRAVEL, *supra* note 23, at 2–4.

<sup>134</sup> *See id.*

corollary is that this is a configuration worth examining from a methodical, albeit perhaps not mainstream, social science perspective.<sup>135</sup>

Indeed, the systematic, predominantly quantitative dissection of border disputes is a well-established undertaking that has generated substantial insights.<sup>136</sup> It has been noted that alliance partners and democracies embroiled in territorial conflicts are more inclined to compromise and resolve their disputes peacefully than non-aligned and non-democratic States.<sup>137</sup> Additionally, all actors in such circumstances are more likely to resort to violence if the contested territory is of significant strategic value for economic, national security, political, social, or symbolic reasons.<sup>138</sup> Finally, it has been shown that capabilities matter, or that relatively strong military states tend to resort to coercion more readily than relatively weak ones.<sup>139</sup>

The explanatory potential of these seemingly compelling observations was deemed modest in the quest for an understanding of China's behavior regarding border disputes.<sup>140</sup> It was concluded that this was due to an overly heavy emphasis on factors contributing to conflict escalation and stabilization, or the features of the conflict itself, rather than those factors impinging on State decisions or the incentives driving the parties to the dispute in one direction or another.<sup>141</sup> As amply reflected in Chinese conduct toward Taiwan, the latter may inspire opposing players to delay tactics, cooperation, or confrontation if a rationalist and state-centric conceptual framework is embraced, and assuming that the State is a unitary actor.<sup>142</sup>

No elaborate account of delaying tactics was provided, as this was not the principal objective of the study, although some light was shed on how they were crafted and deployed during the revolutionary and reform eras.<sup>143</sup> A four-dimensional scheme was proposed, on the other hand, to explain what might tilt parties embroiled in territorial conflicts toward either cooperation or escalation.<sup>144</sup> The dimensions singled out were the value of contested land, claim strength in dispute,

<sup>135</sup> *See id.*

<sup>136</sup> *See id.* at 10.

<sup>137</sup> *See id.* at 10–11.

<sup>138</sup> *See id.* at 11.

<sup>139</sup> *See id.* *See generally* GARY GOERTZ & PAUL F. DIEHL, TERRITORIAL CHANGES AND INTERNATIONAL CONFLICT (1992) (describing the relationship between states' military strength and territorial disputes).

<sup>140</sup> *Id.*

<sup>141</sup> *See* FRAVEL, *supra* note 23, at 11.

<sup>142</sup> *See id.* at 12–13.

<sup>143</sup> *See, e.g., id.* at 134–35, 222, 252.

<sup>144</sup> *See id.* at 38–39.

the security environment, and scope conditions.<sup>145</sup> The first three variables are viewed as pivotal and explored in substantial detail, both generally and in this specific geographic and historical context.<sup>146</sup>

Cooperation may thus materialize when land is regarded as less valuable; a state's relative position in a dispute is stable, strong, or strengthening; when it faces neither internal nor external threats to its security; and when an opponent is able to provide military, economic, or diplomatic support.<sup>147</sup> On the contrary, conflict may escalate when land is seen as more valuable; when a state's position in a dispute is declining or, alternatively, when it suddenly and temporarily improves; when it faces internal or external threats to its security; and when it is able to execute a limited-aims operation without suffering destruction of its entire armed forces.<sup>148</sup>

The distinction between the dimensions relied upon here to account for variations in China's handling of its border conflicts and those identified in previous empirical work, such as the value of contested land, was perhaps not always made sufficiently clear. But, unlike elsewhere, these dimensions were explicitly incorporated into a decision-oriented model acknowledging the State's potential to engage in discretionary action grounded in cost-benefit calculus. Importantly, the author was also able to demonstrate, even if for the most part qualitatively, that the four-dimensional construct may adequately explain a Chinese propensity to employ, or refrain from employing, coercion in territorial disputes.<sup>149</sup>

Nevertheless, despite the lengths to which the author goes to counter possible methodological criticisms, the extensive and rigorous survey has a number of problematic facets. Notably, the parties to the dispute are rather loosely connected. For all intents and purposes, each party formulates its strategies independently of the other. The picture that emerges thus sheds greater light on foreign policy decision-making than international relations. By the same token, in accordance with the unitary actor hypothesis, domestic forces in China and

<sup>145</sup> See *id.* at 37–39.

<sup>146</sup> See *id.*

<sup>147</sup> See *id.* at 38.

<sup>148</sup> See *id.*

<sup>149</sup> See generally *id.* at 70–299; M. Taylor Fravel, *Securing Borders: China's Doctrine and Force Structure for Frontier Defense*, 30 J. STRATEGIC STUD. 705 (2007); M. Taylor Fravel, *Explaining Stability in the Senkaku (Diaoyu) Dispute*, in GETTING THE TRIANGLE STRAIGHT: MANAGING CHINA-JAPAN-US RELATIONS 144 (Gerald Curtis, Ryosei Kokubun & Wang Jisi eds., 2010); M. Taylor Fravel, *China's Rise: Assessing China's Potential for Territorial Expansion*, 12 INT'L STUD. REV. 505 (2010); Alstair I. Johnston, *China's Militarized Interstate Dispute Behavior, 1948–1992: A First Cut at the Data*, 153 CHINA Q. 1 (1998).

in neighboring countries are accorded scant attention and are effectively ruled out as a significant element in conflict dynamics.

These deficiencies, or deliberate omissions, were addressed in another social science research project, albeit one less comprehensive in scope.<sup>150</sup> The explicit aim of the project was to pinpoint the interplay between influences emanating from external and internal arenas in the process of dispute settlement, peaceful or otherwise, involving opposing territorial claims.<sup>151</sup> The guiding assumption was that

the critical theoretical task confronting scholars in the field of international politics is to develop generalizing propositions about state behavior based on the premise that foreign policy leaders are attentive to the incentives and constraints generated by both their domestic and international environment. . . [and that] powerful explanations of international conflict behavior cannot be derived from theoretical models that fail to consider the simultaneous impact of both domestic and international-level variables.<sup>152</sup>

The specific analytical vehicle employed for this purpose was developed and tested by a leading American political scientist<sup>153</sup> and explored further, both conceptually and empirically, by other social scientists and socio-legal researchers,<sup>154</sup> some of whom focused on the Chinese context.<sup>155</sup> It is commonly referred to as the “two-level game”

<sup>150</sup> See generally CHINA'S TERRITORIAL DISPUTES, *supra* note 23; *Resolving China's Island Disputes*, *supra* note 27.

<sup>151</sup> *Id.*

<sup>152</sup> PAUL K. HUTH, *STANDING YOUR GROUND: TERRITORIAL DISPUTES AND INTERNATIONAL CONFLICT* 7 (1996).

<sup>153</sup> See generally Robert D. Putnam, *Diplomacy and Domestic Politics: The Logic of Two-Level Games*, 42 INT'L ORG. 427 (1988).

<sup>154</sup> See generally DOUBLE-EDGED DIPLOMACY: INTERNATIONAL BARGAINING AND DOMESTIC POLITICS (Peter B. Evans, Harold K. Jacobson & Robert D. Putnam eds., 1993); Howard P. Lehman & Jennifer L. McCoy, *The Dynamics of the Two-Level Bargaining Game: The 1988 Brazilian Debt Negotiations*, 44 WORLD POL. 600 (1992); Joel P. Trachtman, *International Law and Domestic Political Coalitions: The Grand Theory of Compliance with International Law*, 11 CHI. J. INT'L L. 127 (2010).

<sup>155</sup> See generally Krishna P. Jayakar, *The United States-China Copyright Dispute: A Two-Level Games Analysis*, 2 COMM. L. & POL'Y 527 (1997); HONGYING WANG & MATTHIAS KAELBERER, *THE TWO-LEVEL GAME OF CHINA'S EXCHANGE RATE POLICY* (2006); Albert S. Yee, *Domestic Support Ratios in Two-Level Bargaining: The US-China WTO Negotiations*, 4 CHINA REV. 129 (2004); Albert S. Yee, *Semantic Ambiguity and Joint Deflections in the Hainan Negotiations*, 2 CHINA: INT'L J. 53 (2004).

model.<sup>156</sup> It falls squarely into the rationalist tradition, which does not lack followers in the field of international law.<sup>157</sup> One key feature, however, is that it relaxes the theoretical requirement that States be treated as unitary actors, or discards the notion that they may realistically be portrayed as such, by introducing domestic groups into the foreign policy decision-making dynamics in general and also in examining China's initiatives and responses in various international settings.<sup>158</sup>

Bargaining between states that are embroiled in border disputes or other conflicts is assumed to unfold in both international (Level I) and domestic (Level II) arenas.<sup>159</sup> Agents of the state and negotiators on both sides are engaged in a complex process, endeavoring to reconcile, within an often tight "bargaining space" or "area of compromise," divergent national interests and demands of domestic constituencies.<sup>160</sup> It is posited that any Level I agreement must ultimately be endorsed by Level II groups.<sup>161</sup> This unique feature provides the vital theoretical link, often missing elsewhere, between the external and internal drivers that impinge on international bargaining outcomes.

The concept of the win-set is at the heart of the construct. It is the cluster of all potential Level I accords capable of attracting sufficient support, or "winning," at Level II.<sup>162</sup> The fundamental hypothesis put forward is that the larger the win-set of a negotiator, the greater the room for maneuver he or she enjoys and the more substantial the concessions that may be extracted from him or her by the other side.<sup>163</sup> By contrast, and perhaps paradoxically, a small win-set may

<sup>156</sup> See generally CHINA'S TERRITORIAL DISPUTES, *supra* note 23; *Resolving China's Island Disputes*, *supra* note 27.

<sup>157</sup> See generally JACK L. GOLDSMITH & ERIC A. POSNER, *THE LIMITS OF INTERNATIONAL LAW* (2005); ANDREW T. GUZMAN, *HOW INTERNATIONAL LAW WORKS: A RATIONAL CHOICE THEORY* (2008); JOEL P. TRACHTMAN, *THE ECONOMIC STRUCTURE OF INTERNATIONAL LAW* (2008).

<sup>158</sup> See generally BRUCE B. DE MESQUITA, DAVID NEWMAN & ALVIN RABUSHKA, *FORECASTING POLITICAL EVENTS: THE FUTURE OF HONG KONG* (1985); BRUCE B. DE MESQUITA, DAVID NEWMAN & ALVIN RABUSHKA, *RED FLAG OVER HONG KONG* (1996); Miron Mushkat & Roda Mushkat, *The Political Economy of International Legal Compliance: Pre-1997 Predictions and Post-1997 Realities in Hong Kong*, 10 U.C. DAVIS. J. INT'L L. & POL'Y 229 (2004); Miron Mushkat & Roda Mushkat, *International Law and Game Theory: A Marriage of Convenience or Strange Bedfellows?*, 2 N.Z. Y.B. INT'L L. 101 (2005).

<sup>159</sup> See, e.g., CHINA'S TERRITORIAL DISPUTES, *supra* note 23, at 16.

<sup>160</sup> See *id.* at 16-18.

<sup>161</sup> See *id.* at 16.

<sup>162</sup> See *id.*

<sup>163</sup> See *id.*

prove to be advantageous in such circumstances because it effectively ties a negotiator's hands and implies that he or she is in no position to compromise.<sup>164</sup> Of course, a virtually non-existent win-set is a recipe for failure since domestic endorsement is, by definition, impossible to secure.<sup>165</sup>

Three additional key propositions underpin the model. First, the size of the win-set depends on Level II societal preferences and informal coalitions:<sup>166</sup> the more heterogeneous the preferences, the more difficult it is to satisfy them.<sup>167</sup> By the same token, the less stable the domestic coalition structure, due for example to the presence of a strong "isolationist" camp, the less smooth the bridge-building effort.<sup>168</sup> Second, the size of the win-set depends on the nature of domestic political institutions.<sup>169</sup> For example, the Japanese propensity to seek as broad a consensus as possible prior to policy action militates against strategic flexibility.<sup>170</sup> Third, the size of the win-set depends on the strategies of Level I negotiators:<sup>171</sup> a negotiator who enjoys high standing at home is more likely to obtain support for his or her foreign policy initiatives.<sup>172</sup> Negotiators also have reason to seek ways to boost the popularity of their counterparts since this increases the size of the other side's win-set and, consequently, their own bargaining power.<sup>173</sup> This in turn makes "reverberation," or the ability of negotiators and leaders to affect the preferences of their adversaries through positive and negative incentives, a crucial factor in the two-level game.<sup>174</sup>

The effectiveness of this elaborate construct was examined by scrutinizing its fit with the facts observed in three protracted and stubborn Chinese territorial conflicts: the Diaoyutai/Tiaoyutai/Senkaku Islands dispute, the Zhenbao/Chenpao/Damansky Islands dispute, and the McMahon Line/Aksai Chin dispute.<sup>175</sup> This is a rather modest sample, compared with the 23-case analysis undertaken in the other wide-ranging social science survey of China's handling of its territorial conflicts. As indicated, however, all the disputes dissected were protracted and stubborn in nature. By extension, each

<sup>164</sup> *Id.*

<sup>165</sup> *See id.*

<sup>166</sup> *See CHINA'S TERRITORIAL DISPUTES, supra note 23, at 20-22.*

<sup>167</sup> *See id.*

<sup>168</sup> *See id.*

<sup>169</sup> *See id.* at 22.

<sup>170</sup> *See id.*

<sup>171</sup> *See CHINA'S TERRITORIAL DISPUTES, supra note 23, at 23.*

<sup>172</sup> *See id.*

<sup>173</sup> *See id.*

<sup>174</sup> *See id.*

<sup>175</sup> *See id.; Resolving China's Island Disputes, supra note 27.*



could be regarded as a series of interrelated cases, featuring considerable dynamics and variation over time.

Overall, it can be said that the model performed satisfactorily across the sample. Some gaps were inevitably highlighted. The active role of leadership in international negotiations may have thus been underestimated.<sup>176</sup> By the same token, insufficient emphasis may have been placed on the disruptive capacity of highly organized domestic forces determined to forestall progress toward a viable compromise.<sup>177</sup> These limitations notwithstanding, external-internal linkages in the dispute settlement process were traced with a degree of precision, fruitfully complementing analytical endeavors strictly focused on the external side of the picture.

#### IV. EVALUATION

Rather surprisingly, Chinese territorial conflicts, which are without a doubt of substantial academic and policy interest, have not attracted great scholarly attention. The number of in-depth studies produced on the subject is relatively modest. Fortunately, those studies that do exist are broad in scope and meticulously executed. Moreover, the insights generated emanate from two distinct, yet, in many respects, complementary disciplinary sources: law and social sciences. The conceptual pattern that emerges upon distilling their essence and reviewing them sequentially thus appears to convey a certain sense of completeness and wholeness.

Legal research is typically inductive and aims at theory-building.<sup>178</sup> It evolves from an observation to a configuration to a tentative hypothesis to a theory.<sup>179</sup> Social science inquiry tends, at least in the case of the "harder" disciplines, to be deductive or to be concerned with theory-testing.<sup>180</sup> It proceeds from a theory to a hypothesis to an observation to a confirmation.<sup>181</sup> International law and international re-

<sup>176</sup> See *id.* at 161.

<sup>177</sup> See *id.*

<sup>178</sup> See DAVID DE VAUS, RESEARCH DESIGN IN SOCIAL RESEARCH 223 (2001); ROBERT K. YIN, CASE STUDY RESEARCH: DESIGN AND METHODS 38-39 (4th ed. 2009); EARL BABBIE, THE PRACTICE OF SOCIAL RESEARCH 56-58 (12th ed. 2010); EARL BABBIE, THE BASICS OF SOCIAL RESEARCH 56-58 (5th ed. 2011).

<sup>179</sup> See DE VAUS, *supra* note 178, at 263-66; YIN, *supra* note 178; BABBIE, THE PRACTICE OF SOCIAL RESEARCH, *supra* note 178; BABBIE, THE BASICS OF SOCIAL RESEARCH, *supra* note 178.

<sup>180</sup> See DE VAUS, *supra* note 178, at 253-62; YIN, *supra* note 178, at 35-38; BABBIE, THE PRACTICE OF SOCIAL RESEARCH, *supra* note 178, at 53-56; BABBIE, THE BASICS OF SOCIAL RESEARCH, *supra* note 178, at 54-56.

<sup>181</sup> See YIN, *supra* note 178, at 35-38; BABBIE, THE PRACTICE OF SOCIAL RESEARCH, *supra* note 178; BABBIE, THE BASICS OF SOCIAL RESEARCH, *supra* note 178.

lations students who have methodically explored China's border disputes have followed these divergent paths.

Theory-building and theory-testing are undertakings that vary considerably in their degree of contribution to knowledge. The former encompasses an attempt to replicate previously demonstrated effects, an examination of effects that have been the subject of previous theorizing, the introduction of a new mediator or moderator to an existing relationship or process, an examination of a previously unexplored relationship or process, and the introduction of a new construct or a significant re-conceptualization of an existing one.<sup>182</sup> The latter involves blending predictions with logical speculation, references to past findings, existing conceptual arguments, existing models, diagrams, or figures, and existing theory.<sup>183</sup> Researchers engaged in such activities may consequently be classified as reporters, qualifiers, builders, testers, and expanders.<sup>184</sup> It is fair to portray the legal scholars whose work has been surveyed here as mostly reporters, qualifiers, and tentative builders and their social science counterparts as determined testers, although this is merely one dimension of an intricate picture.

Reporting, qualification, and tentative building are by no means trivial pursuits. In this particular instance, it can be said that substantial information was produced regarding the norms relating to Chinese practices with respect to border disputes, their origins, and evolution. This is a significant contribution, given that norms are accorded such scant attention in the contemporary academic literature on public policy making,<sup>185</sup> including that pertaining to foreign affairs,<sup>186</sup> with international law remaining an exception to the rule.<sup>187</sup> There is considerable evidence to suggest that norms do play a non-

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<sup>182</sup> See Jason A. Colquitt & Cindy P. Zapata-Phelan, *Trends in Theory Building and Theory Testing: A Five-Decade Study of the Academy of Management Journal*, 50 *ACAD. MGMT. J.* 1281, 1282-85 (2007).

<sup>183</sup> See *id.*

<sup>184</sup> See *id.*

<sup>185</sup> See, e.g., MICHAEL HOWLETT ET AL., *STUDYING PUBLIC POLICY: POLICY CYCLES AND POLICY SUBSYSTEMS* (3d ed. 2009).

<sup>186</sup> See, e.g., ALEX MINTZ & KARL R. DEROUEN, *UNDERSTANDING FOREIGN POLICY DECISION MAKING* (2010).

<sup>187</sup> See, e.g., THOMAS M. FRANCK, *THE POWER OF LEGITIMACY AMONG NATIONS* (1990); ABRAM CHAYES & ANTONIA HANDLER CHAYES, *THE NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL REGULATORY AGREEMENTS* (1995); THOMAS M. FRANCK, *FAIRNESS IN INTERNATIONAL LAW AND INSTITUTIONS* (1995); OONNA A. HATHAWAY & HAROLD H. KOH, *FOUNDATIONS OF INTERNATIONAL LAW AND POLITICS* (2005).

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negligible role in the evolution of territorial conflicts,<sup>188</sup> the corollary being that their omission from factual accounts and explanatory schemes may be a methodologically problematic step.

The work of legal scholars on China's border disputes, while undertaken at different junctures, has another fundamentally attractive feature in that it is characterized by a fairly high degree of consistency. Clearly, official and semi-official ideas seldom stand still, notably in a dynamic institutional environment such as that witnessed in modern Chinese society.<sup>189</sup> Some divergences are thus bound to manifest themselves in writings spanning two decades and no two authors are likely to follow precisely the same path in dissecting such a complex subject. Still, those authors whose research has been reviewed here paint a coherent picture devoid of substantial variations. In technical parlance, it may be marked by a significant measure of descriptive validity.<sup>190</sup>

Moreover, the norms identified as relevant in this context were not portrayed as cast in stone, let alone inviolable. Rather, a certain sense of ambiguity and fluidity was conveyed. This analytical posture is worth highlighting because it accords with the recent trend in the academic literature to acknowledge—indeed, strongly emphasize—the elastic nature of international legal norms and the behavioral consequences of that pattern.<sup>191</sup> Such a conceptual re-adjustment has shifted attention toward interpretation and the manner in which it impinges on international realities, as “[i]nterpretation is pervasively determinative of what happens to legal rules when they are out in the world.”<sup>192</sup>

That said, as indicated earlier, the largely international law-inspired perspective on China's management of its border disputes is inherently restrictive due to its unavoidably limited scope and its heavy focus on principles, as distinct from action. The forces shaping norms are thus selectively outlined, rather than comprehensively explored. Perhaps too much is assumed as cultural, historical, and political fact or taken for granted instead of being exposed to critical scrutiny. By the same token, the relationship between norms and actual State conduct remains somewhat vague despite the extensive re-

<sup>188</sup> See, e.g., GOERTZ & DIEHL, *supra* note 139, at 69-78; GARY GOERTZ, INTERNATIONAL NORMS AND DECISION MAKING: A PUNCTUATED EQUILIBRIUM MODEL (2003) [hereinafter INTERNATIONAL NORMS AND DECISION MAKING].

<sup>189</sup> See generally LIEBERTHAL, *supra* note 19; SAICH, *supra* note 19.

<sup>190</sup> See Joseph A. Maxwell, *Understanding and Validity in Qualitative Research*, 62 HARV. EDUC. REV. 279, 287-300 (1992).

<sup>191</sup> See Robert Howse & Ruti Teitel, *Beyond Compliance: Rethinking Why International Law Really Matters*, 1 GLOBAL POL'Y REV. 127, 127-36 (2010).

<sup>192</sup> *Id.* at 135.

search undertaken. These are gaps that behaviorally inclined social scientists may be able to narrow.

Fortunately, Chinese border disputes constitute a fertile field of inquiry that has not been overlooked by behaviorally oriented scholars. Two book-long studies and a number of solid articles, surveyed in the previous section, have been published on the topic from a distinct social science standpoint. They rest on a robust empirical foundation that consists of a detailed examination of virtually every territorial conflict in which China has been involved. The qualitative nature of the investigative endeavor does not detract from its merit, even if research in this area increasingly relies on quantitative tools,<sup>193</sup> because of the meticulous matching of theoretical propositions and historical data across a wide array of cases.

Nor should this work be viewed as decoupled from the theoretical mainstream. For instance, the power structure, or States' relative strength, is a variable that features prominently in almost all writings on border disputes, whether they possess qualitative or quantitative underpinnings.<sup>194</sup> The value of contested land is just as broadly embraced in behavioral inquiry centered on territorial conflicts, although it is often couched in slightly different terms, such as resource scarcity.<sup>195</sup> Even the more esoteric two-level game model can be said to loom quite large on the research agenda of economists, political scientists, and sociologists concerned with the dynamics of inter-State bargaining and negotiations, as evidenced by the substantial volume of publications on the subject, including from an international legal angle.<sup>196</sup>

Nevertheless, the social science analytical facade is not without chinks, both methodological and theoretical, which cannot be entirely eliminated by integrating it with its legal counterpart. Perhaps most problematic is the treatment of each case dissected as a discrete episode. Some of the cases stretch over a long period of time, but this does not obviate the need for adopting a research strategy, or a design, that systematically incorporates a temporal dimension. This is common practice in methodologically driven case studies,<sup>197</sup> and an approach that is often resorted to, and formally so, by social scientists who focus on the evolution of territorial conflicts.<sup>198</sup>

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<sup>193</sup> See, e.g., GOERTZ & DIEHL, *supra* note 139; RONGXING GUO, CROSS-BORDER RESOURCE MANAGEMENT: THEORY AND PRACTICE (2005).

<sup>194</sup> See, e.g., GOERTZ & DIEHL, *supra* note 139, at 89, 92-93, 96-97, 99, 119-20, 123-24, 128-30.

<sup>195</sup> See, e.g., GUO, *supra* note 193, at 107-30.

<sup>196</sup> See, e.g., Trachtman, *supra* 154.

<sup>197</sup> See, e.g., DE VAUS, *supra* note 178, at 260-63; JOHN GERRING, CASE STUDY RESEARCH: PRINCIPLES AND PRACTICES 152-64 (2007).

<sup>198</sup> See, e.g., GOERTZ AND DIEHL, *supra* note 139, at 93.

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The absence of clear linkages between cases, or a proper longitudinal perspective, gives rise to possible theoretical difficulties. The corollary inevitably is that Chinese foreign policy is wholly dependent on case-specific situational factors and lacks strong continuity, let alone powerful inertia. Another implication is that it does not periodically change in a manner that may be explained within a broad, coherent, and time-sensitive analytical framework. This is inconsistent with the thrust of mainstream theoretical writings on China's external adaptation, which generally place considerable emphasis on path dependence coupled with occasional fundamental readjustments.<sup>199</sup> To the extent that social science investigations centered on Chinese border disputes significantly diverge from this trend, they are characterized by insufficient convergent validity.<sup>200</sup>

<sup>199</sup> See, e.g., CHIH-YU SHIH, *THE SPIRIT OF CHINESE FOREIGN POLICY: A PSYCHOCULTURAL VIEW* (1990); CHINESE FOREIGN POLICY: THEORY AND PRACTICE (Thomas W. Robinson & David Shambaugh eds., 1994); ALASTAIR I. JOHNSTON, *CULTURAL REALISM: STRATEGIC CULTURE AND GRAND STRATEGY IN CHINESE HISTORY* (1995); QUANSHENG ZHAO, *INTERPRETING CHINESE FOREIGN POLICY: THE MACRO-MICRO LINKAGE APPROACH* (1996); CHINA AND THE WORLD: CHINESE FOREIGN POLICY FACES NEW MILLENNIUM CHALLENGES (Samuel S. Kim ed., 4th ed. 1998); GERALD CHAN, *CHINESE PERSPECTIVES ON INTERNATIONAL RELATIONS: A FRAMEWORK FOR ANALYSIS* (1999); LU NING, *THE DYNAMICS OF FOREIGN-POLICY DECISION MAKING IN CHINA* (2d ed. 2000); CHINA'S INTERNATIONAL RELATIONS IN THE 21ST CENTURY: DYNAMICS OF PARADIGM SHIFTS (Weixing Hu et al. eds., 2000); *THE MAKING OF CHINESE FOREIGN AND SECURITY POLICY IN THE ERA OF REFORM, 1978-2000* (David M. Lampton ed., 2001); CHINESE FOREIGN POLICY IN TRANSITION (Guoli Liu ed., 2004); CHINESE FOREIGN POLICY: PRAGMATISM AND STRATEGIC BEHAVIOR (Suisheng Zhao ed., 2004); CHINA RISING: POWER AND MOTIVATION IN CHINESE FOREIGN POLICY (Yong Deng & Fei-Ling Wang eds., 2005); AVERY GOLDSTEIN, *RISING TO THE CHALLENGE: CHINA'S GRAND STRATEGY AND INTERNATIONAL SECURITY* (2005); YUFAN HAO & LIN SU, *CHINA'S FOREIGN POLICY MAKING: SOCIETAL FORCE AND CHINESE AMERICAN POLICY* (2005); *NEW DIRECTIONS IN THE STUDY OF CHINA'S FOREIGN POLICY* (Alastair I. Johnston & Robert S. Ross eds., 2006); *NEW DIMENSIONS OF CHINESE FOREIGN POLICY* (Guo Sujian & Shiping Hua eds., 2007); CHINA'S NEW DIPLOMACY: TACTICAL OR FUNDAMENTAL CHANGE? (Pauline Kerr et al. eds., 2008); CHINA'S ASCENT: POWER, SECURITY, AND THE FUTURE OF INTERNATIONAL POLITICS (Robert S. Ross & Zhe Feng eds., 2008); *NEW INTERNATIONAL ORDER*, *supra* note 19; MARC LANTEIGNE, *CHINA'S FOREIGN POLICY: AN INTRODUCTION* (2009); LAI HONGYI, *THE DOMESTIC SOURCES OF CHINA'S FOREIGN POLICY: REGIMES, LEADERSHIP, PRIORITIES, AND PROCESSES* (2010); ROBERT G. SUTTER, *CHINESE FOREIGN RELATIONS: POWER AND POLICY SINCE THE COLD WAR* (2d ed. 2010); ZHIQUN ZHU, *CHINA'S NEW DIPLOMACY: RATIONALE, STRATEGIES, AND SIGNIFICANCE* (2010).

<sup>200</sup> See BABBIE, *THE PRACTICE OF SOCIAL RESEARCH*, *supra* note 178, at 154; BABBIE, *THE BASICS OF SOCIAL RESEARCH*, *supra* note 178, at 161; Donald T. Campbell & Donald W. Fiske, *Convergent and Discriminant Validation by the Multitrait-Multimethod Matrix*, 56 *PSYCHOL. BULL.* 81, 81-105 (1959); ALAN BRYMAN, *SOCIAL RESEARCH METHODS* 151-52 (3d ed. 2008).

Nor is it just a matter of divergence from mainstream conceptual paradigms. The latter seem to provide modest inspiration for social scientists who explore China's territorial conflicts and who apparently prefer to tread their own paths. Several variables that are typically included in all-embracing explanatory schemes are omitted, known as a "deficiency error,"<sup>201</sup> and highly parsimonious models are chosen that do not overlap closely with the former, a content validity problem.<sup>202</sup> By the same token, certain influences that are largely ignored by mainstream students of Chinese foreign policy and international relations are deemed relevant in this specific context, a "contamination error."<sup>203</sup> Even more intriguing is the fact that some variables are given a distinctly non-mainstream interpretation. For instance, domestic heterogeneity is believed to have had a moderating impact on China's international behavior,<sup>204</sup> but is assumed to render bargaining and negotiations an inherently challenging proposition in two-level games.

The two-level game construct is particularly difficult to accommodate within the theoretical mainstream. It does not correspond well to analytical structures employed to examine the interplay between external and internal forces on the Chinese foreign policy front.<sup>205</sup> Moreover, it does not effectively capture the intricacies pinpointed by scholars who endeavor to shed light on the dynamics of border dispute containment and escalation in such settings from a wider conceptual standpoint.<sup>206</sup> In the China context, the sample of cases is also rather small and there are potentially unresolved methodological issues stemming from the somewhat arbitrary and unsystematic case selection in the two-level game model.<sup>207</sup>

Such reservations do not detract from the theoretical and heuristic value of the social science studies reviewed here. Hypothesis testing can be said to have provided partial support for the ideas put forward and to have generated ample analytical insights, no mean

<sup>201</sup> See LUIS R. GOMEZ-MEJIA ET AL., *MANAGING HUMAN RESOURCES* 270 (7th ed. 2010).

<sup>202</sup> See BABBIE, *THE PRACTICE OF SOCIAL RESEARCH*, *supra* note 178, at 155; BABBIE, *THE BASICS OF SOCIAL RESEARCH*, *supra* note 178, at 161.

<sup>203</sup> See GOMEZ-MEJIA ET AL., *supra* note 201.

<sup>204</sup> See David M. Lampton, *China's Foreign and National Security Policy-Making Process: Is It Changing and Does It Matter?*, in *THE MAKING OF CHINESE FOREIGN AND SECURITY POLICY IN THE ERA OF REFORM, 1978-2000* 12-24 (2001).

<sup>205</sup> See ZHAO, *supra* note 199.

<sup>206</sup> See Ming Gyo Koo, *Island Disputes and Maritime Regime Building in East Asia: Between a Rock and a Hard Place* (2009).

<sup>207</sup> See DE VAUS, *supra* note 178, at 238-42; GERRING, *supra* note 197, at 86-150; David Silverman, *Doing Qualitative Research: A Practical Handbook* 137-51 (3d ed. 2010).

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achievement in such complex circumstances. Moreover, a solid conceptual and empirical foundation has been established that is capable of sustaining a broad-based research agenda. Still, it is important to note that the complementary efforts of international law researchers and social scientists, even if considered in their entirety, have not progressed to a point whereby closure has been attained and the scope for further inquiry is limited. Quite the contrary, this remains, in certain respects, an open field not short of incompletely answered questions.

## V. WAY FORWARD

As emphasized throughout this paper, the pattern of cross-border interactions in East Asia and Southeast Asia, including Russia and South Asia, revolving around the rapidly re-emerging Chinese regional and global power, is a vital component of the delicate but vibrant Asia-Pacific and world economic-political-security order. Territorial conflicts and their management are a crucial element of that dynamic equation and, in the China context, have spawned a rich, if not voluminous, community of academic literature on the subject. The breadth and depth of the work undertaken notwithstanding, it has been shown to contain some gaps that should ideally be narrowed further over time. Offered here is a tentative roadmap in an attempt to initiate and facilitate the process.

Ample “raw material” is available for additional research in this area. Both legal scholars and social scientists, particularly the latter, have provided a detailed account of virtually every Chinese border dispute since the founding of the PRC. The database that has been constructed can be ‘mined’ in search of new theoretical propositions (“theory building”), or serve as an empirical vehicle for assessing those and existing alternative theories (“theory testing”). Pursuit of this idea could occur in a more or less structured way, but the scope for quantitative exploration via techniques such as meta-analysis<sup>208</sup> is rather limited because this form of secondary data manipulation generally requires the original, primary data to be quantitatively organized.<sup>209</sup>

The two qualitative methods typically relied upon in such circumstances are the narrative and systematic literature review. The former surveys a body of academic work, such as the writings on China’s border disputes, to uncover new or alternative patterns absent guidance by pre-determined criteria.<sup>210</sup> On the other hand, such criteria are the driving force constrained a priori.<sup>211</sup> It is possible to call

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<sup>208</sup> See generally BRYMAN, *supra* note 200, at 106.

<sup>209</sup> See *id.*

<sup>210</sup> See *id.*

<sup>211</sup> See *id.*

narrative literature review “unstructured,” whereas its systematic counterpart qualifies as “structured.” This paper is part of a larger research project that involves the examination of specific hypotheses on the basis of a systematic review of the studies surveyed in the previous sections. The furnished roadmap, however, does not have such an empirical foundation because the primary objective is to demonstrate how extending the analytical range, by incorporating mainstream conceptual insights, may place the work on Chinese territorial conflicts on a firmer analytical footing, for example by increasing convergent and content validity.

Norms, or principles, of international law, and their underlying values, are the logical starting point because they precede action in most models of the policy process<sup>212</sup> and do not vary greatly in the short or medium-term. Although social scientists increasingly bypass them in their writings, there is no reason to assume that norms are irrelevant, even if the linkage between them and State behavior is at times not obvious. The legal literature on China’s border disputes effectively highlights the visibility of norms across the foreign policy spectrum and in this specific domain in particular. Painted in other studies, notably those focused on the role of international law norms in Chinese adaptation in the global arena, is a similar picture.<sup>213</sup>

It is often implied that norms coalesce into a harmonious set, and the studies reviewed here are no exception to the rule. Some scholars in the field of international relations have compellingly conveyed the inevitable heterogeneity of norms, the tension among them, the resolution or management of the tension, and the prioritization of the norms.<sup>214</sup> These scholars draw the distinction between norm structures that are coherent, and even robust, and those that are conflicting.<sup>215</sup> It is suggested that the conceptual and practical intricacies to which heterogeneity, tension, and conflict give rise may be mitigated by invoking the fuzzy logic method.<sup>216</sup> In the present context, it suffices to acknowledge this phenomenon and to endeavor to place relevant international law norms within a framework consisting of conflicting, or at least competing, values and strategic impulses, which do not necessarily remain constant.

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<sup>212</sup> See, e.g., SHIH, *supra* note 199, at 38-94.

<sup>213</sup> See, e.g., Ann Kent, *China’s Changing Attitude to the Norms of International Law and Its Global Impact*, in CHINA’S “NEW” DIPLOMACY: TACTICAL OR FUNDAMENTAL CHANGE? 57-76 (Pauline Kerr, Stuart Harris & Qin Yaqing eds., 2008).

<sup>214</sup> See, e.g., INTERNATIONAL NORMS AND DECISION MAKING, *supra* note 188, at 103-17.

<sup>215</sup> *Id.* at 103-23.

<sup>216</sup> *Id.* at 110-17.



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A well-documented position commonly held by social scientists, and vividly epitomized by Mao Zedong's famous dictum that "political power grows out of the barrel of a gun,"<sup>217</sup> is that power is the dominant value pervading all layers of the social fabric in China – "the cornerstone of [its] politics."<sup>218</sup> Consistent with this stance are arguments that "Chinese politicians and diplomats are . . . recognized as masters of power politics, having inherited a well-spring of experience of power play over the millenniums."<sup>219</sup> Moreover, "[e]ven ordinary [people in China] realize the importance of power and exercise it in their daily lives."<sup>220</sup> Power is equated in such circumstances with "who gets what, when, and how."<sup>221</sup>

Traditionally, the Chinese conception of power was confined to the military realm, with "gunboat diplomacy" as its most prominent manifestation and the essence of *qiangquan zhengzhi* (big-power politics).<sup>222</sup> That conception has expanded subsequently to encompass dimensions such as economic strength and external influence, eventually morphing into the notion of *zonghe guoli* or comprehensive national power (CNP).<sup>223</sup> A common assertion is that this is China's paramount strategic goal and that it is pursuing it with great determination.<sup>224</sup> However, to complicate matters, CNP appears to have an ethical component, although its practical significance is shrouded in uncertainty, and its application entails balancing force and morality.<sup>225</sup>

The quest for CNP, at home and abroad, is not a futile enterprise. Rather, it is thought to dovetail with power transition theory (PTT), which posits that a dominant State (i.e., the United States) is sooner or later overtaken by a challenger (i.e., China), peacefully (e.g., the Anglo-American transition at the end of the nineteenth century), or violently (e.g., the Anglo-German transition a decade or so later).<sup>226</sup>

<sup>217</sup> CHAN, *supra* note 199, at 29.

<sup>218</sup> *Id.* at 28.

<sup>219</sup> *Id.*

<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

<sup>222</sup> *Id.* at 29.

<sup>223</sup> CHAN, *supra* note 199, at 29-33.

<sup>224</sup> *Id.*

<sup>225</sup> *Id.* at 30.

<sup>226</sup> See generally STEVE CHAN, CHINA, THE US, AND THE POWER-TRANSITION THEORY: A CRITIQUE (2008); Jack S. Levy, *Power Transition Theory and the Rise of China*, in CHINA'S ASCENT: POWER, SECURITY, AND THE FUTURE OF INTERNATIONAL POLITICS 11-33 (Robert S. Ross & Zhu Feng eds., 2008); Steve Chan, *Is There a Power Transition Between the U.S. and China? The Different Faces of National Power*, 45 ASIAN SURV. 687-701 (2005); Renee Jeffrey, *Evaluating the "China Threat": Power Transition Theory, the Successor State Image, and the Dangers of*

Indeed, once the economic, demographic, military, political, and social conditions are in place, such a shift is a foregone conclusion, a deterministic instead of a probabilistic outcome, whose inevitability cannot be altered by cataclysmic events like war and similar eruptions.<sup>227</sup>

Such distinct realist or neo-realist interpretations have been fine-tuned to reflect changing strategic realities. Specifically, it is claimed that the Chinese foreign policy posture has been transformed from one of offensive realism under Mao Zedong to that of defensive realism under Deng Xiaoping and his successors.<sup>228</sup> Offered to account for this metamorphosis is an elaborate, learning-centered analytical framework, grounded in social evolutionary (as distinct from non-evolutionary and semi-evolutionary) thinking.<sup>229</sup> It differs from the punctuated equilibrium model often employed for this purpose,<sup>230</sup> but has considerable theoretical appeal. The crucial point to note is that a defensive realist State is less likely to flout prevailing international legal norms and more likely to seek a peaceful resolution to border disputes than an offensive realist one, even when there are forces, such as its relative strength, value of contested land, and so forth, propelling it in the opposite direction.

A number of criteria have been suggested for distinguishing between defensive realist States and offensive realist ones. Some authors emphasize ideology, attitude toward domestic minorities, stance regarding arms control, and policy vis-à-vis neighboring countries, particularly weaker ones.<sup>231</sup> Others highlight a recognition of the benefits of international cooperation and a willingness both to exercise self-restraint and to be constrained by other States.<sup>232</sup> These operational norms have inevitable implications for China's approach to the settlement of border disputes if today's China does indeed acknowledge the merits of collaborative international and regional arrangements, as ev-

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*Historical Analogies*, 63 AUSTL. J. INT'L AFF. 309-24 (2009); Douglas Lemke, *Power Transition Theory and the Rise of China*, 29 INT'L INTERACTIONS 269-71 (2003); Ronald L. Tammen & Jacek Kugler, *Power Transition and China US Conflicts*, 1 CHINESE J. INT'L POL. 35-55 (2006), available at <http://cjip.oxfordjournals.org/content/1/1/35.full.pdf+html>.

<sup>227</sup> See Levy, *supra* note 226, at 11-16.

<sup>228</sup> Tan Shiping, *From Offensive to Defensive Realism: A Social Evolutionary Interpretation of China's Security Strategy*, in CHINA'S ASCENT: POWER, SECURITY, AND THE FUTURE OF INTERNATIONAL POLITICS 141-62 (Robert S. Ross & Zhu Feng eds., 2008).

<sup>229</sup> *Id.* at 146-48.

<sup>230</sup> See generally INTERNATIONAL NORMS AND DECISION MAKING, *supra* note 188.

<sup>231</sup> See generally Andrew Kydd, *Sheep in Sheep's Clothing: Why Security Seekers Do Not Fight Each Other*, 7 SECURITY STUD. 114-55 (1997).

<sup>232</sup> See, e.g., Shiping, *supra* note 228, at 152.

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idenced, *inter alia*, by its strategy of multilateralism,<sup>233</sup> does not as a rule exploit the relative weakness of its neighbors, and does act in a constrained fashion in the global arena and segments thereof (i.e., in effect, practices limited sovereignty).<sup>234</sup>

Assuming that a sense of altruism or other-directedness drives defensive realist states is not necessarily the norm. Chinese international behavior is open to both realist and liberal interpretations. It is a moot point whether China is “racing to integrate, or cooperating to compete.”<sup>235</sup> If it is the latter, its conduct would not be inconsistent with realist or at least neo-realist (or, alternatively, institutionalist)<sup>236</sup> readings, and the quest for power might remain a key element of the equation. However, it would constitute a different, more constructive and multifaceted quest than might be the case if a narrower, less accommodative and elastic set of premises provided the inspiration for the analytical structure.

In augmented realist and non-realist accounts, values other than power enter into the Chinese foreign policy calculus. In some social science research, an even greater emphasis is thus placed on China’s “struggle for status,”<sup>237</sup> and not necessarily along realist lines (“[i]ronically, when the term is used in [international relations], it is often by realists, who equate the status struggle with a state’s jockeying for a higher position in the pecking order of power. . . [m]y application here is based on a rejection of key assumptions in the mainstream realist paradigm”).<sup>238</sup> The significance accorded to this value stems

<sup>233</sup> See generally NEW INTERNATIONAL ORDER, *supra* note 19; CHINA TURNS TO MULTILATERALISM: FOREIGN POLICY AND REGIONAL SECURITY (Guoguang Wu & Helen Lansdowne eds., 2008); Jenny Clegg, CHINA’S GLOBAL STRATEGY: TOWARD A MULTIPOLAR WORLD (2009).

<sup>234</sup> See generally Allen Carlson, *More Than Just Saying No: China’s Evolving Approach to Sovereignty and Intervention Since Tiananmen*, in NEW DIRECTIONS IN THE STUDY OF CHINA’S FOREIGN POLICY 217-41 (Alastair I. Johnston & Robert S. Ross eds., 2006); Shan Wenhua, *Redefining the Chinese Concept of Sovereignty*, in CHINA AND THE NEW INTERNATIONAL ORDER 53-80 (Wang Gungwu & Zheng Yongnian eds., 2008).

<sup>235</sup> See generally Thomas G. Moore, *Racing To Integrate or Cooperating To Compete? Liberal and Realist Interpretations of China’s New Multilateralism*, in CHINA AND THE NEW INTERNATIONAL ORDER 35-50 (Wang Gungwu & Zheng Yongnian eds., 2008).

<sup>236</sup> See generally INTERNATIONAL REGIMES (Stephen D. Krasner ed., 1983); ROBERT O. KEOHANE, *AFTER HEGEMONY: COOPERATION AND DISCORD IN THE WORLD ECONOMY* (1984).

<sup>237</sup> See generally Yong Deng, *Better Than Power: “International Status” in China’s Foreign Policy*, in CHINA RISING: POWER AND MOTIVATION IN CHINESE FOREIGN POLICY 51-72 (Yong Deng & Fei-Ling Wang eds., 2005); YONG DENG, *CHINA’S STRUGGLE FOR STATUS: THE REALIGNMENT OF INTERNATIONAL RELATIONS* (2008).

<sup>238</sup> *Id.* at 1-2.

from the fact that “the Chinese are intensely sensitive to their nation’s ‘international status,’ treating it as if it were the overriding foreign policy objective.”<sup>239</sup>

Paradoxically, the belief is that the acquisition of power does not diminish the thirst for status: “Although history matters, contemporary China’s status consciousness would not be so acute if it were not for its ongoing phenomenal ascendancy in comprehensive power.”<sup>240</sup> This is because “[g]rowing wealth generates an expectation of greater respect.”<sup>241</sup> Given the disparity between its power and status, when “[f]aced with the established—albeit still evolving—world order, the PRC naturally feels that its great-power rise is yet to be duly recognized.”<sup>242</sup> Accordingly, overlooking this point when seeking explanations for Chinese responses in situations involving border disputes would be a mistake if this diagnosis was correct.

International law scholars have not yet fully explored the relevant cultural norms, and the norms are, in reality, paid no heed by social scientists. Yet, the inherent tension between the two strands and their divergent impact on China’s foreign policy is examined extensively in other contexts.<sup>243</sup> One is the *realpolitik* view of the world, which “holds that conflicts are perennial and zero-sum”<sup>244</sup> and “regards the use of force as the only effective means [of] ensuring security, stability, and peace.”<sup>245</sup> The other is the Confucian-Mencian worldview, which conceives international society as “harmonious, orderly, and hierarchically structured.”<sup>246</sup> Consistent with this image, “[c]onflicts are regarded as largely deviant phenomena rather than the nature of things and should and can be managed through means other than the use of brute force.”<sup>247</sup>

Scholars believe that the Confucian-Mencian outlook displays an aversion to the use of force and a willingness to countenance its prospect only as a last resort, a strategic device employed for no purposes other than the fulfillment of public interest and self-defense.<sup>248</sup> It also apparently exhibits a clear preference for defense over of-

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<sup>239</sup> *Id.* at 8.

<sup>240</sup> *Id.* at 9.

<sup>241</sup> *Id.*

<sup>242</sup> *Id.*

<sup>243</sup> See, e.g., Chan, *supra* note 199, at 55-63; Qingxin Wang, *Cultural Norms and the Conduct of Chinese Foreign Policy*, in CHINA’S INTERNATIONAL RELATIONS IN THE 21ST CENTURY: DYNAMICS OF PARADIGM SHIFTS 143-69 (Weixing Hu, Gerald Chan & Daojing Zha eds., 2000).

<sup>244</sup> Chan, *supra* note 199, at 59.

<sup>245</sup> *Id.*

<sup>246</sup> *Id.*

<sup>247</sup> *Id.*

<sup>248</sup> See Wang, *supra* note 243, at 147-50.

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fense.<sup>249</sup> Additionally, it seems that a strong pragmatic streak, embodied in the notion of *chung-yun*, which emphasizes the need for smooth equilibrium in human affairs, characterizes this outlook.<sup>250</sup> Interestingly, it has been shown that these norms impinged, to a degree, on Chinese foreign policy even during the revolutionary era.<sup>251</sup> This may partly explain why the recourse to force, including over disputed territory, may have been less frequent and less overwhelming than might have been expected on conventional theoretical grounds.

The constructivist concept of national or State identity, although in need of a realist and utilitarian enhancement to render it a reasonably precise tool in dissecting foreign policy decision making,<sup>252</sup> may also play a meaningful role in grappling with the forces shaping China's handling of boundary conflicts. This is a dimension which is completely lacking in the academic literature surveyed here, but which has received ample attention elsewhere.<sup>253</sup> Where national identity is acknowledged as an influence that, while not readily amenable to operational definition and quantification, may shed some light, in conjunction with other pertinent variables, on State action, there may be some scope for materially broadening the framework within which the quest for understanding the dynamics of foreign policy making is pursued.<sup>254</sup>

Five components of national identity have been outlined in the present context. The first portrays the Chinese State as a socialist entity with distinct features, which is pursuing material progress in a manner properly reflecting its unique socio-economic conditions, and displaying commendable realism in the process (epitomized by the motto that "practice is the sole criterion of truth").<sup>255</sup> The second mirrors China's assent to global power status, and the heavy responsibilities that emanate from this position.<sup>256</sup> Paradoxically, the third component is not in accord with the second one. It is sustained by the gap between Chinese living standards and those enjoyed by people in

<sup>249</sup> See *id.* at 150-52.

<sup>250</sup> See *id.* at 146-47. See generally ANDREW SCOBELL, CHINA'S USE OF MILITARY FORCE: BEYOND THE GREAT WALL AND THE LONG MARCH (2003); QUANSHENG ZHAO, *supra* note 197.

<sup>251</sup> See Wang, *supra* note 243, at 152-62.

<sup>252</sup> See generally J. Samuel Barkin, *Realist Constructivism*, 5 INT'L STUD. REV. 325 (2003); J. SAMUEL BARKIN, REALIST CONSTRUCTIVISM: RETHINKING INTERNATIONAL RELATIONS THEORY (2010).

<sup>253</sup> See generally, e.g., Johnston, *supra* note 199; Tiejun Zhang, *Self-Identity Construction of the Present China*, 23 COMP. STRATEGY 281 (2004).

<sup>254</sup> See generally Barkin, *Realist Constructivism*, *supra* note 252; BARKIN, REALIST CONSTRUCTIVISM: RETHINKING INTERNATIONAL RELATIONS THEORY, *supra* note 252.

<sup>255</sup> See Zhang, *supra* note 253, at 289.

<sup>256</sup> See *id.* at 282-83.

high-income countries. China is consequently perceived as an economic laggard whose loyalties lie with the South rather than the North.<sup>257</sup> This results in a dual-identity syndrome, whereby great power aspirations and commitments run counter to the images and obligations stemming from lower-middle income status.<sup>258</sup>

The fourth component is also at variance with the second one. It focuses on the informal and modestly institutionalized Chinese social fabric, compared with the relatively elaborate and transparent organizational edifice in high-income countries.<sup>259</sup> Its manifestations may be observed on the external front as well as the internal one. For example, in the early 1990s, the close relationship with Thailand was depicted as a form of kinship.<sup>260</sup> The fifth component, amply emphasized in legal writings, was encountered earlier. It centers on the persistent, even if diminished, preoccupation with sovereignty and the reluctance, again less intense than in the past, to contemplate its dilution.<sup>261</sup>

The second, third, and fourth components may have a bearing on the issue at hand. A China that sees itself as a global power with corresponding responsibilities is more likely to display restraint in addressing border disputes. Interestingly, a self-image that keeps it on the international periphery need not have the opposite effect. The point is that a country which identifies itself as a member of the Third World—indeed, its champion and leader—may be unwilling to resort to coercion against neighbors, most of whom belong to this “disadvantaged” and “marginalized” group.

Norms and identities do not properly explain the ramifications of the external-internal linkages highlighted by the two-way game model. A number of Chinese case studies, including those pertaining to border disputes, lend tentative support to this analytical construct. However, as indicated, they give rise to a host of methodological issues and probably constitute a better test of the model, albeit not a robust one, than a robust account of the mechanisms consistently transmitting impulses from the domestic to the international arena, and vice versa, in this particular context. Other exploratory paths, notably at home in China, may yield greater insights regarding the management of territorial conflicts.

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<sup>257</sup> See *id.* at 292-93.

<sup>258</sup> See Yong Deng, *Escaping the Periphery: China's National Identity in World Politics*, in CHINA'S INTERNATIONAL RELATIONS IN THE 21ST CENTURY 41, 51 (Weixing Hu et al. eds., 2000); Zhang, *supra* note 253.

<sup>259</sup> See Deng, *supra* note 258, at 51-54.

<sup>260</sup> See *id.* at 53.

<sup>261</sup> See *id.* at 53.

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A broad scheme for examining the external-internal linkages in Chinese foreign policy making was in fact suggested well before the two-way game model came into vogue.<sup>262</sup> The initial formulation focused on the conversion of general inputs (international constraints plus domestic determinants) into general outputs (foreign policy).<sup>263</sup> The input side was then expanded by differentiating between the macro-level and its micro-level counterpart, where decision makers abroad and at home operate, and by specifying the macro-level international constraints and domestic determinants that affect output.<sup>264</sup>

The applicability of the scheme was demonstrated by pinpointing the impact of changes in such inputs on China's foreign policy over time.<sup>265</sup> Particularly close attention was paid to the domestic dynamics where shifts in the symbolic macrostructure from revolution to modernization, institutional macrostructure from vertical to horizontal authoritarianism, power and regime macrostructure from rigidity toward flexibility, and a wide range of micro processes employing similar categories, were carefully dissected, the latter in greater detail than the macro ones because of the diversity typically encountered at that level.<sup>266</sup>

As indicated, the micro processes were classified in a corresponding fashion, but possibly not as unambiguously and thus less meaningfully from an empirical perspective, into symbolic ("change in the interpretation of the internal and external environments; learning and adaptation; [and] changing priorities of foreign policy"), institutional ("increased scope and degree of participation in foreign policy making; [and] changes of norms, rules, and mechanisms in the policy making process"), and power/regime-related processes ("dynamics of individual leaders' power and authority; regime legitimacy; decision makers preference and choices; [and] foreign policy strategies and tactics").<sup>267</sup>

Besides offering a broad theoretical framework, such a scheme may also serve the purpose of bringing into focus continuities and periodic shifts in Chinese foreign policy. For instance, in a recent survey, the following, currently relevant, enduring features have been highlighted: (1) the pursuit of cooperation and partnerships with all countries in Asia and key governments in other parts of the world; (2) the exercise of self-restraint as part of a strategy to promote a benign image of China as a country that is a source of opportunities rather than

<sup>262</sup> See generally QUANSHENG ZHAO, *supra* note 199.

<sup>263</sup> See *id.* at 19-21.

<sup>264</sup> See *id.* at 22-25.

<sup>265</sup> See *id.* at 25-28.

<sup>266</sup> *Id.* at 25, Table 2.4.

<sup>267</sup> *Id.*

threats to members of the international community; (3) a willingness to lower rhetoric directed at American hegemonic practices as long as the United States does not challenge fundamental Chinese interests; (4) an increasingly deeper integration into the global economy; and (5) a progressively firmer commitment to multilateralism.<sup>268</sup>

Strategic continuity, even if punctuated by periodic paradigm transformations, paves the way for the consideration of regimes, or stable patterns of action, rather than case-specific responses, in analyzing China's border disputes. This is the emerging trend in social science research addressing the subject, productively followed in the Asian space, with selective references to the Chinese situation.<sup>269</sup> It does not obviate the need for scrutinizing individual cases, but ideally in clusters, rather than in isolation, employing methods designed to deal with multiple and interconnected historical episodes instead of relying on those geared toward handling single and self-contained cases.

The distinction drawn in this paper has primarily been between the revolutionary and reform eras' policy regimes, which may have been marked by reasonably well-defined behavioral propensities in relation to border disputes. Elsewhere, additional phases displaying regime-like properties have been identified. For instance, one social scientist divides the 1949-78 period into a cycle of moderation (until shortly before the 1958 Great Leap Forward) and of radicalization, and has divided the period of liberalization that followed into a cycle of incremental restructuring (up to 1993) and a comprehensive overhaul of the socialist system thereafter.<sup>270</sup> Another social scientist euphemistically portrays the entire revolutionary era as a "catching up" regime, which gave way in 1978 to one characterized by "GDPism," with the latter apparently discarded in the wake of the mismanagement of the 2003 severe acute respiratory syndrome (SARS) episode in favor of "people-centered development" (i.e., a simultaneous pursuit of economic betterment, environmental preservation, and social equality).<sup>271</sup>

Whatever analytical scheme one adopts, the external-internal linkages outlined above may exhibit different patterns during different policy regimes. Notably, both at the macro- and micro-level, but perhaps particularly the latter, the post-1978 domestic landscape

<sup>268</sup> See SUTTER, *supra* note 199, at 5-6.

<sup>269</sup> See generally KOO, *supra* note 206.

<sup>270</sup> See JINGLIAN WU, UNDERSTANDING AND INTERPRETING CHINESE ECONOMIC REFORM 31-89 (2005).

<sup>271</sup> See Kinglun Ngok, *Redefining Development in China: Toward a New Policy Paradigm for a New Century?*, in CHANGING GOVERNANCE AND PUBLIC POLICY IN EAST ASIA 49 (Ka Ho Mok & Ray Forrest eds., 2009).



sharply diverges from the preceding configuration.<sup>272</sup> For instance, the pre-1978 foreign policy process/structure was remarkably fluid, with key decisions often made by strategically placed individuals such as Chairman Mao Zedong and Premier Zhou Enlai.<sup>273</sup> It is now a far more complex and less flexible setting, occupied by multiple actors who are institutionally much more constrained by previous standards.<sup>274</sup> One authoritative account of the evolution of the foreign policy-national security establishment lays considerable emphasis on trends such as professionalization, corporate pluralization, decentralization, and globalization, and shows that they have had a tangible impact on strategic decisions and tactical maneuvers.<sup>275</sup>

The impulses running from the international level to the domestic one have been extensively explored, albeit largely within a unitary actor framework, by social scientists, including those with a quantitative orientation.<sup>276</sup> The impulses traveling in the opposite direction have been accorded less attention. Recently, there has been a rebalancing of research priorities and the internal side has come to the fore.<sup>277</sup> The effects of domestic factors such as the role of top leaders, cohesion-promoting stimuli emanating from the desire of all key prominent players to preserve the prevailing politico-economic order, crucial events like the SARS debacle, deeply entrenched organizational patterns, and firmly rooted institutional routines on China's foreign policy decisions are thus beginning to be systematically examined.<sup>278</sup>

Attempts have been made to apply this perspective in a methodical fashion to Chinese militarized conflicts, including those involving disputed territory, but selectively so.<sup>279</sup> This clearly is an analytical domain where there is substantial scope for further inquiry. An interesting issue is the relationship between increasing domestic heterogeneity, a salient feature of the present policy regime, and the ten-

<sup>272</sup> See generally Wang Gungwu, *China and the International Order: Some Historical Perspectives*, in CHINA AND THE NEW INTERNATIONAL ORDER, *supra* note 19, at 21.

<sup>273</sup> See David Bachman, *Structure and Process in the Making of Chinese Foreign Policy*, in CHINA AND THE WORLD: CHINESE FOREIGN POLICY FACES NEW MILLENNIUM CHALLENGES *supra* note 199, at 34, 37.

<sup>274</sup> See generally NING, *supra* note 199.

<sup>275</sup> See David M. Lampton, *supra* note 204, at 1, 4-31.

<sup>276</sup> See generally Alastair I. Johnston, *International Structure and Chinese Foreign Policy*, in CHINA AND THE WORLD: CHINESE FOREIGN POLICY FACES NEW MILLENNIUM CHALLENGES, *supra* note 199, at 55.

<sup>277</sup> See generally LAI, *supra* note 199.

<sup>278</sup> See generally *id.*

<sup>279</sup> See Johnston, *supra* note 149; Thomas J. Christensen, *Windows and War: Trend Analysis and Beijing's Use of Force*, in NEW DIRECTIONS IN THE STUDY OF CHINA'S FOREIGN POLICY 50 (Alastair I. Johnston & Robert S. Ross eds. 2006).

dency to either rely on peaceful means of conflict resolution or to resort to coercion. Proponents of the two-level game model provide insights in this regard that may be overly mechanistic and may possess insufficient explanatory power.

Two theoretical constructs may prove relevant in providing a foundation for fruitfully delving into that question. One portrays China's evolving policy regime as a loose network rather than a rigid hierarchy.<sup>280</sup> It draws on a psycho-cultural paradigm that places the social network (*guanxi*) at the heart of Chinese political order, demonstrating its pervasiveness and resilience in varying circumstances,<sup>281</sup> and posits that consensus, bargaining, networking, and face-saving<sup>282</sup> are the most steadfast characteristics of the policy process in the country.<sup>283</sup> It is argued that this social configuration has morphed into a mode of governance consisting of "webs and spiders."<sup>284</sup> The former are "the institutional attributes"<sup>285</sup> and the latter are "the actors."<sup>286</sup>

The second possibly useful formulation is the fragmented authoritarianism model that depicts China's one-party political system as a negotiated State composed of a wide array of vertical lines (*tiao*) and horizontal pieces (*kuai*).<sup>287</sup> Despite perceptions to the contrary, this is a highly complex institutional edifice that is assumed to often require a massive effort to attain a modicum of organizational cohesion and to shift the politico-administrative machinery forward.<sup>288</sup> Such structural intricacy, whether attributed to network-like properties or institutional fragmentation, may render recourse to force to settle border disputes an organizationally challenging proposition. It may also lead to an erosion of State capacity,<sup>289</sup> with conceivably similar policy consequences.

<sup>280</sup> See generally JOHN B. STARR, UNDERSTANDING CHINA: A GUIDE TO CHINA'S ECONOMY, HISTORY, AND POLITICAL STRUCTURE (3d ed. 2001); MING XIA, THE PEOPLE'S CONGRESSES AND GOVERNANCE IN CHINA: TOWARD A NETWORK MODE OF GOVERNANCE (2008).

<sup>281</sup> See generally LUCIAN W. PYE WITH MARY W. PYE, ASIAN POWER AND POLITICS: THE CULTURAL DIMENSIONS OF AUTHORITY (1985).

<sup>282</sup> STARR, *supra* note 280.

<sup>283</sup> See *id.*

<sup>284</sup> XIA, *supra* note 280, at 16.

<sup>285</sup> *Id.*

<sup>286</sup> *Id.*

<sup>287</sup> See LIEBERTHAL, *supra* note 19, at 186-87.

<sup>288</sup> See *id.* at 186-88.

<sup>289</sup> See generally Jonathan Schwartz, *The Impact of State Capacity on Enforcement of Environmental Policies: The Case of China*, 12 J. ENV'T & DEV. 50 (2003); Paul Collins & Hon S. Chan, *State Capacity Building in China: An Introduction*, 29 PUB. ADMIN. DEV. 1 (2009).

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Given this backdrop, it may not be productive to study Chinese decisions to resort to force over disputed territory as the sole product of deliberations by rational, forward-looking, expected utility-maximizing leaders whose strategy selection is a function of "the values they attach to alternative outcomes and the beliefs they hold regarding how their adversary will respond to their strategic decisions."<sup>290</sup> The notion that they clinically assess the costs and benefits associated with each alternative to obtain the largest net gain at an acceptable level of risk<sup>291</sup> is, strictly speaking, difficult to reconcile with the complex realities outlined above.

Greater insights may, in all likelihood, be generated by endeavoring to identify recurring regime-specific organizational patterns. In the intricate context of elaborate external-internal linkages, persistent behavioral trends may still be observed, but probably more consistent with a configuration akin to that outlined by the cybernetic satisficing model of decision-making whose proponents highlight the multiple constraints under which political leaders operate while searching for an acceptable outcome to an inter-State conflict over contested territory.<sup>292</sup> One way or another, the enormous complexity of China's strategic environment, at home and abroad, needs to be acknowledged.

## VI. CONCLUSION

Chinese border disputes are manifold and have deep historical roots. Some, but not all, have been resolved, yet not necessarily in a manner that might have been anticipated. Given the international prominence of the parties involved, notably China, the ramifications of actions taken and refrained from, the not-easy-to-read policy signals, and the elaborate strategic maneuvers, this is a subject that merits careful scholarly attention. Students of international law have responded to the challenge by exploring it broadly and consistently. The largely traditional orientation of those involved in the enterprise has left some inevitable gaps and social scientists have stepped into the breach.

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<sup>290</sup> Bruce B. de Mesquita & David Lalman, *Domestic Opposition and Foreign War*, 84 AM. POL. SCI. REV. 747, 750 (1990).

<sup>291</sup> See BRUCE BUENO DE MESQUITA, *THE WAR TRAP* (1981); Bruce B. de Mesquita, *The War Trap Revisited: A Revised Expected Utility Model*, 79 AM. POL. SCI. REV. 156 (1985).

<sup>292</sup> See generally Charles W. Ostrom, Jr. & Brian L. Job, *The President and the Political Use of Force*, 80 AM. POL. SCI. REV. 541 (1986). For additional insights, see also Alastair I. Johnston, *China and International Environmental Institutions: A Decision Rule Analysis*, in *ENERGIZING CHINA: RECONCILING ENVIRONMENTAL PROTECTION AND ECONOMIC GROWTH* 555 (Michael B. McElroy et al. eds., 1998).

However, the latter have followed a rather narrow path, without explicitly aiming at achieving a high degree of cross-field convergence. A set of well-defined hypotheses has been put to an empirical test, with partial success, but the gaps have not been significantly narrowed. Several potentially fruitful avenues of socio-legal investigation have been identified in this paper. To pursue them productively may require a more effective interdisciplinary collaboration and synthesis than witnessed thus far. Rather than operate in parallel, researchers in the international law field and social scientists may have to circumvent existing academic barriers and seek closer conceptual integration. The general lesson to be drawn here is that this is a theoretically challenging topic that should ideally be addressed within a comprehensive analytical framework instead of in a segmented fashion.

The juxtaposition of international legal approaches with social science strategies of empirical inquiry, in this particular context, leads to additional, more specific observations. First, despite the failure to achieve a meaningful convergence, the considerable and selectively overlapping insights generated independently by a small number of scholars belonging to two distinct academic disciplines serve as a poignant reminder of the methodological and theoretical promise of systematic case studies focused on clearly delineated policy issues, rather than overarching ones. Attempts to analytically enrich the field of international law by incorporating concepts from the social sciences into the prevailing body of thought have largely been confined to the far macro end of the macro-micro continuum, or to the question of what consistently drives States when they face legal constraints in the global arena. This may have resulted in the proliferation of narrow-based paradigms that are overly abstract and difficult to reconcile.

Such intellectual constructs are inevitably limited in scope because of the level at which they are formulated. To generalize about the behavior of States in a manner that is independent of space and time, researchers need to freely discard relevant information and build models that consist of insufficient variables and oversimplified relationships. These problems may be circumvented by endeavoring to develop and test middle-range theories, rather than grand ones, which often are the product of meta-theoretical exploration, or theorizing about theories, through studies that concentrate on concrete policy issues such as the management of territorial conflicts by different States in varying circumstances. The knowledge generated in the process may then be consolidated in a bottom-up fashion with a view to drawing broad inferences, without materially sacrificing fine detail and structural complexity. The strengths and weaknesses of the work surveyed here suggest that this is a desirable and realistic undertaking.

The ultimate goal of such an ongoing scientific project must be a full integration of legal and social science perspectives, which is a

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formidable challenge, but one that does not imply that proceeding in a stepwise manner is an unproductive strategy. Knowledge creation is a cumulative endeavor, often entailing the construction of two-level theories that have a structure consisting of a basic level (the core of the model) and a secondary level (a set of variables that are less closely related to the fundamental proposition).<sup>293</sup> This type of a framework may prove to be an effective analytical vehicle for scholars comprehensively versed in international law, yet not thoroughly familiar with social science reasoning, and vice versa.

Better interdisciplinary synthesis is both a conceptual and practical imperative. Proper understanding and sound management of international legal issues cannot be attained unless a genuinely multidimensional approach is adopted. A painstaking examination by the International Crisis Group (ICG) of the dynamics of recent maritime boundary disputes in the South China Sea, currently the subject of much media attention, lends support to this argument.<sup>294</sup> Competing claims by Northeast and Southeast Asian protagonists, and even outside powers (but with an Asia-Pacific identity), are involved in a dispute over islands located in an area suffused with historic symbolism, strategically valuable, and to all appearances richly endowed with vital resources.

China is at the heart of the unfolding conflict. The ISG employs an informal variant of the two-way theoretical scheme. Its implicit model revolves around economic, political, and social forces that shape Chinese behavior at the basic level. These include an array of organizations in both the public and private sector, factional groupings within such entities, the media, interest groups, and the grassroots community. Domestic pressures emanating from other countries engaged in the disputes are dissected in a similar fashion and the interaction among the protagonists, in terms of the tactics relied upon, is incorporated into the picture by also resorting to tools of behavioral inquiry. The practical side, focused on institutional coordination mechanisms, is principally viewed through a social science lens as well.

The international law element is not overlooked. Claims advanced by the countries involved—their forms, origins, and validity—are carefully scrutinized. This observation equally applies to the pursuit, actual and potential, of those claims via legal channels. This en-

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<sup>293</sup> See GARY GOERTZ, *SOCIAL SCIENCE CONCEPTS: A USER'S GUIDE* 240-41 (2006).

<sup>294</sup> See INTERNATIONAL CRISIS GROUP, *STIRRING UP THE SOUTH CHINA SEA (I)* (Apr. 23, 2012), <http://www.crisisgroup.org/en/regions/asia/north-east-asia/china/223-stirring-up-the-south-china-sea-i.aspx>; INTERNATIONAL CRISIS GROUP, *STIRRING UP THE SOUTH CHINA SEA (II): REGIONAL RESPONSES* (July 24, 2012), [www.crisisgroup.org/en/regions/asia/north-east-asia/china/229-stirring-up-the-south-china-sea-ii-regional-responses.aspx](http://www.crisisgroup.org/en/regions/asia/north-east-asia/china/229-stirring-up-the-south-china-sea-ii-regional-responses.aspx).

tire dimension of the analytical framework, however, is accorded less space and weight and may thus be deemed as a less crucial, albeit still relevant, ingredient of the conceptual structure. The corollary is that, as a vehicle for exploring and controlling conflict and cooperation among States, international law cannot perform its essential function without seeking inspiration from the social sciences. This is not a one-sided relationship as it is also apparent that behaviorally-oriented scholarship cannot single-handedly fulfill that role either.



