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# CHINA'S COMPLIANCE WITH INTERNATIONAL LAW: WHAT HAS BEEN LEARNED AND THE GAPS REMAINING

Roda Mushkat<sup>†</sup>

*Abstract:* Chinese willingness and ability to play by the rules in the global arena is a critical issue that has long loomed large on the academic and policy agendas. A substantial body of knowledge has been built in the past two decades, shedding considerable light on key dimensions of the question. However, there is an apparent need to fine-tune the approach pursued thus far by seeking greater methodological robustness and better theoretical elucidation. Data collection procedures must be anchored more firmly in principles of scientific inquiry, providing a solid empirical foundation for reliable and valid generalizations, and single-cause explanations need to be jettisoned in favor of multi-pronged approaches.

## I. INTRODUCTION

China's historical journey in the contemporary era has been remarkably tumultuous. In the political domain, the embryonic republican institutions, which had displaced crumbling imperial structures, had been violently supplanted by an authoritarian order of the hard variety, which in turn has been deliberately transformed into a soft one. In the economic realm, a highly decentralized and largely agrarian system, based on small-scale farming and commerce organized along essentially feudal lines, had been forcefully cast off in favor of a rigid top-down communist edifice designed to bring about rapid industrialization, which later has been mostly dismantled following an ideological shift toward gradual liberalization. In the international sphere, selective engagement, albeit colored by nationalist sentiment, had given way to withdrawal, which subsequently has metamorphosed into renewed engagement, even though restrained at times.<sup>1</sup>

This is a generalization and, consequently, an oversimplification. In fact, the historical phases have not been as uniform as implied above. Each has been characterized by zigzag, rather than linear, movement. The superficial impression may be that the Maoist period had featured a relentless pursuit of power by a single-minded revolutionary elite, unwavering collectivization, and ardent isolationism. However, this is not

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<sup>1</sup> See generally KENNETH G. LIEBERTHAL, *GOVERNING CHINA: FROM REVOLUTION THROUGH REFORM* (2d ed., W.W. Norton 2004); BARRY NAUGHTON, *THE CHINESE ECONOMY: TRANSITIONS AND GROWTH* (The MIT Press 2007).

an accurate portrayal of the strategic thrust at the time. Both policy direction and pace had varied considerably during that stage of the post-1949 regime adaptation. This complicates the picture and exacerbates, rather than diminishes, the sense of perpetual and unpredictable motion.<sup>2</sup>

Students of international relations have naturally focused on the descriptive, explanatory, and prescriptive facets of external cooperation and estrangement. They have been driven by a mixture of intellectual curiosity and practical considerations. The former has been inspired by growing interdependence, as distinct from mere interconnectedness, among States, and its increasing complexity,<sup>3</sup> coupled with the traditional Chinese propensity to resist the pull of the center and chart an autonomous course.<sup>4</sup> These two contradictory trends have been perceived as a source of actual and potential friction, and their problematic coexistence has stimulated academic interest and inquiry.<sup>5</sup>

China is thought to have been generally uncomfortable with the concept of interdependence because it has been at variance with the core values of independence, sovereignty, and self-reliance. The first (*duli*, or more fully, *duli zizhu*) is equated with preserving autonomy and maintaining initiative. The second (*zhuquan*) is associated with the exercise of exclusive power. The third (*zili gengsheng*) places strong emphasis on regeneration through one's own efforts, and possesses deep historical roots, as well as Buddhist underpinnings, which may extend as far as the Tang Dynasty.<sup>6</sup>

The practical concerns have stemmed from the resources—notably, economic base, military arsenal, and population—at the disposal of the country and the competence it has displayed in recent years in converting them into capabilities.<sup>7</sup> Since it has not consistently adopted a cooperative posture, and has at times acted in a defiant fashion, considerable research has been channeled into determining how to prevent the Chinese threat from materializing, with some analysts advocating positive inducements (engagement) and others favoring negative therapy (containment).<sup>8</sup>

These concerns have abated, but have not vanished altogether, as pragmatism has intensified and ideological fervor has receded in China. The evolution of its foreign policy behavior during the contemporary era has

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<sup>2</sup> See LIEBERTHAL, *supra* note 1, at 85-122; NAUGHTON, *supra* note 1, at 55-84.

<sup>3</sup> See ROBERT O. KEOHANE & JOSEPH S. NYE, *POWER AND INTERDEPENDENCE: WORLD POLITICS IN TRANSITION* (Little, Brown and Company 1977).

<sup>4</sup> See Michael Yahuda, *How Much Has China Learned about Interdependence*, in *CHINA RISING: NATIONALISM AND INTERDEPENDENCE* 7-13 (David S.G. Goodman & Gerald Segal eds., Routledge 1997).

<sup>5</sup> See *id.* at 7-13.

<sup>6</sup> See *id.* at 8.

<sup>7</sup> See *id.* at 6-7.

<sup>8</sup> See *id.* at 21-23.

come over time to be more confidently seen as featuring gradual, albeit uneven, progression from autarky, self-reliance, and dependence (an asymmetrical configuration, such as that prevailing in 1949-1958, the lean-to-one-side period characterized by a heavy reliance on the Soviet Union) toward a recognition, although not unambiguous, of the necessity and merits of (symmetrical) interdependence.<sup>9</sup> As this pattern has crystallized, the sense of unease has subsided and the attractions of engagement have begun to outweigh those of containment.<sup>10</sup>

Nothing symbolizes more poignantly the transition from a profoundly inward-looking orientation to an essentially outward-looking one than the commitment, even if mostly rhetorical at this juncture, to build a "harmonious world with an open mind."<sup>11</sup> It was enunciated by Chinese President Hu Jintao at the Asia-Pacific Economic Cooperation ("APEC") CEO Summit on November 17, 2005, and signaled, at the highest strategic level, a willingness to embrace multilateralism, practice it in a mutually-beneficial manner, accept cultural diversity openly and without prejudice, and make a tangible contribution to the process of enhancing the effectiveness of global governance mechanisms.<sup>12</sup>

However, this is not a clear-cut picture. Attention is thus commonly drawn to the word, or deed disjuncture, or the gap "between the ideals, principles, and orientations expressed in policy pronouncements and the actual conduct of foreign policy."<sup>13</sup> The implication is that China should be judged by the strategies that it pursues rather than those that it espouses.<sup>14</sup> The motives for the newfound enthusiasm for multilateralism have also been subject to critical scrutiny. It has been argued that it may reflect utilitarian considerations rather than a fundamental cognitive adjustment culminating in the formation of benign worldview, or that both influences may be at work.<sup>15</sup>

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<sup>9</sup> Samuel S. Kim, *New Directions & Old Puzzles in Chinese Foreign Policy*, in *CHINA AND THE WORLD: NEW DIRECTIONS IN CHINESE FOREIGN POLICY* 11-15 (Samuel S. Kim ed., Westview Press 2d ed. 1989).

<sup>10</sup> See Samuel S. Kim, *Chinese Foreign Policy in Theory and Practice*, in *CHINA AND THE WORLD: CHINESE FOREIGN POLICY FACES THE NEW MILLENNIUM* 3-9 (Samuel S. Kim ed., Westview Press 4th ed. 1998).

<sup>11</sup> "HARMONIOUS WORLD" AND CHINA'S NEW FOREIGN POLICY 1 (Sujian Guo & Jean-Marc F. Blanchard eds., Lexington Books 2008).

<sup>12</sup> See *id.* at 1-4.

<sup>13</sup> Kim, *supra* note 9, at 9.

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

<sup>15</sup> See generally *CHINA'S NEW DIPLOMACY: TACTICAL OR FUNDAMENTAL CHANGE* (Pauline Kerr, Stuart Harris & Qin Yaqing eds., Palgrave Macmillan 2008); *CHINA TURNS TO MULTILATERALISM: FOREIGN POLICY AND REGIONAL SECURITY* (Guogang Wu & Helen Lansdowne eds., Routledge 2008).

Similar themes pervade the literature on Chinese attitudes toward international law.<sup>16</sup> The focus there is primarily, but not exclusively, on

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<sup>16</sup> See generally 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, *supra* note 15, at 55-76; Jeremy Paltiel, *Peaceful Rise? Soft Power? Human Rights in China's New Multilateralism*, in CHINA TURNS TO MULTILATERALISM: FOREIGN POLICY AND REGIONAL SECURITY, *supra* note 15, at 198-221; BUENO DE MESQUITA, DAVID NEWMAN & ALVIN RABUSHKA, FORECASTING POLITICAL EVENTS: THE FUTURE OF HONG KONG (Yale Univ. Press 1985); Ann Kent, *China and the International Human Rights Regime: A Case Study of Multilateral Monitoring, 1989-1994*, 17 HUM. RTS. Q. 1-47 (1995) [hereinafter Kent, *China and the International Human Rights Regime*]; BUENO DE MESQUITA, DAVID NEWMAN & ALVIN RABUSHKA, RED FLAG OVER HONG KONG (Chatham House Publishers 1996); Alastair I. Johnston, *Learning versus Adaptation: Explaining Change in Chinese Arms Conflict Policy in the 1980s and 1990s*, 35 CHINA J. 27-61 (1996) [hereinafter Johnston, *Learning versus Adaptation*]; Xinxia Wang, *The Implementation of CITES in China*, in IMPROVING COMPLIANCE WITH INTERNATIONAL ENVIRONMENTAL LAW 204-10, (James Cameron, Jacob Weksman & Peter Roderik eds., Earthscan Publications 1996); Alastair I. Johnston, *China and International Environmental Institutions: A Decision Rule Analysis*, in ENERGIZING CHINA: RECONCILING ENVIRONMENTAL PROTECTION AND ECONOMIC GROWTH 555-99 (Michael B. McElroy, Chris P. Nielson & Peter Lydon eds., Harvard Univ. Press 1998) [hereinafter Johnston, *China and International Environmental Institutions*]; Michel Oksenberg & Elizabeth Economy, *China: Implementation under Economic and Market Reform*, in ENGAGING COUNTRIES: STRENGTHENING COMPLIANCE WITH INTERNATIONAL ENVIRONMENTAL ACCORDS 353-94 (Edith Brown Weiss & Harold K. Jacobson eds., The MIT Press 1998); ANN KENT, CHINA, THE UNITED NATIONS, AND HUMAN RIGHTS: THE LIMITS OF COMPLIANCE (Univ. of Pennsylvania Press 1999) [hereinafter KENT, CHINA, THE UNITED NATIONS, AND HUMAN RIGHTS]; Michael D. Swaine & Alastair I. Johnson, *China and Arms Control Institutions*, in CHINA JOINS THE WORLD: PROGRESS AND PROSPECTS 90-135 (Elizabeth Economy & Michel Oksenberg eds., Council on Foreign Relations Press 1999); Andrew J. Nathan, *China and the International Human Rights Regime*, in CHINA JOINS THE WORLD: PROGRESS AND PROSPECTS 136-60 (Elizabeth Economy & Michel Oksenberg eds., Council on Foreign Relations Press 1999); Margaret M. Pearson, *China's Integration into the International Trade and Investment Regime*, in CHINA JOINS THE WORLD: PROGRESS AND PROSPECTS 161-205 (Elizabeth Economy & Michel Oksenberg eds., Council on Foreign Relations Press 1999); Kunmin Zhang & Can Wang, *China's Sustainable Development Strategy*, in IMPLEMENTING INTERNATIONAL ENVIRONMENTAL LAW IN GERMANY AND CHINA 1-19 (Zhenghua Tao & Rüdiger Wolfrum eds., Kluwer Law International 2001); Ann Kent, *China's International Socialization: The Role of International Organizations*, 8 GLOBAL GOVERNANCE 343 (2002) [hereinafter Kent, *China's International Socialization*]; Paul Thiers, *Challenges for WTO Implementation: Lessons from China's Deep Integration into an International Trade Regime*, 11 J. CONTEMP. CHINA 413 (2002); Gerald Chan, *China's Compliance in Global Environmental Affairs*, 45 ASIA PAC. VIEWPOINT 69 (2004); Gerald Chan, *China and the WTO: The Theory and Practice of Compliance*, 4 INT'L REL. ASIA-PAC. 47 (2004); 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) [hereinafter Mushkat & Mushkat, *The Political Economy of International Legal Compliance*]; Gerald Chan, *Responsibility and Compliance in China's WTO Policy: Implications for Sino-US Relations*, in RETURN OF THE DRAGON: US-CHINA RELATIONS IN THE 21ST CENTURY 85-109 (Danny Pauu & Herbert Yee eds., Peter Lang 2005); Gerald Chan, *Globalisation Rules and China's Compliance*, 41 CHINA REP. 59 (2005); 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) [hereinafter Mushkat & Mushkat, *International Law and Game Theory*]; 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 Iain Johnston & Robert S. Ross eds., Stanford Univ. Press 2006); Margaret M. Pearson, *China in Geneva: Lessons from China's Early Years in the World Trade Organization*, in NEW DIRECTIONS IN THE STUDY OF CHINA'S FOREIGN POLICY 242-75 (Alastair Iain Johnston & Robert S. Ross eds., Stanford Univ. Press 2006); GERALD CHAN, CHINA'S COMPLIANCE IN GLOBAL AFFAIRS: TRADE, ARMS CONTROL, ENVIRONMENTAL PROTECTION, HUMAN RIGHTS (World Scientific 2006) [hereinafter CHAN, CHINA'S COMPLIANCE IN GLOBAL AFFAIRS]; Ann Kent, *Compliance v Cooperation: China and International Law*,

compliance. A trend featuring greater adherence to international rules is discerned.<sup>17</sup> This is an inevitable product of liberalization at home and integration into the global community. Yet, again, the pattern that emerges is not indicative of linear movement from autarky to interdependence.<sup>18</sup> The word versus deed dichotomy frequently surfaces and the issue of motives continues to loom large on the unfolding research agenda.<sup>19</sup>

The writings on China's international legal compliance are less voluminous than those on its international relations. They are also not as interconnected and systematic. There is no strong sense of collective endeavor leading to the gradual accumulation of knowledge. The theoretical and methodological underpinnings cannot be portrayed as robust. The corollary is that it may be desirable to pause and assess what has been achieved to date, particularly in descriptive and explanatory terms (policy prescription may be regarded as a separate issue), and where analytical resources should be directed for further progress to be realized. This is the purpose of the present paper.

## II. TAKING STOCK OF SCHOLARLY DEVELOPMENTS

### A. *Conceptual Architecture*

Researchers in the field of international law commonly proceed to examine State behavior in a normative context without addressing preliminary analytical issues routinely attended to by students of other social phenomena. This may reflect the fact that the predominantly inductive nature of legal inquiry fosters a shared understanding of the ideas explored

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13 AUSTL. INT'L L. J. 19 (2006) [hereinafter Kent, *Compliance v Cooperation*]; Gørild Heggelund, *China's Climate Change Policy: Domestic and International Developments*, 31(2) ASIAN PERSP. 155 (2007); Gørild Heggelund & Ellen Bruzelius Backer, *China and the UN Environmental Policy: Institutional Growth, Learning, and Implementation*, 7 INT'L ENVTL. AGREEMENTS: POL., L., & ECON. 415 (2007); ANN KENT, BEYOND COMPLIANCE: CHINA, INTERNATIONAL ORGANIZATIONS, AND GLOBAL SECURITY (Stanford Univ. Press 2007) [hereinafter KENT, BEYOND COMPLIANCE]; Miron Mushkat & Roda Mushkat, *The Political Economy of Sovereignty Revisited: A Re-examination of the Public Choice Model in Light of China's Accession to the World Trade Organization*, 7 ASPER REV. INT'L BUS. & TRADE L. 115 (2007) [hereinafter Mushkat & Mushkat, *The Political Economy of Sovereignty Revisited*]; Pitman B. Potter, *China and the International Legal System: Challenges of Participation*, 191 CHINA Q. 699 (2007); Hongyuan Yu, *International Institutions and Transformation of China's Decision Making on Climate Change*, 1 CHINESE J INT'L POL. 497 (2007); Gerald Chan, Pak K. Lee & Lai-Ha Chan, *China's Environmental Governance: The Domestic-International Nexus*, 29 THIRD WORLD Q. 291 (2008) [hereinafter Chan, Lee & Chan, *China's Environmental Governance*]; Roda Mushkat, *Dissecting International Compliance: An Unfinished Odyssey*, 38 DENV. J. INT'L L. & POL'Y 161 (2009) [hereinafter Mushkat, *Dissecting International Compliance*].

<sup>17</sup> See, e.g., CHAN, CHINA'S COMPLIANCE IN GLOBAL AFFAIRS, *supra* note 16.

<sup>18</sup> See, e.g., Yahuda, *supra* note 4, at 6-26.

<sup>19</sup> See, e.g., Kim, *supra* note 9, at 9.

and patterns observed. Certain established formalities strictly adhered to by practitioners of deductive logic may thus be dispensed with and the problem at hand may be investigated in an unencumbered fashion. However, in an intellectually fluid domain such as the study of international legal compliance,<sup>20</sup> it may be desirable to place a broad evaluation, such as undertaken here, within a systematic framework.

Rule conformity in the international arena, or lack thereof, is a variable—whether binary (yes versus no), ordered categorical (more or less, without specifying the degree), or continuous. Variables, in turn, are embedded in concepts. A careful dissection of the former must generally be preceded by a methodical scrutiny of the latter. This is a time-honored proposition reaffirmed decades ago by two social scientists who have stipulated that, prior to seeking to determine the presence or absence of some attribute (e.g., compliance), “or before we can rank objects or measure them in terms of some variable, we must form the concept of that variable.”<sup>21</sup> The implication is that a systematic framework for grappling with adherence to international law needs to rest on a solid conceptual foundation.

The linkage with variables may generate overly narrow connotations. In fact, concepts stretch far afield analytically in that they may be viewed as theories about ontology, or to state it more explicitly, as “theories about the fundamental constitutive elements of a phenomenon.”<sup>22</sup> By extension, they focus on “the core characteristics of a phenomenon and their interrelationships.”<sup>23</sup> Moreover, they possess explanatory power by virtue of identifying ontological features that “play a key role in casual . . . mechanisms.”<sup>24</sup> Finally, they have a realist dimension because their use “involves an empirical analysis of the phenomenon.”<sup>25</sup> It follows that concept is a “somewhat more abstract term than . . . variable, and it implies a richness, depth, and complexity that undermines any sense of oversimplification.”<sup>26</sup>

Concept formation is a multilevel and multidimensional process. The first, and analytically most basic, level entails broad yet compact specification of the concept (e.g., parliamentary democracy), as typically

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<sup>20</sup> See generally Mushkat, *Dissecting International Compliance*, *supra* note 16.

<sup>21</sup> Paul F. Lazarsfeld & Allen H. Barton, *Qualitative Measurement in the Social Sciences: Classification, Typologies, and Indices*, in *THE POLICY SCIENCES: RECENT DEVELOPMENTS IN SCOPE AND METHOD* 155-92, 155 (Daniel Lerner & Harold D. Lasswell eds., Stanford Univ. Press 1951).

<sup>22</sup> GARY GOERTZ, *SOCIAL SCIENCE CONCEPTS: A USER'S GUIDE* 5 (Princeton Univ. Press 2006).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> DAVID W. BRITT, *A CONCEPTUAL INTRODUCTION TO MODELING: QUALITATIVE AND QUANTITATIVE PERSPECTIVES* 21 (Lawrence Erlbaum Associates 1997).

seen in theoretical propositions.<sup>27</sup> At the secondary level, the constitutive dimensions of the concept are identified (e.g., for democracy, these may be universal franchise, competitive elections, civil rights, and so forth).<sup>28</sup> The third level consists of conversion into empirical indicators, or data-centered operationalization of the concept.<sup>29</sup>

The progression from one level to another is an open-ended and iterative, rather than top-down and linear, undertaking. Notably, the secondary-level constitutive dimensions are often combined, via addition or multiplication, to arrive at the basic- or first-level concept, although disaggregation involving movement in the opposite direction is not uncommon.<sup>30</sup> By the same token, the quest for empirical indicators is seldom implemented in one step but generally entails several rounds of meaningful adjustment characterized by intensive circular cross-level movement.<sup>31</sup>

Traditionally, the aggregation of secondary-level constitutive dimensions into a coherent basic- or first-level concept has been underpinned by the Aristotelian notion of necessary and sufficient conditions. In classical philosophical thought, concept definition requires the specification of the necessary and sufficient conditions for a phenomenon to fit into a designated category.<sup>32</sup> Each of these standards is a secondary dimension: “the structural glue that binds the secondary-level dimensions together to form the basic level is the mathematics of necessary and sufficient conditions.”<sup>33</sup>

Developments in cognitive psychology, logic, and philosophy have paved the way for another approach to concept construction, one focused on family resemblance, dispensing altogether with the necessary and sufficient conditions requirement.<sup>34</sup> According to this criterion, “[a]ll one needs is enough resemblance on secondary-level dimensions to be part of the family.”<sup>35</sup> The proposition reflects the realization that concepts may have no essential attributes but nevertheless exhibit likeness that justifies grouping under one rubric.<sup>36</sup> Thus, “[w]hether a certain animal is considered a ‘bird’

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<sup>27</sup> See GOERTZ, *supra* note 22, at 6.

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

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

<sup>30</sup> See *id.* at 7-9.

<sup>31</sup> See BRITT, *supra* note 26, at 14-15.

<sup>32</sup> See GOERTZ, *supra* note 22, at 7.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 29.



depends on how similar it is to prototypical birds like robins, sparrows, etc.”<sup>37</sup>

The difference between the two yardsticks may be highlighted by juxtaposing a definition of a militarized interstate dispute with that of an international crisis. The latter has been portrayed as a situation with three necessary and sufficient conditions deriving from a change in a State’s external or internal environment. All three are perceptions held by the highest level decision-makers of the actors concerned: 1) *a threat to basic values*, along with 2) the awareness of *finite time for response* to the external value threat, and 3) a *high probability of involvement in military hostilities*.<sup>38</sup>

By contrast, the term militarized interstate dispute refers to “united historical cases of conflict in which the threat, display, or use of military force short of war by one member State is explicitly directed towards the government, official representatives, official forces, property, or territory of another State.”<sup>39</sup> The principal dimension of this concept is the presence of a threat or resort to force short of war. Any potential militarized dispute is explored by assessing all participants. If any exhibits a level of hostility exceeding the threshold of a “serious threat to use military force,”<sup>40</sup> then that State and its target join the population of dispute actors.

The threat or recourse to force is not a necessary condition for qualifying as such. A target in a dispute may be classified as a party to the conflict even if it refrains from reciprocating threats or forcefully retaliating. The structural principle employed here is the maximum level of hostility displayed by any of the participants. Once any participant crosses the threat threshold, all targets of such action are included as dispute actors even if they do not surpass the threshold themselves. The concept of a militarized interstate dispute is thus an effective example of the family resemblance invocation of the maximum criterion for dyadic and multilateral relationships.

This illustrates that concepts are not carved in stone, or that they may be loosened up and tightened up, as circumstances warrant. In technical parlance, this is known as concept extension and intension.<sup>41</sup> Loosening up is accompanied by a decrease in intension and an increase in extension (i.e., the scope of the concept widens and it becomes more elastic). Tightening up

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<sup>37</sup> *Id.*

<sup>38</sup> See MICHAEL BRECHER, JONATHAN WILKENFELD & SHEILA MOSER, *CRISES IN THE TWENTIETH CENTURY: VOLUME I HANDBOOK OF INTERNATIONAL CRISES 3* (Pergamon Press 1988).

<sup>39</sup> David M. Jones, Stuart A. Bremer & J. David Singer, *Militarized Interstate Disputes, 1816-1992: Rationale, Coding Rules, and Empirical Patterns*, 15(2) *CONFLICT MGMT. & PEACE SCI.* 163, 168 (1996).

<sup>40</sup> *Id.* at 166.

<sup>41</sup> See GOERTZ, *supra* note 22, at 10.

has the opposite impact.<sup>42</sup> In the example above, the concept of militarized interstate dispute has greater extension, or lesser intension, than that of a crisis for two reasons that may be readily discerned.

First, to be categorized as a militarized dispute actor, a participant does not have to embark on any military initiative at all, whereas to qualify as a crisis actor three necessary conditions that are jointly sufficient need to be met. Second, the militarized dispute procedure takes into account merely the one dimension of level of hostility in establishing whether a crucial event (a militarized interstate dispute) has occurred, while the screening device relied upon in drawing a similar conclusion regarding another crucial event (a crisis) again stringently requires the satisfaction of three necessary and jointly sufficient conditions. This, in turn, raises the issue of where to draw the line between positive and negative cases (e.g., compliance versus non-compliance). On the one hand, if a concept is loosened up excessively, virtually any kind of behavior may be seen as consistent with rule conformity. On the other hand, if it is tightened up markedly, scarcely any type of conduct may be regarded as fulfilling the lofty standards of strict adherence to the law.<sup>43</sup> There is no magic formula for striking a balance between the two objectives, but a disciplined approach, coupled with a high degree of transparency, is called for.<sup>44</sup>

The notion of family resemblance suggests that concept formation involves grouping together phenomena that have properties in common (convergence) and separating ones that have different properties in common (divergence or differentiation).<sup>45</sup> A parallel process entails mapping phenomena with common properties onto dimensions ranging from low to high, in order to facilitate discriminations based on intensity, maturity, potency, and so forth.<sup>46</sup> Convergent or divergent and discriminant strategies feature in qualitative (i.e., with similar characteristics to those pursued in the legal field) as well as quantitative research.<sup>47</sup>

As pointed out earlier, concepts need to be matched with empirical indicators, necessitating the construction of concept-indicator models.<sup>48</sup> As they do not dwell in a theoretical vacuum, the relationships between concepts must also be specified.<sup>49</sup> The relevant dimensions in this respect

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<sup>42</sup> *See id.*

<sup>43</sup> *See id.* at 19-22.

<sup>44</sup> *See id.* at 177-210.

<sup>45</sup> *See* BRITT, *supra* note 26, at 22.

<sup>46</sup> *See id.*

<sup>47</sup> *See id.* at 22-24.

<sup>48</sup> *See id.* at 23.

<sup>49</sup> *See id.* at 50-74.

may include direction (one or both ways), linearity (or lack thereof), polarity (whether the connected concepts change in the same or opposite direction), strength (intensity of the linkage), symmetry (whether the polarities observed are contingent on the direction of the driving concept), and temporality (i.e., the relative time order of related concepts).<sup>50</sup> Connecting concepts is at the heart of the theory-building or model-construction process.<sup>51</sup>

### B. *Reviewing Insights Generated To Date*

Chinese compliance with international law has primarily been explored at the basic or first level, but without overlooking essential methodological issues. The term at which the scholarly effort has been directed—typically left unexplained in the emerging literature on the subject, presumably because its meaning was implicitly assumed to be widely shared—is formally defined in recent writings, albeit not necessarily in a uniform fashion. For example, in a paper selectively examining China's adherence to the provisions of the Sino-British Joint Declaration on the Question of Hong Kong, compliance is broadly equated with "a state of conformity or identity between an actor's behavior and a specified rule."<sup>52</sup>

It is also noted that some authors incorporate motives into their extended definitions by highlighting a distinction between compliance secured by negative-style tactics (e.g., fear of punishment) and more positive or softer attitudinal methods (e.g., inculcation of norms via explicit or tacit educational socialization).<sup>53</sup> This observation is qualified by remarking that the practice is not common and that the issue of causality is generally dealt with separately.<sup>54</sup> Another distinction underscored in the same paper is that between compliance and implementation, which is viewed as "the process of converting commitments into action and legal system effectiveness."<sup>55</sup> The reason lies in the fact that "rule effectiveness may persist in the face of low compliance and high compliance may coincide with ineffective standards."<sup>56</sup>

The differentiation between negative and positive tactics, and the act of conformity and implementation, constitutes a simple form of a divergent

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<sup>50</sup> *See id.*

<sup>51</sup> *See* BRITT, *supra* note 26, at 50-131; CHARLES A. LAVE & JAMES G. MARCH, *INTRODUCTION TO MODELS IN THE SOCIAL SCIENCES* (Ronald Taylor & Lois Lombardo eds., Univ. Press of America 1993) (1975).

<sup>52</sup> Mushkat, *Dissecting International Compliance*, *supra* note 16, at 162.

<sup>53</sup> *Id.* at 163.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

research strategy. Other useful distinctions have been put forth by students of Chinese international legal compliance. One is that between a State's globally responsible conduct and its adherence to international rules.<sup>57</sup> There is a clear linkage between the two notions which needs to be brought into focus through appropriate conceptual mapping. Nevertheless, each term possesses different connotations and centers on a distinct phenomenon.

An additional difference illuminatingly expounded in the current literature is that between compliance and cooperation. The former merits close attention, but it "is not the whole story. To gain a complete understanding of the dynamics of [S]tate integration into the international system, we must go [further]."<sup>58</sup> "Consequently, [i]n this book, . . . 'beyond compliance' is used as an analytical concept, designating the need to move beyond sole consideration of formal compliance (and non-compliance) in evaluating the integration of a [S]tate into the international system, to the broader political questions of cooperation (and non-cooperation)."<sup>59</sup>

Globally responsible States do not invariably respect international law and, if States do, this is not necessarily an affirmation of their propensity to consistently act in a manner conducive to global well-being.<sup>60</sup> By the same token, "cooperation may not always lead to compliance with rules, and compliance can occur without cooperation, for instance, as a consequence of the imposition of coercive sanctions."<sup>61</sup> However, such divergences should not be overstated. Thus, "if a [S]tate's compliance with an international norm or rule is associated with long-term cooperation, it is more likely to be a function of 'deep' compliance whereas, without cooperation, compliance may be merely instrumental."<sup>62</sup>

The attempts to place Chinese adherence to international law in a wider context apparently reflect residual concerns about the motives and quality of commitments of a former "rogue" State which is rapidly evolving into a global power, having already achieved a prominent regional status. The trend is also indicative of the growing maturity of scholarship in this field. Without loosening up the notion of compliance, researchers engage in *de facto* conceptual mapping, highlighting fundamental disjunctions and connections, and generating theoretical enlightenment in the process.

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<sup>57</sup> See generally CHAN, CHINA'S COMPLIANCE IN GLOBAL AFFAIRS, *supra* note 16, at 11-76.

<sup>58</sup> KENT, BEYOND COMPLIANCE, *supra* note 16, at 16.

<sup>59</sup> *Id.*

<sup>60</sup> See generally CHAN, CHINA'S COMPLIANCE IN GLOBAL AFFAIRS, *supra* note 16, at 11-76.

<sup>61</sup> KENT, BEYOND COMPLIANCE, *supra* note 16, at 18.

<sup>62</sup> *Id.*

As suggested earlier, these attempts are largely confined to the basic or first level of the analytical structure outlined in the present paper. Yet, there are exceptions to the norm. A notable example is the work of a group of researchers who boldly endeavored to predict, before the resumption of sovereignty over Hong Kong by China in 1997, the country's likely compliance with the terms of the Sino-British Joint Declaration. They concluded erroneously that this international legal instrument would be blatantly disregarded by Chinese policy makers, but a salient feature of their survey was a detailed specification of how exactly the flaunting of the rules might possibly manifest itself at the secondary level.<sup>63</sup>

This particular illustration may also serve the purpose of underscoring the increasing diversity of the writings on China's international legal compliance. Initially, for obvious reasons, there was a predominance of negative cases, in which non-observance of the law was given prominence.<sup>64</sup> Later, the focus has shifted to positive cases.<sup>65</sup> Interestingly, however, the grey zone lying between the two ends of the continuum has remained in the theoretical spotlight. For instance, the ambiguities characterizing Chinese attitudes toward the World Trade Organization have recently been dissected.<sup>66</sup>

Determining conceptual linkages, within an explanatory framework, has been the ultimate aim of case analysis—whether negative, positive, or neutral in its orientation. Various theoretical propositions have been formulated regarding the drivers (causes) of China's posture vis-à-vis international law (effect). At the risk of some oversimplification, it can be said that scholars drawn to the negative cases have been inclined to embrace Austinian-realist and Hobbesian-utilitarian perspectives, and that those gravitating toward the positive cases have tended to opt for Kantian-liberal and Benthamian-constructivist or cognitivist interpretative schemes.<sup>67</sup>

The weight of negative cases has been so substantial and the intellectual pull of the realist and (neoclassical) utilitarian traditions so

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<sup>63</sup> See DE MESQUITA, NEWMAN & RABUSHKA, FORECASTING POLITICAL EVENTS: THE FUTURE OF HONG KONG, *supra* note 16, at 137-41; DE MESQUITA, NEWMAN & RABUSHKA, RED FLAG OVER HONG KONG, *supra* note 16, at 101-19.

<sup>64</sup> See, e.g., Thiers, *supra* note 16.

<sup>65</sup> See generally KENT, CHINA, THE UNITED NATIONS, AND HUMAN RIGHTS, *supra* note 16; KENT, BEYOND COMPLIANCE, *supra* note 16; CHAN, CHINA'S COMPLIANCE IN GLOBAL AFFAIRS, *supra* note 16.

<sup>66</sup> See generally Mushkat & Mushkat, *The Political Economy of Sovereignty Revisited*, *supra* note 16.

<sup>67</sup> See generally Mushkat, *Dissecting International Compliance*, *supra* note 16; Miron Mushkat & Roda Mushkat, *The Political Economy of Hong Kong's "Open Skies" Legal Regime: An Empirical and Theoretical Exploration*, 10 SAN DIEGO INT'L L.J. 381 (2009); Roda Mushkat, *International Legal Compliance as a Rational Act: Theoretical Extensions and Chinese Realities*, 20(3) TRANSNAT'L L. & CONTEMP. PROBS (forthcoming 2011).

strong that these approaches have inevitably had a far more pronounced impact on model-building or theory-development geared toward methodically illuminating Chinese international legal compliance than any other analytical paradigms. Researchers who subscribe to such views portray China as a unitary actor bent on enhancing its national interest, mostly expressed in material (economic and military) terms, and maneuvering accordingly in all circumstances and on all fronts, including with respect to international law.

The assertion that, everywhere and at any juncture, Chinese external strategies are underpinned by the maxi or mini principle resonates with scholars who belong to this school of thought. That crisply-enunciated principle states that China's conduct of foreign affairs is inspired by a desire to maximize its rights and interests and to minimize its responsibilities and normative costs. The pursuit of this compact formula triggers an unscrupulous "quest to make the best of all possible worlds."<sup>68</sup> Symptoms of such a stance may be seen in neo-mercantilist international economic practices<sup>69</sup> and a tendency to free ride on the back of obligations assumed by others to constrain the production and/or deployment of particular arms while avoiding as much as possible similar undertakings.<sup>70</sup> In the military domain, the following strategic tenets are apparently adhered to:

- 1) Maximize material capabilities above all. State security rests in large measure on possessing the unilateral ability to use military force against any potential adversary. The constraints on this ability should therefore be as low as technologically and economically feasible.
- 2) Avoid high cost commitments. This follows from the first decision rule. High costs are defined as any commitment which prevents or closes off future options to improve relative military capabilities.
- 3) If avoidance incurs image costs, then try to avoid high cost commitments but join low cost, high profile activities. More specifically, pursue high profile unilateral commitments and pledges, and eschew high cost multilateral commitments. This decision rule maximizes image payoffs, and minimizes the

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<sup>68</sup> See Samuel S. Kim, *China In and Out of the Changing World*, 2 CTR. FOR INT'L STUD., WORLD ORD. STUD. PROGRAM OCCASIONAL PAPER, 1991, at 25-27.

<sup>69</sup> See ROBERT KLEINBERG, *CHINA'S "OPENING" TO THE OUTSIDE WORLD: THE EXPERIMENT WITH FOREIGN CAPITALISM* 254-68 (Westview Press 1990).

<sup>70</sup> See generally Alastair I. Johnston, *Learning versus Adaptation*, *supra* note 16.

chance of getting entrapped in a process over which China has less control or in which its bargaining power is diluted by an increased number of players.

4) If the opportunities to pursue material gains unilaterally are closed off, and China has little choice but to join multilateral negotiations, then it should try to build coalitions to weaken commitments. The reason is that although fear of opprobrium may make it pay to cooperate, the total payoff may still be higher if China does not have to make any costly multilateral commitments at all. Thus China should try to create an alternative coalition of [S]tates which provides it with sufficient back[-]patting benefits to counteract the opprobrium from the avoidance of substantive commitments.

5) If unilateral opportunities to maximize relative capabilities are closed off, and coalition building unsuccessful, then China should choose the least constraining options; try to prevent the toughening of any commitments that cannot be avoided (e.g., try to dilute compliance requirements).<sup>71</sup>

Determined asset accumulation is believed to extend beyond the material (i.e., economic and military) realm. Reputation, both abroad and at home, an intangible resource but a highly valuable one, is also thought to be a factor in the strategic decision calculus. International rules may thus be respected because Chinese policy makers may be eager to bolster the country's image, and astutely leverage it in a subsequent search for further tangible assets, or shore up their own domestic position by expediently conforming to external standards and engaging in visible forms of international cooperation.<sup>72</sup>

Such ruthless amassing of resources, both tangible and intangible, for State or individual benefit features prominently in realist and (neoclassical) utilitarian accounts of actor behavior in the global arena. Game theorists complicate this elegant analytical picture by introducing a distinction between collaboration and coordination games. The former has mixed implications for compliance with international law: while all participants are better off if they all conform, shirking may serve the interests of

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<sup>71</sup> Johnston, *China and International Environmental Institutions*, *supra* note 16, at 565.

<sup>72</sup> *Id.* at 559-64.

individual players.<sup>73</sup> It is posited that China is a consummate practitioner of collaboration strategies.

By contrast, coordination games reflect situations in which actors benefit from the existence of a collective rule. The classic example is the requirement to drive on the right (or left) side of the road, but not both. Once such a rule is established, the incentive to shirk markedly diminishes, or even vanishes altogether. In such circumstances, compliance may be regarded as an equilibrium outcome.<sup>74</sup> Recent academic work suggests that the Chinese foreign policy apparatus is not oblivious to the logic of this argument and may have internalized it, at least selectively.<sup>75</sup>

Unlike in some mathematical formulations and contrived laboratory settings, real-life games are typically, albeit not invariably, ongoing. Wherever this is the case, participants are likely to develop a heightened awareness of their interdependence and enter into collaborative arrangements.<sup>76</sup> This is the theme pervading the institutionalist literature on international legal compliance. The State continues to be perceived as a self-centered unitary player. Nevertheless, members of the global community cooperate, forge agreements, and often even construct or maintain elaborate regimes, both formal and informal. For them, case-specific rule conformity may be a rewarding long-term strategy consistent with the national (as well as individual ruler) interest.<sup>77</sup>

Researchers exploring China's compliance with international law seldom explicitly identify themselves with institutionalism or the new institutionalism. Yet, it would not be inappropriate to place a sizeable group in this category. The assumptions they embrace and the conclusions they reach are not dissimilar to those seen in institutionalist writings.<sup>78</sup> The

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<sup>73</sup> See generally Kal Raustiala, *Compliance and Effectiveness in International Regulatory Cooperation*, 32 CASE W. RES. J. INT'L L. 387, 400-01 (2000).

<sup>74</sup> *Id.*

<sup>75</sup> See generally CHAN, CHINA'S COMPLIANCE IN GLOBAL AFFAIRS, *supra* note 16; "HARMONIOUS WORLD" AND CHINA'S NEW FOREIGN POLICY, *supra* note 11; CHINA'S NEW DIPLOMACY: TACTICAL OR FUNDAMENTAL CHANGE, *supra* note 15; CHINA TURNS TO MULTILATERALISM: FOREIGN POLICY AND REGIONAL SECURITY, *supra* note 15; GERALD CHAN, CHINESE PERSPECTIVES ON INTERNATIONAL RELATIONS: A FRAMEWORK FOR ANALYSIS (St. Martin's Press 1999); WEIXING HU, GERALD CHAN & DAOJIONG ZHA, CHINA'S INTERNATIONAL RELATIONS IN THE 21ST CENTURY (Univ. Press of America 2000); CHINA AND THE NEW INTERNATIONAL ORDER (Gungwu Wang & Yongnian Zheng eds., Routledge 2008); KAI HE, INSTITUTIONAL BALANCING IN THE ASIA PACIFIC: ECONOMIC INTERDEPENDENCE AND CHINA'S RISE (Routledge 2009).

<sup>76</sup> See Raustiala, *supra* note 73, at 401-02.

<sup>77</sup> See Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE L.J. 1935, 1947-1952 (2002).

<sup>78</sup> See generally CHAN, *supra* note 75; HU, CHAN & ZHA, *supra* note 75; CHAN, CHINA'S COMPLIANCE IN GLOBAL AFFAIRS, *supra* note 16; Guo and Blanchard, *supra* note 11; Kerr, Harris & Qin, *supra* note 15; Wang and Zheng, *supra* note 75; Wu and Lansdowne, *supra* note 15; HE, *supra* note 75.



notion of a regime, participation in such structures, and adherence to their rules is also beginning to be earnestly examined.<sup>79</sup> It would be premature to suggest that this loosely-defined position is replacing realism and (neoclassical) utilitarianism as the dominant paradigm in the systematic study of Chinese rule conformity in the global arena, but there can be little doubt that it is an influential perspective, whatever its precise impact.

Constructivism or cognitivism is another approach, with deep roots in this particular context, which has been recycled in a specific fashion by scholars dissecting China's international legal compliance and is displaying considerable staying power. It has anthropological underpinnings because of the emphasis accorded to cultural mechanisms as drivers (causes) of State actions (effects). Analysts who employ this conceptual vehicle contend that, in addressing macro-level phenomena, researchers should "start with the recognition that nations like individuals . . . develop visions, dreams and prejudices about themselves and the world that shape their intentions . . . [which makes it necessary] to consider the mind-sets of leaders and people."<sup>80</sup>

A book, which has attracted much academic attention, aptly titled *Perceptions and Misperceptions in International Politics*,<sup>81</sup> has provided an impetus to the application of this framework to a number of pivotal Chinese foreign policy issues. A leading sinologist has thus invoked image structures and perception gaps to shed light on the posture vis-à-vis the United States.<sup>82</sup> Others have resorted to such concepts to explain attitudes toward and relations with Japan<sup>83</sup> and the Soviet Union.<sup>84</sup> These theoretical efforts have complemented the strand of academic literature based on realist and (neoclassical) utilitarian postulates.

Indeed, sinologists practiced constructivism or cognitivism long before the term was formally incorporated into the international politics lexicon. The psychological significance of perceived Chinese ascendancy as

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<sup>79</sup> See generally CHAN, CHINA'S COMPLIANCE IN GLOBAL AFFAIRS, *supra* note 16; Mushkat & Mushkat, *supra* note 67; Roda Mushkat, *Compliance with International Environmental Regimes: Chinese Lessons*, 34 WM. & MARY ENVTL. POL'Y. REV. 493; Roda Mushkat, *The Development of Environmental Governance Regimes: A Chinese-Inspired Reconstruction*, WASH. & LEE J. ENERGY, CLIMATE & ENV'T (forthcoming 2011).

<sup>80</sup> Akira Iriye, *Culture*, 77 J. AM. HIST. 99, 100-01 (1990).

<sup>81</sup> See generally ROBERT JERVIS, PERCEPTION AND MISPERCEPTION IN INTERNATIONAL POLITICS (Princeton Univ. Press 1976); ROBERT JERVIS, THE LOGIC OF IMAGES IN INTERNATIONAL RELATIONS (Princeton Univ. Press 1970).

<sup>82</sup> See generally DAVID SHAMBAUGH, BEAUTIFUL IMPERIALIST: CHINA PERCEIVES AMERICA, 1972-1990 (Princeton Univ. Press 1991).

<sup>83</sup> See generally ALLEN S. WHITING, CHINA EYES JAPAN (Univ. of Cal. Press, 1989).

<sup>84</sup> See generally GILBERT ROZEMAN, THE CHINESE DEBATE ABOUT SOVIET SOCIALISM, 1978-1985 (Princeton Univ. Press, 1987).

a Middle Kingdom (*Zhongguo*) was consistently emphasized and it was noted that, symbolically, “it is a measure of a world in disequilibrium if China does not have a place of respect commensurate with its size and history.”<sup>85</sup> The impact of this strategic configuration came sharply to the surface when an empirically-oriented social scientist observed “the almost universally expressed desire of Chinese to economically, culturally and politically resume their ‘rightful place’ . . . in the region, and ultimately in the world . . . a vision shared across generations, walks of life, and system levels.”<sup>86</sup>

Despite its perceived pre-eminence as a Middle Kingdom, China had also been subject to adverse cyclical patterns, characterized by dynastic falls during which the Mandate of Heaven was periodically withdrawn, but eventually followed by another reacceleration in momentum. The Century of Humiliation (*bainain guochi*), in the aftermath of the defeat in the First Opium War (1839-1842), which lasted until the end of the Second World War, was the most painful such episode, arousing a sense of “humiliation, impotence, and rage felt by China’s elites in the face of colonial representation of their country and their people. This humiliation knew no political boundaries,”<sup>87</sup> deeply affecting the stance toward the outside world and the conduct of foreign policy.<sup>88</sup>

The vulnerabilities that came to the fore during the Century of Humiliation notwithstanding, China continued to be perceived as potentially powerful, and hence threatening, by virtue of its large population, physical size, and vast resources. Even as the country was laid prostrate and suffered foreign subjugation in the wake of the Boxer Uprising (1898-1901), “Westerners like Robert Hart were nevertheless warning from Beijing in 1900 that the future will have a ‘Yellow’ question—perhaps a ‘yellow peril’—to deal with, [and that this prognosis] is as certain as the [assertion that the] sun will shine tomorrow.”<sup>89</sup> Again, that sentiment had profoundly influenced cognitions on both sides, turning into the behavioral equivalent of a self-fulfilling prophecy.<sup>90</sup>

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<sup>85</sup> Gungwu Wang, *China and Southeast Asia: Myths, Threats, and Culture*, 13 E. ASIAN INST. OCCASIONAL PAPER, 1999, at 46.

<sup>86</sup> DAVID M. LAMPTON, *SAME BED, DIFFERENT DREAMS: MANAGING U.S.-CHINA RELATIONS, 1989-2000* xi (Univ. of Cal.Press, 2001).

<sup>87</sup> John Fitzgerald, *Chinese, Dogs, and the State that Stands on Two Legs*, 29(4) BULL. CONCERNED ASIAN SCHOLARS 54, 61 (1997).

<sup>88</sup> See DAVID SCOTT, *CHINA STANDS UP: THE PRC AND THE INTERNATIONAL SYSTEM* 11-14 (Routledge 2007).

<sup>89</sup> *Id.* at 15.

<sup>90</sup> See *id.* at 15-19.

Realists and (neoclassical) utilitarians do not dismiss the significance of cultural constructs. However, they grapple with the notion on their own terms. The picture painted in their work is one of a strategic tradition entirely consistent with the premises underlying the *realpolitik* paradigm.<sup>91</sup> It is even argued that the psychological burden wrought by the Century of Humiliation has opportunistically been exploited as a strategic weapon in a quest for national advantage.<sup>92</sup> For instance: “because of their perception of the country as a victim of historical wrongs, China’s leaders have developed what might be called a diplomatic culture of entitlement, as may be seen from their expectation of favorable treatment from Japan by invoking war-time guilt or from the United States by demanding generosity as of right.”<sup>93</sup>

Such revisionist assessments have not prevented implicit, and at times explicit, constructivism or cognitivism from remaining an integral part of the repertoire of students of Chinese foreign policy. Indeed, in the field of compliance with international law, some of the most detailed and theoretically coherent exploration has been undertaken in a manner sympathetic to this analytical perspective.<sup>94</sup> That scholarly endeavor has yielded conceptual insights dovetailing with transnational legal theory, a school of thought that highlights the impact of State participation in global processes (with special reference to those embedded in international law), which may be viewed as forms of direct and indirect socialization (causes), on attitudes (or images) that shape strategic responses (effects).<sup>95</sup>

The propagation of international norms is believed to materialize through a number of channels and involve several socialization agents emitting mutually-reinforcing impulses such as bureaucratic compliance procedures, governmental norm sponsors, interpretive communities and law-declaring forums, issue linkages, transnational issue networks, and transnational entrepreneurs.<sup>96</sup> Of these, the first and the second are thought

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<sup>91</sup> See generally ALASTAIR I. JOHNSTON, *CULTURAL REALISM: STRATEGIC CULTURE AND GRAND STRATEGY IN CHINESE HISTORY* (Princeton Univ. Press 1995).

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

<sup>93</sup> Yahuda, *supra* note 4, at 15.

<sup>94</sup> See generally Kent, *China and the International Human Rights Regime*, *supra* note 16; KENT, *BEYOND COMPLIANCE*, *supra* note 16; KENT, *CHINA, THE UNITED NATIONS, AND HUMAN RIGHTS*, *supra* note 16; Kent, *China’s International Socialization*, *supra* note 16; Kent, *Compliance v Cooperation*, *supra* note 16; Kent, *China’s Changing Attitude to the Norms of International Law and its Global Impact*, *supra* note 16.

<sup>95</sup> See Jeffrey T. Checkel, *Why Comply? Social Learning and European Identity Change*, 55 INT’L ORG. 553, 553-588 (2001); Harold H. Koh, *Why Nations Obey International Law?*, 106 YALE L.J. 2599, 2599-2659 (1997); Harold H. Koh, Professor, University of Nebraska, *Transnational Legal Process*, Address at the 1994 Roscoe Pound Lecture, in 75 NEBRASKA L. REV. 181, 181-207 (1997).

<sup>96</sup> See KENT, *BEYOND COMPLIANCE*, *supra* note 16, at 9.

to already exert influence in China,<sup>97</sup> an evaluation that perhaps understates the importance of the role played by agents not formally associated with the State (e.g., non-governmental organizations in the environmental domain).<sup>98</sup>

Persuasion theory, borrowed from social psychology, is invoked to suggest that previously peripheral (or not closely integrated) actors like the Chinese may be particularly amenable to international socialization because of their entry into relatively unfamiliar segments of the global arena and generally fresh mind (i.e., the presence of few cognitive priors or prior beliefs).<sup>99</sup> That said, it does not necessarily follow that the learning process invariably culminates in the full and unqualified internalization of international norms.<sup>100</sup> In fact, instrumental adoption, motivated by tactical considerations, may take place.<sup>101</sup>

This approach is viewed by its proponents not just as another component of a multi-pronged strategy to gain better understanding of China's international legal behavior but as the most appropriate analytical tool for addressing the task. It is said to be conceptually superior to the perspectives examined earlier (realism, utilitarianism, and new institutionalism) and others that have been accorded less attention by researchers in this domain (e.g., rule-legitimacy theory, internationalism, or rule-identity theory and managerialism).<sup>102</sup> Whether or not the claim is justified, it attests to the inherent intellectual attractions of sociological-type explanations which venture beyond the narrow confines of economic-like logic while remaining on firm empirical ground.

### III. TARGETING AREAS THAT MERIT ATTENTION

#### A. *Pinpointing Missing Empirical Components*

The literature surveyed in the preceding section goes a considerable way toward providing a solid foundation for obtaining insight into Chinese international legal compliance and systematically exploring the subject.<sup>103</sup> A substantial amount of information has been generated, predominantly qualitative in nature, but some of it in quantitative form. A large number of case studies have been conducted over a long period of time and in different

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<sup>97</sup> See *id.* at 10.

<sup>98</sup> See CHAN, CHINA'S COMPLIANCE IN GLOBAL AFFAIRS, *supra* note 16, at 158-62.

<sup>99</sup> See KENT, BEYOND COMPLIANCE, *supra* note 16, at 11.

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

<sup>101</sup> See *id.*

<sup>102</sup> See *id.* at 13-16.

<sup>103</sup> See *supra* note 16.

circumstances.<sup>104</sup> Most have been of the stand-alone variety, yet there have been notable exceptions to the rule. Virtually every relevant sphere of China's international activity has come under scrutiny.

Scholarly examination has often been inspired by descriptive concerns, or a desire to merely establish whether compliance occurs. However, the focus has increasingly shifted toward scientific-style analytical probing. Key terms have carefully been defined, conceptual relationships have been dissected, and the issue of empirical manifestation (i.e., indicators) has been at least tentatively considered. The explanations offered have at times been expressed in a fashion suited for problem-centered policy discourse, rather than academic learning, but the theoretical dimension has become more salient.

Nevertheless, there is room for broadening the scope of inquiry and placing it on a firmer analytical footing. One aspect of the research process that leaves something to be desired is the rather inadequate methodological basis underpinning it. As pointed out above, the question of concept-indicator connection has not been completely overlooked. Be that as it may, the issue has not been dealt with comprehensively and effectively. As matters stand, it continues for the most part to be consigned to the investigative periphery and is touched upon in passing, without a genuine effort to construct empirical measures and apply them.

One notable exception to the norm has been the attempt to gauge China's exercise of global responsibility and adherence to international law by resorting to data-derived proxies, even if rather crude in nature. Indicators such as membership in international organizations, number of headquarters and secretariats of such entities in the country, and volume of treaties acceded to have been employed in order to determine the level of and changes in overall rule conformity.<sup>105</sup> Such measures are very rough indeed (e.g., are all treaties equally important?), but in the absence of quantitative indicators or equivalent one, are entirely dependent on subjective judgment of those performing the assessment.

This is a domain where scholarship focused on the Chinese situation has simply not kept pace with developments elsewhere. Compliance with human rights obligations of States is a case in point. This has been a primary area of concern with respect to China. It is an analytically, as well as politically, challenging subject to come to grips with. However, precisely for that reason, it is one where close attention has long been paid to the need for reliable empirical measures and where the efforts made on this front have

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<sup>104</sup> See *id.*

<sup>105</sup> See CHAN, CHINA'S COMPLIANCE IN GLOBAL AFFAIRS, *supra* note 16, at 46-57, 70-76.

borne some fruit, although the process may have not yet reached a mature stage.<sup>106</sup>

Some of the indicators in question focus on developmental progress rather than adherence to human rights requirements *per se*. Such empirical measures generate useful information for policy and related purposes, but they do not hold entities whose behavior is monitored accountable to international legal standards (i.e., they merely “examine the state of the situation and not the right to that situation”).<sup>107</sup> By the same token, they seldom succeed in taking “discrimination into account and provide only a partial picture of the human rights situation in a [S]tate.”<sup>108</sup>

Nevertheless, development indicators are not irrelevant in this context. Importantly, such empirical measures may overlap with their human rights counterparts (e.g., funds devoted to protecting human rights).<sup>109</sup> Moreover, it is possible to disaggregate development indicators to a point whereby they reflect differential access to resources by distinct groups or the treatment of specific segments of the population. If performed in a satisfactory fashion, the exercise may yield information that pertains to social discrimination and may thus support evaluation of a human rights regime.<sup>110</sup>

Development indicators are produced on a large scale by various arms of the Chinese government and other parties. Empirical measures centering on human rights directly are more difficult to obtain, but are neither so scarce nor so complicated to generate independently that omitting them altogether may legitimately be considered as a practical necessity. There are human rights indicators that emphasize State violations and those that gauge the extent to which rights-holders enjoy their rights; event-based indicators; measures derived from socio-economic data; indicators capturing household perceptions; measures reflecting expert judgments; civil and political rights indicators; measures of economic, social, and cultural rights; structural indicators; process measures; outcome indicators; and benchmarks.<sup>111</sup> Students of China's compliance with international law have made very limited headway in confronting this facet of the research enterprise.

Empirical measures, even when they do not involve elaborate quantitative manipulation, are not an integral part of the craft of legal

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<sup>106</sup> See generally Gauthier de Beco, *Human Rights Indicators for Assessing State Compliance with International Human Rights*, 77 *NORDIC J. INT'L L.* 23 (2008); AnnJanette Rosga & Margaret L. Satterthwaite, *The Trust in Indicators: Measuring Human Rights*, 27 *BERKELEY J. INT'L L.* 253 (2009).

<sup>107</sup> De Beco, *supra* note 106, at 28.

<sup>108</sup> *Id.* at 29.

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

<sup>110</sup> See *id.*

<sup>111</sup> See *id.* at 31-48.

scholarship. Case studies, a time-tested qualitative method, are normally preferred and can be said to have served the profession more than adequately. However, unless employed carefully and in a structured manner, this technique may be characterized by a high degree of fuzziness.<sup>112</sup> Unless applicable standards of scientific inquiry are observed, questions of reliability and validity may be raised, irrespective of how conscientious the endeavor and how meticulous the dissection of the material.<sup>113</sup>

The problem must to be confronted in descriptive case studies, especially if they entail the construction of typologies, whether deductive or inductive,<sup>114</sup> but it may prove particularly challenging in explanatory research. In such work, where theories are either built or tested,<sup>115</sup> the attribution of causality looms large in the undertaking and this may necessitate the imposition of more stringent criteria for demonstrating the robustness of findings.<sup>116</sup> Conceptual linkages need to be delineated with a measure of precision and in methodologically appropriate terms (i.e., direction, linearity, polarity, strength, symmetry, temporality, and so forth).<sup>117</sup> The connection between theoretical generalizations and supporting evidence should be made as tight as realistically possible.<sup>118</sup>

These issues are easier to address if prospective design (whereby changes are tracked forward over time)<sup>119</sup> is relied upon than when retrospective format (whereby data are collected after the fact)<sup>120</sup> is resorted to, which is typically the pattern in legal studies, but they cannot be overlooked in any circumstances. However demanding such requirements are, the difficulties they pose can be at least partly circumvented by following the steps involved in the process of analytic induction.<sup>121</sup> Tools

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<sup>112</sup> See CHARLES C. RAGIN, *FUZZY-SET SOCIAL SCIENCE* 44-49, 53-61, 122-33, 141-44, 182-89 (Univ. of Chicago Press 2000).

<sup>113</sup> See DAVID DE VAUS, *RESEARCH DESIGN IN SOCIAL RESEARCH* 233-48 (Sage Publications 2001).

<sup>114</sup> See *id.* at 224-26.

<sup>115</sup> "The difference between the theory testing and theory building approaches is that in the former we *begin* with a set of quite specific propositions and then see if these work in real world situations. In the theory building model we *begin* with only a question and perhaps a basic proposition, look at real cases and *end up* with a more specific theory or set of propositions *as a result* of examining actual cases." *Id.* at 223.

<sup>116</sup> See *id.* at 221-24.

<sup>117</sup> See BRITT, *supra* note 26, at 50-74.

<sup>118</sup> See DE VAUS, *supra* note 113, at 221-24.

<sup>119</sup> See *id.* at 228.

<sup>120</sup> See *id.* at 227.

<sup>121</sup> Specify what it is you are seeking to explain (the dependent variable); formulate an initial and provisional possible explanation of the phenomenon you are seeking to explain (your theory); conduct a study of a case selected to test your theory; review (and revise if necessary) your provisional theory in the light of the case or exclude the case as inappropriate; conduct further case studies to test the (revised) proposition and reformulate the proposition as required; continue with case studies (including looking for

such as pattern matching, developed specially to enhance the effectiveness of qualitative inquiry,<sup>122</sup> and employed successfully by sinologists in the international relations field,<sup>123</sup> may further bolster the conceptual potential of case studies.<sup>124</sup>

### B. *Identifying Missing Explanatory Ingredients*

China's compliance with international law is a subject of great academic and practical interest, which is attracting growing scholarly attention. Theoretical sophistication is not lacking, but the methodological foundations cannot be portrayed as sturdy. Retrospective case studies are conducted liberally with few, if any, of the relevant scientific standards adhered to. Embracing the findings generated unambiguously may be a risky proposition as there is no sufficient transparency and there is a distinct possibility that the same material, if dissected by another researcher, might be subject to a completely different interpretation, which is scarcely a trivial matter.

The problems to which this gives rise vary from one school of thought to another. The realist and (neoclassical) utilitarian fields are so crowded that one could argue that the conclusions offered by such a large number of scholars have a degree of consensual validity.<sup>125</sup> The same argument may be extended, albeit less emphatically, to the institutionalist camp. For those who subscribe to transnational legal process theory, the challenge is more formidable because the size of the group is rather modest. Here, the entire

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cases that might disprove the proposition) and revise the proposition until you achieve a causal proposition that accounts for all cases. See NORMAN K. DENZIN, *THE RESEARCH ACT: A THEORETICAL INTRODUCTION TO SOCIOLOGICAL METHODS* 192 (Aldine Publishing 1970).

<sup>122</sup> See DE VAUS, *supra* note 113, at 253-60.

<sup>123</sup> See HE, *supra* note 75, at 161-64.

<sup>124</sup> Literal and theoretical replication may serve a similar purpose. It consists of two interrelated questions and corresponding steps: Does the full set of outcome characteristics occur if the causal factor is present? If so we have confirmation of our theory . . . We would then find another case where the presumed causal factor is present and see whether the full set of outcomes is also present in that case. If so we have a literal replication of the previous case and further confirmation of our theory . . . Do we get cases where the presumed causal factor is present but only *some* of the predicted outcome characteristics are present? If we find such cases then we have failed to replicate the theory and we would either reject or modify the theory. If we could find *no* cases where the cause was present and the full set of outcomes was *not* present then we have a theoretical replication . . . We would then seek to find a case in which the presumed causal factor is *not* present. That is, we should not find cases where we have the effects without our presumed cause. If we *fail* to find any such cases we have achieved further theoretical replication. See DE VAUS, *supra* note 113, at 262-63.

<sup>125</sup> An indicator, or observation, possesses consensual validity when numerous persons in different situations accept it as a good measure of a concept or description of the underlying phenomenon. See KENNETH J. MEIER, JEFFREY L. BRUDNEY & JOHN BOHTE, *APPLIED STATISTICS FOR PUBLIC AND NONPROFIT ADMINISTRATION* 17 (Thomson Wadworth 7th ed. 2009).



analytical edifice rests on one comprehensive survey<sup>126</sup> and a handful of narrower investigations.<sup>127</sup>

The picture painted cannot be unequivocally read in the way suggested by the authors because of the looseness of the conceptual framework. Is rule conformity indeed the product of international participation or socialization, or is it the result of some other variable? If the latter is the case, what is regarded here as the driving force may in fact be the outcome of different influences. Even if international participation or socialization is part of the causal chain, it may be merely one element and not necessarily the most crucial. And, if several variables are at work, what is the structure of the complex model?<sup>128</sup>

Nor should increasing theoretical sophistication be mistaken for comprehensiveness. The most glaring gap is the virtual absence of the domestic scene from explorations of Chinese conformity to international rules. The intricate home front is treated as a metaphorical black box. The sole notable exception to the norm is the previously mentioned attempt to predict compliance with the provisions of the Sino-British Joint Declaration. While it suffered from other flaws,<sup>129</sup> the authors nevertheless put forward a model firmly rooted in group theory and went to considerable analytical and empirical lengths in their effort to determine how various domestic interests might impinge on policies vis-à-vis Hong Kong.<sup>130</sup>

This is a puzzling configuration as the unitary actor assumption, while conceptually convenient for explanatory purposes, is at variance with the substantial body of writings on decision making in China. In the early days of communist rule, there may have been a tendency to highlight the cohesion of the ruling elite (e.g., Mao-in-command formulation), but this perspective quickly gave way to approaches emphasizing factional disputes, ideological strains, institutional fragmentation, intra-elite conflict, power struggles, and so forth.<sup>131</sup> Rendering such forces theoretically subservient to more concentrated (as distinct from diffuse) influences (e.g., international participation or socialization), whether abroad or at home, simply flies in the face of widely available evidence on Chinese strategy making and implementation.

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<sup>126</sup> See KENT, BEYOND COMPLIANCE, *supra* note 16.

<sup>127</sup> See Carlson, *supra* note 16; Yu, *supra* note 16.

<sup>128</sup> See BRITT, *supra* note 26, at 75-131.

<sup>129</sup> See Mushkat & Mushkat, *The Political Economy of International Legal Compliance*, *supra* note 16; Mushkat & Mushkat, *International Law and Game Theory*, *supra* note 16.

<sup>130</sup> See DE MESQUITA, NEWMAN & RABUSHKA, FORECASTING POLITICAL EVENTS, *supra* note 16; DE MESQUITA, NEWMAN & RABUSHKA, RED FLAG OVER HONG KONG, *supra* note 16.

<sup>131</sup> See JIANRONG HUANG, THE APPLICABILITY OF POLICY-MAKING THEORIES IN POST-MAO CHINA 59-103 (Ashgate 1999).

Interestingly, domestic interests feature prominently in a strand of the rationalist literature on compliance with international law (to which realism and utilitarianism belong) which dispenses with the unitary actor framework. It is known as institutional liberalism, or alternatively liberal institutionalism, and its proponents disaggregate the State and bring into focus internal political processes. They contend that the home environment is “much more complex than realists and institutionalists acknowledge. States are not unitary, but rather are the sum of many different parts. Understanding those parts—the political institutions, interest groups, and [S]tate actors—is essential to fully understanding [S]tate action on the world stage.”<sup>132</sup>

The domestic-international nexus has not been merely identified as worthy of attention but has been examined in an analytically rigorous fashion.<sup>133</sup> Scholars in the field of international relations whose expertise lies in China's external relations have not been oblivious to these developments. Some have approached the subject broadly,<sup>134</sup> but others have addressed specific hypotheses found in conceptually advanced writings on rule conformity in the global arena.<sup>135</sup> However, thus far, theoreticians concerned with Chinese international legal compliance have not moved decisively to close the gap.

Another persistent and problematic characteristic of their work has been the single-factor structure of the explanations provided. Sometimes it is desirable to unambiguously lean in one direction or another and enhance clarity by constructing a model around its crucial attributes. In certain circumstances, this may also constitute the most effective way of capturing the essence of real phenomena, however intricate. Nevertheless, the narrow path continually trodden by international law researchers on that front again flies in the face of evidence suggesting that a broader, multi-pronged strategy may be called for.

It is interesting to contrast this pattern with the diverse route followed by economists and political scientists in exploring closely related topics such as China's internationalization and multilateral diplomacy. In the case of the former process, multiple explanations have been offered stressing the role of factors such as the prevalence of regulatory controls and the impact of their

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<sup>132</sup> Hathaway, *supra* note 77, at 1952.

<sup>133</sup> See generally JOEL P. TRACHTMAN, *THE ECONOMIC STRUCTURE OF INTERNATIONAL LAW* (Harvard Univ. Press 2008).

<sup>134</sup> See, e.g., Chan, Lee & Chan, *China's Environmental Governance*, *supra* note 16.

<sup>135</sup> See, e.g., CHIEN-PENG CHUNG, *DOMESTIC POLITICS, INTERNATIONAL BARGAINING, AND CHINA'S TERRITORIAL DISPUTES* 145-62 (RoutledgeCurzon 2004).

lowering in a setting with a favorable (in the sense of being conducive to integration) incentive structure, pressures emanating from comparative advantage, influence of international market forces on domestic interests, institutional rigidity (and flexibility), development-oriented East Asian bureaucratic mindset, corporatist form of social organization (predisposing policy makers toward pro-business initiatives), administrative decentralization (unleashing powerful forces at the local level), the irresistible pull of network capitalism (driven by overseas Chinese), foreign maneuvering, and benefits captured by functionaries (and agents in general) reacting to these developments or spearheading them.<sup>136</sup>

Some of these accounts are not inconsistent with those furnished by legal scholars, particularly ones with realist, utilitarian, and institutionalist inclinations. Moreover, they may be regarded as competing to a certain extent. At the same time, where appropriate, complementarity is not overlooked and, the diversity notwithstanding, attempts are being made to combine the separate threads into a coherent whole.<sup>137</sup> The quest for synthesis is not pursued merely at the conceptual level but also in the empirical domain. The entire loosely-connected and intricate theoretical edifice has been tested and refined in a series of case studies.<sup>138</sup>

The dynamics of multilateral diplomacy is perhaps even more illuminating in this context because the process involves specific discretionary decisions supposedly taken at the top level of the organizational pyramid following an elaborate process of strategic deliberation (in a manner similar to acts of conformity to international law), although it would be inappropriate to liken it to a sophisticated game of chess, given that the usual behavioral qualifications apply. One might be tempted here to embrace one explanation or another (self-interest, cooperative spirit, altruism, culturally-induced sense of community, international socialization, and so forth), but this temptation has generally been resisted.

It should be noted at the outset that the shift toward multilateralism constitutes a radical, albeit not abrupt, departure for a country that “has for a long time clung to bilateralism or unilateralism in its handling of regional disputes and managing its foreign relations.”<sup>139</sup> However one accounts for

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<sup>136</sup> See generally DAVID ZWEIG, *INTERNATIONALIZING CHINA: DOMESTIC AND GLOBAL LINKAGES* 7-18 (Cornell Univ. Press 2002); David Zweig & Zhimin Chen, *Introduction: International Political Economy and Explanations of China's Globalization*, in *CHINA'S REFORMS AND INTERNATIONAL POLITICAL ECONOMY* (David Zweig & Zhimin Chen eds., Routledge 2007).

<sup>137</sup> See *id.*

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

<sup>139</sup> Wu & Landsdowne, *supra* note 15, at 3.

it, this strategic turnaround “is phenomenal enough to call attention to it.”<sup>140</sup> Importantly, the fundamental adjustment that has taken place “brings . . . China . . . much closer to the evolving Western mentality in the way of viewing world affairs, as, concurrently multilateralism rises as a principle in the guidance of governmental foreign-policy making in major advanced industrialized countries.”<sup>141</sup>

It should also be observed that the Chinese variant of multilateralism is selective in nature. The rhetoric (word) may be devoid of ambiguities, but the practice (deed) does not display a similar strength of commitment to the principle. Rather, there are policy domains “in which China does not want to be bound by multilateral diplomacy, and where it likes to continue to employ a bilateralist and even a unilateralist approach.”<sup>142</sup> By the same token, the strategy is as much driven by a desire to promote a multipolar world order (i.e., erode American hegemonic dominance) as by a normative preference for interdependence in the positive sense of the term.<sup>143</sup>

As to the underlying motives, there is a bias in favor of realist, utilitarian, and institutionalist explanations. Multilateralism is supposed to be conducive to economic development, it provides a convenient antidote to hegemonic power (i.e., it promotes multipolarism), it enhances the country's image (reputation, an important consideration in rationalist writings), and it furnishes an effective platform for managing security issues, particularly on a regional basis.<sup>144</sup> However, there is also recognition that a complex interplay between domestic and international forces is at work (as posited by liberal institutionalists)<sup>145</sup> and that the strategy is not without normative underpinnings, whatever their origins.<sup>146</sup>

Analytical diversity, coupled with structural integration, is a salient feature of the study of Chinese international relations in general rather than merely in a limited number of policy realms. The views expounded do not always stretch across the whole conceptual range and cannot readily be

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

<sup>141</sup> *Id.*

<sup>142</sup> *Id.* at 8.

<sup>143</sup> *See id.* at 5-11.

<sup>144</sup> *See id.* at 9-11.

<sup>145</sup> *See* CHINA AND THE NEW INTERNATIONAL ORDER, *supra* note 75, at 3-6; Liqun Zhu, *The Domestic Sources of China's Foreign Policy and Diplomacy*, in CHINA'S NEW DIPLOMACY: TACTICAL OR FUNDAMENTAL CHANGE, *supra* note 15, at 107-30.

<sup>146</sup> *See* “HARMONIOUS WORLD” AND CHINA'S NEW FOREIGN POLICY, *supra* note 11, at 1-4; Zhongqi Pan, *China's Changing Image of and Engagement in World Order*, in “HARMONIOUS WORLD” AND CHINA'S NEW FOREIGN POLICY, *supra* note 11, at 39; Kai Ha, *China's Peaceful Rise and Multilateral Institutions: In Search of a Harmonious World*, in “HARMONIOUS WORLD” AND CHINA'S NEW FOREIGN POLICY, *supra* note 11, at 65-82; Lowell Dittmer, *China's New Internationalism*, in CHINA TURNS TO MULTILATERALISM: FOREIGN POLICY AND REGIONAL SECURITY, *supra* note 15, at 21-34.

harmonized in all circumstances. It is not altogether uncommon for researchers to adopt a well-defined perspective (such as the realist standpoint) and apply it consistently without deviating from the chosen path,<sup>147</sup> although this practice is rapidly becoming a thing of the past. However, there is awareness of competing or complementary approaches, absolute claims are eschewed, theoretical propositions are placed in a broad context, and sooner or later someone performs a balancing act by systematically accommodating the divergent or convergent insights within an overarching framework.

Such a framework typically encompasses, in an organized manner, a host of domestic and external factors that impinge on foreign policy outcomes. Domestic-external linkages are also accorded ample attention. The individual components of the entire architecture are carefully assembled, evaluated, fine-tuned, and consolidated.<sup>148</sup> The product is a more complex but less fractured mosaic than encountered in the international law literature and, in terms of its explanatory effectiveness and heuristic value, a credible model toward which scholars concerned with China's rule conformity in the global arena should possibly aspire.

#### IV. CONCLUSION

Chinese civilization has deep and rich historical roots, but it has evolved in a cyclical fashion and has experienced a high degree of turbulence. The peaks of exuberance and valleys of despondency traversed have had several noteworthy characteristics, including an orientation toward the outside world that may be portrayed as outward- or inward-looking. Since the curtain has descended on the 1949-1978 revolutionary era, China has recognized the merits of interdependence and has practiced multilateralism, albeit in its own peculiar way, or not unreservedly.

The shift toward greater openness has apparently been accompanied by an increasing willingness to play by international rules. An erstwhile rogue State seems to have been transformed into a status-quo power without exhibiting pronounced revisionist tendencies. Researchers in the field of international law have been exploring to what extent this metamorphosis has taken place, in what circumstances, and for what reasons. They have made considerable progress in that respect, but the picture remains hazy. This is partly due to the intellectual challenge that the subject poses and the

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<sup>147</sup> See generally *NEW DIRECTIONS IN THE STUDY OF CHINA'S FOREIGN POLICY* (Alastair Iain Johnston & Robert S. Ross eds., Stanford Univ. Press 2006).

<sup>148</sup> See, e.g., Kim, *supra* note 10, at 11-27.

relatively modest resources channeled toward its examination. The comparison with international relations is not flattering, yet it is not completely valid because this has been a less intensive effort undertaken by a smaller group of scholars operating independently.

However, it is legitimate to argue that there is room, even in the face of significant constraints, to place the whole enterprise on a firmer conceptual footing. Lingering empirical issues must be grappled with and the quest for explanations needs to be pursued more rigorously. As matters stand, the methodological and theoretical foundations are not solid enough to support unambiguous generalizations. This is an unfortunate configuration given the importance of the question motivating scholarly endeavor in the sphere delineated in the present paper. It is not inappropriate to contend that Chinese international legal compliance should be monitored as precisely as possible and understood better than is currently the case.

Methodological and theoretical stocktaking, such as undertaken here, is by definition a backward-looking exercise. The existing literature is placed under the proverbial microscope, its limitations are brought into focus, and the merits of alternative, hopefully more fruitful, research strategies are highlighted. The forward-looking part of the project necessitates moving beyond retrospective base-building and applying the proposed analytical tools across the entire space involving China's encounter with international law and in specific areas. That is a task not just for the author of this article but also other scholars engaged, individually or collectively, in dissecting Chinese international legal behavior.