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COMMENT

THE CONTINUING POWER OF CULTURAL TRADITION AND SOCIALIST IDEOLOGY: CROSS-CULTURAL NEGOTIATIONS INVOLVING CHINESE, KOREAN, AND AMERICAN NEGOTIATORS


They sat there, arms folded, for 4 1/2 hours. Not a word. Finally, Gen. Ri got up, walked out and drove away.¹

In investigating the processes and difficulties of negotiation, scholars have passed through three stages of development: first, they collected and collated rough impressions from negotiators and diplomats; second, they attempted to construct models to explain these differences; and third, they tried to refine these models to account for the myriad subtleties that individuals bring to the negotiation context.² Scholars proposed various models as part of the second phase, including prominently a model based upon the idea of the homogeneous "rational person" used by economists.³ Such models contain an oversimplified concept of the negotiator by assuming that these individuals share an understanding of the "optimal" negotiating strategy and only deal with intra-group disputes.⁴ Therefore, consistent with the third stage of intellectual investigation, attention turned to refining these proposed models by examining other factors which affect negotiation styles and outcomes.⁵ Looking into the characteristics

3. Id. at 2-4.
4. See id. at 9-10.
5. See, e.g., R. JANOSIK, supra note 2; Poortinga & Hendriks, Culture as a Factor in International Negotiations: A Proposed Research Project from a Psychological Perspective, in PROCESSES OF INTERNATIONAL NEGOTIATIONS 203 (F. Mautner-Markhof ed. 1989); Wang, Some Cultural Factors Affecting Chinese in Treaty Negotiation, in CULTURAL FACTORS IN INTERNATIONAL RELATIONS 97 (R.
that a society shares seems particularly valuable in advancing the model in a systematic way. Indeed, because some investigators see "cultural or cognitive differences as being the major source of conflict in the international system," this line of investigation may create understandings with practical importance in increasing the successful resolution of international conflicts.

This Comment approaches the issue of "cultural" factors in international negotiations by examining cross-cultural negotiation in which the People's Republic of China (PRC) and Korea (North and South) have dealt with Western nations. First, the cultural heritage of these nations appears important. Confucian ideals, for example, have had a tremendous impact on China for thousands of years, and they continue to influence modern societies. Second, more recent political tradition, namely the "ideology" of Marx, Lenin, and Mao, has also had an impact on the conduct and goals of conflict resolution today. As one scholar states, the "Chinese view of negotiation, so different from, and even incompatible with, . . . the Western view, rests on a Marxist-Leninist base." This Comment tries to answer such questions as whether these two "traditions" reinforce, contradict, or merely run parallel to each other, but will also take up more practical concerns such as how they influence negotiations with members of other cultures, specifically the United States. The Comment will not argue that culture is the only, or even the most important, factor that affects such cross-cultural negotiations. Instead, it will examine how cultural tradition and political ideology affect negotiation style, how culture and ideology cause difficulties in negotiations with the United States, and it will make some suggestions on how these difficulties might be alleviated.

I. A DEFINITION OF CULTURE

A. Finding a Definition

While most observers agree that psychological and historical factors influence individuals and their ability to interact in negotiations with opponents from other traditions, "culture" remains a very difficult term to define in a usable form. For


6. D. DRUCKMAN, HUMAN FACTORS IN INTERNATIONAL NEGOTIATIONS: SOCIAL-PSYCHOLOGICAL ASPECTS OF INTERNATIONAL CONFLICT 34 (1973) (emphasis added). Pye confirms this view, stating that "[u]nquestionably the largest and possibly the most intractable category of problems in Sino-American business negotiations can be traced to the cultural differences between the two societies." L. PYE, CHINESE COMMERCIAL NEGOTIATING STYLE 20 (1982).


9. See, e.g., R. JANOSIK, supra note 2, at 13; Poortinga & Hendriks, supra note 5, at 205.
example, Fisher labeled it a "vague and fuzzy concept." Because culture can carry such a variety of connotations, the incautious analyst may attribute a wide variety of negotiation difficulties to this catch-all category without scrutinizing them carefully. Consequently, scholars have tried to narrow the concept of culture by creating more workable definitions.

The working definition this Comment utilizes derives from one proposed by Jervis and includes an individual's ideology, understanding of history, and beliefs inherited from the environment. The first of these, when considered in the Chinese and Korean context, consists of the Marxist-Leninist-Maoist political doctrine. In these societies, ideology forms an integral part of "culture" in the broad sense. The second and third items in Jervis' list form what this comment will call "cultural heritage" or "cultural tradition" and include elements of pre-communist society such as Confucian values. Both sets of these sets factors affect cognitive processes, perspectives, and emotional reactions of Chinese and Korean negotiators.

Other scholars have distinguished these two categories in explaining the negotiation styles of these countries. For instance, Wang states that "[o]ne may examine the implications of a state's cultural heritage or . . . its ideology to identify its views [on] treaty negotiation." Two schools of thought have evolved from these categories. Analysts who base their explanations of negotiation behavior on the influence of communist ideology are generally either Cold War American negotiators, or hard line anti-communists from South Korea and Taiwan. Although there remains a real risk that these commentators do not demonstrate an unbiased understanding of their perceived "enemies," their claims do not seem completely unfounded. Marx, Lenin, and Mao propounded ideas and prescriptions relative to negotiation behavior, and none can

11. Poortinga & Hendriks, supra note 5, at 204.
12. See, e.g., id. at 206 (discussing three approaches to the characterization of culture); G. FISHER, supra note 10, at 11 ("patterns of psychological behavior that go with shared culture"); R. JANOSIK, supra note 2, at 18 ("ways of behavior or techniques of solving problems which . . . have a high probability of use by the individual members of a society") (quoting Wallace, Individual Differences and Cultural Uniformities, 750 AM. SOC. REV. 7 (1952)); Hofstede, Cultural Predictors of National Negotiation Styles, in PROCESSES OF INTERNATIONAL NEGOTIATIONS, supra note 5, at 193 ("collective programming of the mind which distinguishes the members of one category of people from another").
14. Lubman describes "ideology" as a "view of the world and a program for changing it," and gives Maoism as an example of such an ideology. Lubman, Mao and Mediation: Politics and Dispute Resolution in Communist China, in R. FOLSOM & J. MINAN, supra note 7, at 92.
15. Wang, supra note 5, at 97.
17. See, e.g., NATIONAL UNIFICATION BOARD, A WHITE PAPER ON SOUTH-NORTH DIALOGUE IN KOREA (1988); Jong-Hwan, supra note 8; Yin, On Communist Negotiations, 16 ISSUES & STUD. 13 (1980).
doubt the pervasive influence of communist ideologies on the societies of North Korea and the PRC. In addition, these critiques persisted even after the cold war stereotypes of these nations lost favor.

A second group of scholars arose from a second category of cultural factors which focus on historical traditions. A growing number of analysts look at historical traditions as a tool in explaining differences in negotiating behavior. They quickly point out that such factors cannot completely explain observed differences in national negotiating behavior, but an examination of these influences can contribute to the overall understanding of, and help to systematize, apparently unrelated negotiation practices.

B. Some Difficulties with the Definition

Some analysts might object to this Comment's division of explanatory factors into cultural heritage and ideology, claiming that Chinese and Korean societies have distinct cultural traditions and have interpreted the socialist system of thought in differing ways. While these national differences should not be ignored, the two societies remain far more similar to each other than to the American society with whom they interact in negotiations. For centuries, the proximity and interaction of China and Korea caused a sharing of fundamental values, and more recently socialist thought has strongly influenced North Korea just as it has Chinese society. In addition, even if differences between the societies of China and Korea exist, strong similarities traceable to similar cultural roots may explain observed negotiation behavior.

A second stumbling block rests on the fact that the communist governments of the PRC and North Korea attempted to transform their societies by stamping out traditional values and replacing them with progressive socialist ones. For example, these governments urged struggle and change, and such campaigns as the Cultural Revolution tried to eliminate "old thinking," where Confucian values dictate harmony. However, although over forty years of communist rule led to much societal change, the traditional values and beliefs survived to a great degree.

19. See, e.g., Yin, supra note 17, at 27 (quoting Lenin).
20. See, e.g., NATIONAL UNIFICATION BOARD, supra note 17.
22. Wang, supra note 5, at 98.
23. See, e.g., Pfeiffer, How Not to Lose the Trade Wars by Cultural Gaffes, 18 SMITHSONIAN 145 (1988) (cautioning not to generalize perceptions of the quite different Asian peoples).
24. Some scholars have proposed that every nation may not have a unique culture; cultural heritages may span national boundaries. See, e.g., R. JANOSIK, supra note 2, at 19.
25. R. FOLSOM & J. MINAN, supra note 7, at 11; Shenkar & Ronen, supra note 21, at 264.
First, the very nature of culture makes it deep-seated, unconscious, and stable over time. Changes can occur, but they are much more likely to take the form of gradual evolution than sudden shifts, especially if imposed from above. The societies of the PRC and North Korea resisted many of the changes that the communist governments sought. Second, the traditional heritage of a society tends to meld into changes attempted by visionary leaders. Psychologists suggest that humans tend to hold onto beliefs learned at an early age and then fit new information into the existing pattern. This model provides a cognitive basis for the observed phenomenon that revolutionary ideals often absorb the preexisting value system to a great extent. Third, because the government imposed socialist ideological values in erratic ways, it lessened the impact on traditional values. The uncertainty caused by frequent changes in the "correct" political values undermined the effectiveness of the new ideas, and "technocrats" who learned to distrust the volatile proclamations and policies of the high officials have replaced most of Mao's supporters. Folsom confirms this assessment in his description of the PRC:

The weight of Chinese history could not have made of Chinese communism anything but a new tool for the fulfillment of specifically Chinese cultural and political yearnings. . . . The Chineseness of China's communism is not to be under-estimated; Marx is more remote in his foreignness than Confucius across the gap of millennia.

Thus, although the separation of the cultural heritage and ideological influences may prove problematic, perhaps impossible to do definitively, both sets of factors have a recognizable affect on current negotiation behavior. This Comment will attempt to draw out relationships between the two despite these conceptual problems.

A third source of potential difficulty lies in the observation that a kind of common culture has developed among professional negotiators. Such norms could make conclusions as to the causes of certain behavior problematic. For example, Glenn and Witmeyer admit that the common profession culture of United Nations diplomacy may have distorted the empirical results of a study on cultural styles of persuasion. In addition, Druckman suggests that a close-knit society of

27. Lubman, supra note 14, at 106. The Confucian model of behavior (li) has been historically favored in Chinese society and continues today in the PRC. R. FOLSOM & J. MINAN, supra note 7, at 4.
29. Shenkar & Ronen, supra note 21, at 264-65; see also R. TUNG, U.S.-CHINA TRADE NEGOTIATIONS 9-10 (1982).
31. Glenn, Witmeyer & Stevenson, Cultural Styles of Persuasion, 1 INT'L J. INTERCULTURAL REL. 52, 59. Hofstede also notes that professional negotiators may share a common culture of symbols and common habits, facilitating successful bargaining results. Hofstede, supra note 12, at 194.
foreign ministers has grown due to similarity of background and education and screening processes within the profession. In cases of the PRC and North and South Korea interacting with the United States, this objection seems less relevant. First, a significant portion of the negotiators in the studies utilized in this Comment cannot be considered "professional." The common culture proposed seems to apply less well to business negotiations, particularly between small American companies and lower bureaucratic cadres, than to national, diplomatic meetings. Second, a review of the literature reveals Chinese and Korean negotiators still maintain differences when compared with their Western counterparts. Thus, even if a common "negotiation culture" has begun to develop in some parts of the world, the subjects of this comment do not seem to have participated in its development to any great extent.

Finally, in assessing the effects of cultural heritage and ideology, the analyst must prevent other intervening variables from clouding the causal relationship. Wang points out that such other variables exist, stating that "it would be hardly rewarding to attempt to find answers for all questions regarding the People's Republic of China ... exclusively in terms of its Communist ideology any more than in terms of its cultural tradition." Janosik confirms this assessment, stressing that the analyst must separate individual personalities of the negotiators and the structural framework of the society from cultural background. Simple national interest may also affect the behavior and attitudes of negotiators. For example, the Republic of China on Taiwan and the PRC have roughly similar perceptions of and policies toward Tibet despite their differing ideological backgrounds. While the analysis in this Comment will take this caution into consideration, the argument does not rule out the possibility of finding some relationships between cultural factors and negotiation behavior. In fact, cultural heritage and ideology have had a significant impact on Chinese and Korean negotiation practices.

32. D. DRUCKMAN, supra note 6, at 68.
33. Solomon notes that although China has shown a partial adaptation to diplomatic conventions of the West, Cultural traditions and communist ideology still play an important role in Chinese negotiation style. Solomon, supra note 21, at 2.
34. See, e.g., CHINESE ETIQUETTE, supra note 21; KOREAN ETIQUETTE, supra note 21; L. PYE, supra note 6; R. TUNG, supra note 29.
36. Wang, supra note 5, at 98.
37. R. JANOSIK, supra note 2, at 13-14.
38. Wang, supra note 5, at 98. For an additional example, see Weiss, The Negotiating Style of the People's Republic of China: The Future of Hong Kong and Macao, 13 J. SOC. POL. & ECON. STUD. 175, 180 (1988). The United Kingdom believed that it would be unable to militarily intervene to protect Hong Kong from the PRC, and it considered its trade relations with the PRC more important than the benefits it gained from its relationship with Hong Kong. Id. at 180. Under these circumstances, pure considerations of national interest had a strong effect on the manner and outcomes of its negotiation with the PRC. See id.
II. THE EFFECTS OF CULTURAL HERITAGE AND POLITICAL IDEOLOGY ON NEGOTIATIONS

The behavior of Chinese and Korean negotiators derives from a composite tradition which includes cultural and historical elements as well as the influence of Communism. These influences affect the participants' choice of techniques as well as their conceptions of the process as a whole. The causal factors examined here intimately interrelate with each other. Confucian values form a complete system whose many elements support and confirm each other and Chinese socialist thinkers incorporated many of these ideas into their version of communism. Despite the blurring of distinctions, this Comment will treat them as distinct causes for the sake of clarity and then examine the ways in which they interrelate.

A. The Effects of Cultural Heritage on Negotiation Behavior

1. Harmony

One basic aspect of the traditional Confucian value system lies in its emphasis on harmony. The ideal relationship remained conflict-free and took into account the interests and reactions of the entire group. In resolving conflicts, the restoration of harmony remained more important than achieving some notion of abstract justice; yielding (jang) and compromise were virtuous because they prevented friction and restored a harmonious condition. These behavioral ideals affect negotiations today.

First, the concept of harmony explains the way that many individuals in Chinese and Korean societies conduct negotiations. Because a person making an emotional outburst tends to disrupt the harmony of the situation, negotiators will seldom reveal any feelings, and others showing strong emotions may arouse the

40. R. JANOSIK, supra note 2, at 18-19.
41. See supra notes 25 & 27 and accompanying text.
42. Although traditional Chinese culture contained many competing philosophies, including Taoism, Buddhism, and Legalism, "Confucianism is most clearly identified as the foundation of China's great cultural tradition, and Confucian values still provide the basis for the norms of Chinese interpersonal behavior." Shenkar & Ronen, supra note 21, at 266. Consequently, this paper will focus on Confucianism.
43. Id. at 266.
44. Id.
45. Wang, supra note 5, at 101; see CONFUCIUS, THE ANALECTS 115 (D. Lau trans. 1979) ("The Master said, 'In hearing litigation, I am no different from any other man. But if you insist on a difference, it is, perhaps, that I try to get the parties not to resort to litigation in the first place.'").
46. R. FOLSOM & J. MINAN, supra note 7, at 3-4; Lubman, supra note 14, at 90, 92; see CONFUCIUS, supra note 45, at 75. "To be importunate with one's lord will mean humiliation. To be importunate with one's friends will mean estrangement." Id.
distrust or antipathy of individuals who hold the traditional values.\textsuperscript{47} A North Korean general during the Panmunjom armistice talks displayed a rather crude example of this idea: if a fly were to land on his face, he would not even brush it away but instead keep iron control.\textsuperscript{48}

In attempting to minimize confrontation, negotiators may also utilize subtlety and indirection. For instance, during the 1973 normalization talks between China and the United States, Chinese officials delicately suggested normalization according to the "Japanese formula" without ever explaining exactly what this might mean.\textsuperscript{49} This tactic allowed the parties to avoid the difficult details of dispute for a little while and moved the talks forward to attain a consensus over general principles. Also, Chinese parties will often accept contracts without much modification once a general agreement has been reached because of an aversion to haggling over the details.\textsuperscript{50} Therefore, a dislike of personal conflict seems to explain certain negotiation behavior. The Confucian goal of maintaining harmony even during the settlement of disputes may affect the manner in which Chinese and Koreans carry out negotiations.

A second affect of the concept of harmony lies in the way that negotiating parties make decisions. Because of the importance of harmony within the negotiating group, no individual can make a decision; instead, consensus is the norm.\textsuperscript{51} No team member wants to risk being accused of "wild ambition" (\textit{yexin})\textsuperscript{52} and so will consult with the other members of the group before making any substantive change in bargaining position. Korean and Chinese negotiators at the Korean War armistice talks exhibited this behavior by frequently recessing the talks to caucus among themselves or to consult higher authority.\textsuperscript{53} In addition, in an empirical study Hofstede found this desire to make collective decisions particularly striking when compared to more individualistic American norms.\textsuperscript{54} Clearly, harmony has as important an influence within a negotiation group as it does in shaping interactions between opposing parties.\textsuperscript{55}

\begin{thebibliography}{99}
  \bibitem{47} Shenkar & Ronen, \textit{supra} note 21, at 267; see C. Joy, \textit{supra} note 16, at 10-11; \textit{CONFUCIUS}, \textit{supra} note 45, at 135. "T\textit{he lack of self restraint in small matters will bring ruin to great plans.}" \textit{Id.}
  \bibitem{49} Solomon, \textit{supra} note 21, at 9.
  \bibitem{50} Robinson & Doumar, \textit{\textquoteright It is Better to Enter a Tiger's Mouth than a Court of Law\textquoteright} or Dispute Resolution Alternatives in U.S.-China Trade, 5 \textit{DICK. J. INT'L. L.} 247, 256 (1987); Solomon, \textit{supra} note 21, at 14.
  \bibitem{51} \textit{KOREAN ETIQUETTE}, \textit{supra} note 21, at 92-93; Shenkar & Ronen, \textit{supra} note 21, at 269.
  \bibitem{52} Shenkar & Ronen, \textit{supra} note 21, at 269.
  \bibitem{53} W. Vatcher, \textit{supra} note 16, at 218.
  \bibitem{54} Hofstede, \textit{supra} note 12, at 198.
  \bibitem{55} Some scholars have raised another explanation for this emphasis on group decision making. They argue that the bureaucratic structure of a government organization, where every decision is scrutinized by higher officials, may cause the individual to spread responsibility among the group by assuring consensus before taking action. \textit{See \textit{KOREAN ETIQUETTE}, \textit{supra} note 21, at 93; Lubman, \textit{supra} note 35, at 67. However, even the bureaucratic structure itself may have been designed by individuals who value harmony and consensual decision making.} It remains unclear which cause takes precedence.
\end{thebibliography}
2. Friendship and Affiliation

The teachings of Confucius also prescribe a reliance on kinship affiliations (guanxi) as the model to govern interpersonal relationships, an idea closely related to "harmony." Individuals tend to distrust impersonal or legalistic dealings, preferring a moral link. For example, the traditional Chinese custom of sealing a business arrangement involved only an oral agreement or a handshake instead of a written contract. Further, this model of relationships implies that people following the Confucian tradition become cautious about requesting assistance outside of kinship groups because the individuals incur reciprocal obligations which may be undesired or may disrupt the harmony of the groups' interaction. Individuals holding the traditional values therefore have anxiety about incurring obligations that require real but unspecified future repayment. Clearly, these ideals of interpersonal behavior still affect negotiation proceedings.

One result of this Confucian outlook that commentators almost universally recognize is that negotiators will try to build strong friendship bonds with their opponents and will rely on these interpersonal bonds more than any contractual terms to which the parties may agree. Observers note this belief in the importance of the relationship in the Korean and Chinese contexts and in empirical studies. For example, Chinese negotiators will seek a personal relationship by using sightseeing trips to the Great Wall and breaks in negotiation sessions to cultivate friendships. They will also try to find out their counterparts' tastes in food and politics. This helps to stimulate a more intimate atmosphere and builds trust among individuals holding Confucian values.

Likewise, Chinese behavior regarding which United States envoy they prefer to deal with reveals this belief in the importance of building relationships. The PRC government has often made its preferences known as to the diplomat with whom they would prefer to negotiate. In 1978, for example, Chinese leaders expressed a preference for National Security Advisor Brzezinski over Secretary of

56. Shenkar & Ronen, supra note 21, at 263 & 267; Solomon, supra note 21, at 3.
57. L. Pye, supra note 6, at 20; Solomon, supra note 21, at 3.
58. L. Pye, supra note 6, at 21.
59. Shenkar & Ronen, supra note 21, at 271.
60. Id.
61. See sources cited infra notes 62, 63 & 64.
63. Chinese Etiquette, supra note 21, at 62; Robinson & Doumar, supra note 50, at 256 & 261; Shenkar & Ronen, supra note 21, at 271.
64. R. Tung, supra note 29, at 64. Pye suggests that a high level of mutual trust and respect is necessary between any pair of negotiators and that the only uniquely Chinese feature of such relationships is the way that they use it to try to manipulate opponents. L. Pye, supra note 6, at 32. However, even this manipulation does not seem unique; Western negotiators also play upon personal connections at times. What truly characterizes the negotiator schooled in Confucian values is the early and continual stress placed upon such personal relationships.
65. Shenkar & Ronen, supra note 21, at 271; Solomon, supra note 21, at 3.
66. Solomon, supra note 21, at 3.
State Vance, whereas in 1981 they quickly sought Secretary of State Haig rather than National Security Advisor Allen. The Confucian ideal of friendship clearly affects the way that individuals approach negotiations.

Views about the role of negotiation itself are also affected by this understanding of friendship. Chinese negotiators view the agreement reached at the end of a bargaining session not as the end of the process, but as a step in the development of an ongoing relationship. Consequently, such parties do not hesitate to reopen issues during negotiation that their foreign counterparts thought had been definitively settled. For example, during the Panmunjom armistice talks, the low level representatives worked for many hours to agree on the geographical location for the demilitarized buffer zone. After trading concessions and finally developing a line, the Korean official then went back to question sections that he had himself proposed. In addition, Chinese and Korean parties expect the terms of a signed contract to be reevaluated or renegotiated. Such revisions have even been proposed right after the signing of a contract. Thus, under this view of negotiation, the substance of the agreement reached is not nearly as important as the creation and testing of the relationship between the parties.

This view of negotiation has practical consequences for the tactics favored by individuals schooled in Confucian values. Because such negotiators do not intend the negotiation to serve as a technical process which seeks to make the parties' views converge but instead see the process as an "attempt to reconcile principles and objectives and to test commitment" to the relationship, negotiators tend to emphasize mutual interests rather than making concessions and compromises on specific differences. Consequently, once negotiators feel that they understand their opponents' intentions and that an agreement can be reached, they often show great flexibility as to the details. This action also obviates the need for harmony-disrupting haggling.

Finally, the value placed on the relationship has another affect on bargaining tactics. Because the Confucian scheme of friendship obliges one to help and favor one's partner, Chinese negotiators use the principles upon which the relationship is based to influence their opponents. Chinese and Korean parties will use the early stages of a meeting to establish their mutual interests in the form of agreed

67. Id. at 7.
68. CHINESE ETIQUETTE, supra note 21, at 123; L. PYE, supra note 6, at 78; Weiss, supra note 38, at 185 & 193.
71. Id.
72. CHINESE ETIQUETTE, supra note 21, at 116.
73. L. PYE, supra note 6, at 78.
74. Id. at 77; Solomon, supra note 21, at 6.
75. Solomon, supra note 21, at 6.
76. Id. at 3-4; CHINESE ETIQUETTE, supra note 21, at 115 & 121.
general principles. They then raise these principles later in the bargaining process as a form of obligation that their new "friends" should follow and may accuse them of betraying the spirit of their relationship if they do not agree.

For example, in 1972 President Nixon and Premier Zhou Enlai signed the Shanghai Communique, a declaration of friendship that began the process for normalization of diplomatic relations finally achieved in 1978. This communique served as the framework for the following six years of talks. Subsequently, however, the Chinese cited the agreement to criticize U.S. arms sales to Taiwan as against the spirit of the relationship between the two countries. This idea of an obligation created by an expression of friendship rather than the terms of a contract may also be seen in the PRC's recently published 13-volume "treaty series." This collection contains more than one hundred joint announcements, communiques, and declarations which would never qualify as "treaties" under the Western understanding. Clearly, the government of the PRC regards these joint declarations as evidence of obligation despite their explicit labels of "parallel unilateral declarations," for instance, instead of "agreements."

Finally, Jong-Hwan, a South Korean observer, reveals this view of obligation when he criticizes the North Korean government's tactics. By agreeing in principle to discuss economic conflicts and later refusing to enter further negotiations without settlement of the military differences, the North Korean government lacks "integrity" in Jong-Hwan's eyes. Clearly, the obligations of a relationship based on agreed principles played a roll in his perception of the proper manner in which to negotiate. On the whole, the Confucian ideal of friendship and affiliation affects views of the negotiation process, its role in settling disputes, and the tactics utilized by negotiators.

77. See, e.g., Jong-Hwan, supra note 8, at 634.
78. Solomon, supra note 21, at 4; see, e.g., Kazuo, How the "Inscrutables" Negotiate with the "Inscrutables": Chinese Negotiating Tactics vis-a-vis the Japanese, 79 CHINA Q. 529, 530 & 544 (1979).
79. Solomon, supra note 21, at 7.
80. Id.
81. Id.; L. PYE, supra note 6, at ix.
82. See Wang, supra note 5, at 101-02.
83. Id.
84. Jong-Hwan, supra note 8, at 644-45.
85. Id.
86. Solomon, although a strong proponent of the tactic of friendship and obligation, adds one caveat: "When Chinese officials want to reach a specific agreement, they will set aside their stress on principle and reach a concrete understanding that in fact may have little relation to—or may even seem to contravene—the principles they stressed early in the negotiation." Solomon, supra note 21, at 4. However, simply because overwhelming national interest can overcome tendencies toward emphasizing principle, the underlying importance of principle and obligation remains intact.
3. Hierarchy and Face

Growing out of the Confucian values of group consciousness and harmony is an intertwining set of ideas loosely labeled "hierarchy" or "face." Hierarchy posits that each individual is conscious of her position in the social system; this knowledge prevents her from overreaching her position and disrupting the harmony of the society.87 Closely related to this concept, face measures the individual’s prestige or reputation within a group (mien-tzu or lien), helping to define her social status.88 People influenced by these Confucian ideals tend to regard social status within society as important and strongly dislike being shamed or snubbed by others.89 This group of values can affect the tactics, progress, and outcomes of negotiation.

First, the concept of face influences negotiator’s choice of tactics. Chinese negotiators, for instance, will always request that their opponents fully express their position before the Chinese reveal their views.90 This tactic not only allows the negotiator to learn the status level of her opponent if it were not already known, but it protects her superiors from confrontational encounters with lower level foreign officials that would tend to infringe on their need for face.91 In addition, Chinese negotiators will try to use shame, or loss of face, to gain concessions and put their opponents on the defensive. For example, in 1975 Deng Xioping tried to advance the normalization talks by asserting that president Nixon had not fulfilled his publicly announced intention to establish full diplomatic ties.92 The Chinese leader in essence tried to shame Nixon by pointing out his lack of good faith.93 Thus, the Chinese have developed tactics not only to protect face but also to use it as a tool to try to manipulate opponents.

Hierarchy may also affect the progress of negotiations. The status of opponents may be quite important; Chinese and Korean negotiators feel less comfortable forming the necessary friendly relationship with individuals of different perceived status.94 Often a correct pairing of status levels may engender bonding and allow much more rapid conclusion of an agreement. For example, when technical experts from the PRC and the United States meet, mutual respect comes much more easily than between, for example, Chinese government officials and American business executives.95 Chinese scientists are accustomed to a high

87. Shenkar & Ronen, supra note 21, at 263, 266, 267-70.
89. KOREAN ETIQUETTE, supra note 21, at 88; S. PARES, supra note 62, at 117; Wang, supra note 5, at 107.
90. Solomon, supra note 21, at 8-9; Kazuo, supra note 78, at 541.
91. Solomon, supra note 21, at 9.
92. Id. at 12.
93. Id.; see L. PYE, supra note 6, at 42-43. Whether this tactic works on those who do not share the Confucian ideas of status and shame (especially Nixon!) is another issue.
94. See, e.g., S. PARES, supra note 62, at 117.
95. Lubman, supra note 35, at 63.
status position in their society, so they tend to more readily respect their American counterparts.96 Thus, status equality aids in the negotiation process.

Finally, perceptions of face and status may shape the outcomes of negotiation. Individuals may find certain positions favored by opposing parties untenable because of personal calculations of status and loss of face. A complex example of this reality occurred in 1898 during the talks over the British acquisition of Hong Kong.97 The British government desired that China make a complete cession of the island and the peninsula next to it outright.98 The Chinese officials, however, managed to achieve an agreement in which it leased the island to Britain without payment for ninety nine years and China maintained jurisdiction over Kowloon City on the peninsula.99 They insisted on this arrangement because the emperor felt that he would lose too much face with his people if he ceded a government installation (Kowloon City) gained by his predecessor or if he charged rent for the property, and that he would lose international prestige if he ceded the land outright.100 Thus, the constraints of perceived status shaped the settlement into the form of a lease but prevented any payment of rent.

4. History

Closely linked to the idea of status is the role of perceptions of history. Western nations historically treated China and Korea as subordinate, uncivilized countries, primarily useful as markets for their industrial goods and sources of raw materials. These societies view this treatment as a loss of face on the national level, and they desire to correct the status imbalance.

This view of history shapes negotiation behavior by increasing the importance of certain goals and by creating a distrust of international law. First, correcting the imbalance of the Western colonial system has become an overriding goal. For example, the regaining of Hong Kong has huge symbolic importance as a way of erasing the humiliation of the last century,101 and this perception makes it an extremely important goal for negotiations.

On the other hand, Robinson points out that the Western nations' historic abuse of international law has made the PRC wary of relying on it in negotiations.102 For example, China repeatedly asked Queen Victoria in the 1800's to restrain her citizens' opium trade under principles of international law.103 Britain responded with the Opium War (1839-42) and smuggling

96. Id. See generally CHINESE ETIQUETTE, supra note 21, at 122.
97. Wang, supra note 5, at 108-09.
98. Id. at 109.
99. Id.
100. Id.
101. Weiss, supra note 38, at 180.
102. Robinson & Doumar, supra note 50, at 250-51; see also Solomon, supra note 21, at 4.
103. Robinson & Doumar, supra note 50, at 250-51.
As a result, the PRC may be less ready to accept international law terms in negotiations and will be less likely to rely on tenets of international law to restrain opponents.

5. Patience

The stereotypical Oriental patience may in fact have some basis in traditional Chinese and Korean culture. Related to the idea of harmony, these societies had a looser idea of time. The Chinese word for "tomorrow," for example, did not necessarily mean the next day but instead the less precise "some time in the near future." More importantly, unlike the values generated by the Protestant work ethic, these societies did not necessarily associate the passage of time with the loss of money. Numerous observers recognized this cultural outlook and an empirical study has confirmed it. In addition, when the Korean War armistice talks concluded in 1953, they were the longest negotiations of their kind in history, spanning 575 regular meetings. Obviously, patience alone did not cause these talks to continue for so long, but only negotiators or leaders with a fair measure of patience would adopt this strategy. The value placed on patience may allow Chinese and Korean negotiators to be more flexible during negotiations and even extract greater concessions from their less patient opponents.

Chinese negotiators use this patience as a tactic in circumstances where some factor blocks full agreement. Solomon reports, for example, that Chinese officials have often used stalling tactics when immediate closure might be unfavorable to their position or deadlock would occur. Western negotiators, of course, also use this tactic when expedient, but Chinese negotiators seem to rely on it to a greater extent. A second example of this lack of concern for speed occurred during a business negotiation between low level cadres and western business executives. When an impasse in the bargaining occurred, the Chinese official responded that although the law at the time did not permit the proposed

104. Id.
105. See, e.g., CONFUCIUS, supra note 45, at 74. "The Master said, 'In serving your father and mother you ought to dissuade them from doing wrong in the gentlest way. If you see your advice being ignored, you should not become disobedient but remain reverent. You should not complain even if in so doing you wear yourself out.'" Id.
106. CHINESE ETIQUETTE, supra note 21, at 124-25.
107. Id.
108. CHINESE ETIQUETTE, supra note 21, at 115; L. PYE, supra note 6, at 73; Kazuo, supra note 78, at 546; Robinson & Doumar, supra note 50, at 256; Solomon, supra note 21, at 13-14.
109. R. TUNG, supra note 29, at 64.
111. Solomon, supra note 21, at 14.
112. Id. at 9 and 14.
113. See id.
agreement, a change was expected in four years. The Chinese negotiator thought it reasonable to go ahead with the agreement in the hope that when the change occurred, the deal could go through. Thus, the cultural emphasis on patience may prove to be a distinct advantage in gaining concessions from one's opponents, but it may create difficulties when it conflicts with the speed with which Western business is accustomed to run.

B. The Effects of Political Ideology on Negotiation Behavior

1. Domination Ideal

A school of thought very different from the "cultural heritage" school argues that the potent effects of Marxist-Leninist-Maoist doctrines have had a significant impact on the very concept of negotiation and the legitimacy of various tactics. These effects stem from the basic Soviet way of looking at the world—either socialism or capitalism will dominate the globe; they cannot coexist because of their antithetical nature. However, this outlook becomes tempered by a certain degree of Soviet pragmatism that allows a choice of tools in the struggle for control, and Chinese communists agree that compromise might be acceptable if it does not become so extreme as to constitute capitulation. The impact of this pragmatism is that the Chinese and North Korean governments believe that negotiation with the West remains possible, but they view it as part of the overall struggle.

Negotiation, under this conception, is another weapon for the domination of opponents, not a means to exchange concessions for the mutual benefit of the parties. For example, early in the life of the Soviet Union, Lenin granted foreign economic concessions because of the weak bargaining position of his country, but he stated that "the concessions . . . which we are forced to grant, are the continuation of war in another form, by other means." Dean Acheson

115. Id.
116. Some commentators claim that some of the lack of speed of Chinese negotiators may be attributed to the clumsy bureaucratic structure within which they make many decisions. L. PYE, supra note 6, at 49; see W. VATCHER, supra note 16, at 218; Comparative Approaches to Negotiations with the People's Republic of China, AM. J. INT'L L., Sept. 1972, at 117 [hereinafter Comparative Approaches] (Comments of S. Lubman). However, one must question whether this bureaucratic organization itself might have been designed differently if time were valued more highly. C.f supra note 55.
117. See supra notes 16-20 and accompanying text.
118. Jong-Hwan, supra note 8, at 621.
119. Id.
120. Id. at 624.
121. Id. at 619-20; W. VATCHER, supra note 16, at 20 (quoting Lenin); Yin, supra note 17, at 13 (quoting Khrushchev).
122. See Jong-Hwan, supra note 8, at 620.
confirmed this assessment: "In Communist doctrine, [negotiation] was war by political means to achieve an end unacceptable to the other side." Commentators argue that this view of negotiation holds true for North Korea as well. While the fervency of this political position may no longer hold the importance it did at the height of the cold war, this ideological perception of the concept of negotiation influences both the goals and tactics of negotiators.

Communist ideology legitimates one alternate goal that is unrelated to the settlement of disputes—the spread of propaganda. By entering negotiations, these governments can spread information about their ideas and goals to a much wider and potentially more receptive audience. Chinese and North Korean negotiators had this goal throughout much of the Panmunjom armistice talks. For example, Admiral Joy argues that because the North Korean refused to meet at any location other than in the North Korean controlled zone, they made it appear that the United Nations forces needed to seek a cease fire. The North Koreans then exploited this appearance, despite their frail military condition, to raise the morale of their troops and gain credibility on the world press. Another instance of using negotiation for propaganda purposes arose at the fall of the Park government in South Korea. The North Korean negotiating team government quickly opened talks in the hope that stirring unrest in the south would support political factions that it would prefer, but when a new government formed along much the same lines as the Park regime, it once again shunned negotiations. Thus, the communist governments have not hesitated to use negotiation for goals other than the traditional Western one of settling disputes.

Another non-tradition goal sought by communist negotiators lies in the use of delay in order to succeed militarily. Mao exhibited this goal, a purpose outside of the context of the negotiations, when he opened talks with Jiang Kai-shek in 1945. Mao did not intend to peacefully settle his disputes with his opponent, but merely sought time to build up the military strength of his forces so as to oust Jiang. Arguably, North Korea also used negotiations for a similar purpose. Labeled "fight-talk-fight-talk," the drawn-out negotiations and their associated

123. Id.
124. See, e.g., NATIONAL UNIFICATION BOARD, supra note 17, at 159; Jong-Hwan, supra note 8, at 628.
125. See, e.g., C. Joy, supra note 16, at 5-8; NATIONAL UNIFICATION BOARD, supra note 17, at 44; C. Yin, NEGOTIATIONS IN AN ERA OF NEGOTIATION 36-38, 39-40 (1973); Jong-Hwan, supra note 8, at 655; J. Weiss, supra note 38, at 180.
127. Id. at 2.
128. NATIONAL UNIFICATION BOARD, supra note 17, at 163; see also Jong-Hwan, supra note 8, at 633-34.
129. NATIONAL UNIFICATION BOARD, supra note 17, at 163.
130. Of course, Western governments occasionally use negotiation for similar propaganda purposes, but this seems far less common and is generally regarded as devious and illegitimate.
131. Yin, supra note 17, at 16.
132. Id.
cease-fires allowed the North Korean government to reinvigorate and secretly resupply its troops. These two goals, propaganda and seeking military advantage, arise from and are justified by the ideology of total struggle.

In addition to alternative goals, certain tactics also receive legitimation by the communist ideological outlook. The overriding goal of the struggle against Imperialism appears to create an attitude of the ends justifying the means. When communist negotiators first used these revolutionary tactics, they shocked Western opponents who promptly labeled them dishonorable and "despicable." One example of these methods arose when negotiators would lie or distort the truth, even in the face of strongly contradictory evidence. For instance, North Korean officials understated, in a completely unrealistic way, the number of prisoners of war that they held. In addition, they put forward extortionary demands. For example, North Korean negotiators demanded a major change in the laws of South Korea and a preferential military settlement before they would even discuss the reuniting of families separated by the armistice line.

A third non-traditional method lies in attempts to physically intimidate opponents. Negotiators would use implicit threats, such as when North Korea marched heavily armed troops through a supposedly neutral, demilitarized conference area in Panmunjom. Finally, a collection of tactics seems to exist that American negotiators would not consider blatantly illegitimate but that seem relevant here because they fit the pattern of the more revolutionary methods. These tactics include the use of late sessions and fatigue to pressure or disorient opponents, time deadlines to force agreement, agenda items containing substantive conclusions in the hope of biasing outcomes, and concessions on spurious issues in attempts to gain concessions on material issues. Thus, the ideology of communism, in its attempts to dominate its imperialist foes, opened up whole new areas of negotiation goals and tactics.

2. Patience

Not only does patience have a traditional basis in Chinese culture but some elements of political ideology also support it. Lenin, for example,

133. See C. Joy, supra note 16, at 71-73, 88; Jong-Hwan, supra note 8, at 627.
136. Id. at 104; see also W. Vatcher, supra note 16, at 213 & 215; Jong-Hwan, supra note 8, at 637.
137. Jong-Hwan, supra note 8, at 637; see also National Unification Board, supra note 17, at 159; Chang, supra note 35, at 270-71; Jong-Hwan, supra note 8, at 656.
138. C. Joy, supra note 16, at 30; see also id. at 3 & 5.
139. Solomon, supra note 21, at 10.
140. C. Yin, supra note 125, at 42-43.
142. Id. at 89-90.
143. See supra notes 105-16 and accompanying text.
encouraged tenacity in his negotiators, stating that they "must be patient ... Once you have gone into the business of negotiation, it is impossible to get nervous and fall into despair ... That would not be proletarian." Jong-Hwan confirmed this assessment of Soviet negotiators as persevering in negotiations no matter how unpleasant. In this way, patience becomes part of the mentality of struggle against opposing ideologies—the side that holds on the longest will win.

Chinese and Korean negotiators have expressed this patience both by refusing to make concessions until the other side capitulates and by repeating the same demands, wearying opponents. An example of the former occurred during the Panmunjom armistice talks when North Korea officials refused to accede to the term of a cease fire proposal that prohibited either side from rebuilding damaged airfields during the pause in hostilities. The North had no useable aircraft, so it hoped to constrain the ability of the U.N. forces to use transport planes to resupply. Putting forth the disingenuous argument that such a provision would interfere in the North's "internal affairs," negotiators stubbornly held onto their position. After a long period of waiting, Washington finally ordered the U.N. representatives to make this concession. During the Paris peace talks to end the Vietnam war, communist negotiators also used patience to force concessions from their opponents. They kept repeating their unchanged demands over a long period of time in the hope that domestic pressure in the U.S. would force a capitulation. Thus, although the patience exhibited by these negotiators may have cultural roots, a better explanation in these situations of ideological fervor may be the perseverance advocated by communist thinkers in pursuing the struggle against imperialism.

3. Principle

Communist ideology suggests a very different conception of "principle" from that associated with notions of harmony and kinship affiliations. Instead of a basic understanding to which the parties agree on which to base a relationship, principle in this context concerns ideals internal to the communist negotiator which serve to restrict the scope of possible agreements. Communist officials remain unable to compromise on certain points because of the overriding ideals of Marxist-Leninist-Maoist thought. These restrictions relate fundamentally to

144. Yin, supra note 17, at 27.
145. Jong-Hwan, supra note 8, at 622-23.
146. See, e.g., C. Joy, supra note 16, at 72-73; Yin, supra note 17, at 28.
148. Id.
149. Id.; see also id. at 39-40.
150. Yin, supra note 17, at 28; see also W. Vatcher, supra note 16, at 212.
151. Yin, supra note 17, at 28.
152. See supra note 74 and accompanying text.
the communist view of the struggle between opposing ideologies. Negotiation may be used as an alternate tool to violent revolution, but if negotiation gives up communism’s fundamental principles, it loses its legitimation as part of the overall struggle. Thus, whereas Americans view compromise as allowing the negotiator to alter policy for political benefits, a Chinese negotiator might react very hostilely to the suggestion that she needs to make concessions on subjects she considers fundamental. Thus, ideological notions of principle can have concrete effects within the context of a negotiation.

C. The Relationships Between Ideology and Cultural Tradition

1. Reinforcing

Both ideological and cultural explanations reinforce certain negotiating behavior. One example of this convergence lies in the patience of negotiators. Although quite different sources support this tendency, the practical effect at the bargaining table remains exactly the same: an increased ability to extract concessions from opponents, especially those who operate on shorter time scales or who do not possess this proclivity towards patience.

Another pair of causes that seem to result in the same behavior is the desire to regain "face" for perceived historical subordination and the desire to dominate opposing ideologies. The convergence of these inclinations helps to explain the tremendous importance placed on the regaining of Hong Kong. By taking over this territory, the PRC not only begins to erase the humiliation of the domination by nineteenth century Western powers, but it scores an ideological and propaganda victory in the struggle against Imperialism. Thus, where the background factors of cultural tradition and ideology coincide, one can expect an even greater impact on negotiation behavior.

2. Similar but Diverging

Both cultural traditions and communist ideology have a conception of the importance of principle, but differences between the views suggest differing implications for negotiation behavior. Both of these groups of explanatory factors place greater importance on ideas of principle in guiding negotiators and in setting overall goals than an American negotiator might display, especially an American negotiating a business deal. However, the ideological view of principle tends to restrict the range of agreements that a negotiation might achieve, and ideological principle itself remains relatively static over time. For example, the Party’s view on a particular subject, or the mentality of a general struggle against capitalism,

154. Id.
155. See Comparative Approaches, supra note 116, at 109 (Comments of R. Clough).
156. See, for example, the universal observation that Chinese and Korean negotiators show high levels of patience. See supra notes 105-09 and accompanying text.
tends to change only at a glacial pace. Negotiators guided by these goals may not be able to accept certain agreements that conflict with these principles, and may not be persuaded by certain arguments. By contrast, the cultural view of principle as the mutual interests that provide a foundation for relationships does not restrict conflict resolution but in fact engenders it. Principles in this respect can evolve when the policies and goals of the bargaining party change, allowing successful negotiations where before no agreement could be reached. These essentially different natures, therefore do not fortify one another.

Another way of looking at this distinction is to examine the basic contradiction between the Confucian ideals of harmony and of the development of friendship relationships within which to work, and the communistic principles of struggle and domination. In order to build the real bonds of friendship required by the Confucian idea of negotiation, a negotiator must set aside communism's single-minded search for domination.

Trends in the PRC after Mao's death, although turbulent, suggest that the PRC has reduced its emphasis on ideological principle, and North Korea may follow this lead. In 1978, for example, the Eleventh People's Congress announced the official abandonment of political upheavals such as the Great Leap Forward and the Cultural Revolution, and more pragmatic officials have assumed high government posts as part of the move away from the dominance of ideology.

The subordination of ideology also became apparent in the Macao talks, in which Chinese negotiators made concessions in order to gain a successful agreement. Chang states that the "Macao dispute shows China will be flexible and pragmatic in making concessions it feels necessary to accomplish its objectives, even if this requires significant departure from precedent and previous stated positions." Finally, even North Korea has recently shown remarkable shifts in its bargaining with the South Korean government, and on December 13, 1991, the two nations signed a treaty of reconciliation and non-aggression. Further negotiations to reduce tensions followed the gains made with the initial treaty. These trends suggest that perhaps Chinese and Korean negotiators not
only will make reference to ideology less often but will reveal less of its influence in their tactics and goals.

3. Contradicting

A contradiction exists between the ideological justification for certain tactics and the idea of face or integrity. The mindset of the struggle for domination allows the ends to justify the means, making such tactics as lying, intimidation, and extortionary demands acceptable tools for the negotiator. Yet these ideas conflict with the building of relationships between the parties, an important goal of a negotiator schooled in the Confucian value of friendship and affiliation. Once again, however, the emphasis on ideological domination seems to be slightly less important, and the more traditional values have resurfaced.

Americans will not hear Marxist-Leninist-Maoist rhetoric from Chinese negotiators, even if the Chinese bureaucracy and press continue to use it internally. Solomon also argues that the Chinese now seek to "preserve their credibility by avoiding hollow bluffs and outright lies," even if they may still distort prior statements and understandings to their advantage.

Perhaps a shift in the countries' national interests may explain this shift in tactics. In the 1950's when the Chinese used negotiations to advance their military positions, any tactic seemed justified. Now, however, when the PRC needs technology and business relationships, it must deal with the West in part on its own terms. The ideological goal of strengthening the nation in order to preserve communism is now fulfilled using less revolutionary tactics.

III. BARRIERS TO SETTLEMENT THROUGH NEGOTIATION

It seems intuitively obvious that negotiations between individuals of different cultures will encounter greater difficulties and take longer to reach agreements. An enormous number of factors may inhibit the settlement of a dispute. For example, parties can never easily communicate their needs to each other, even when they have an extensive background of shared values and experience. In fact, studies show that the greater the similarities of perception and behavior between opposing parties, the more readily they can reach agreement.

163. See generally Solomon, supra note 21, at 2.
164. Id.
165. Id. at 12.
166. Id. at 12-13.
167. See supra notes 134-38 and accompanying text.
169. D. DRUCKMAN, supra note 6, at 70; Shenkar & Ronen, supra note 21, at 264; see D. DRUCKMAN, supra note 6, at 60-61.
Therefore, differences in nationality and culture can only add to differences found between individuals within a culture.

A cultural dimension may even exist in the way that parties view the negotiation encounter itself. However, cultural differences per se do not interfere with negotiation; instead it is how these differences impact on communication between the parties and on the choice of tactics that causes barriers to settlement. This section tries to ascribe specific difficulties encountered to causes found in the negotiators' cultural heritage and ideology.

A. Harmony

The importance placed on harmony and consensus can create communication difficulties and prevent the development of creative solutions. First, part of the ideal of harmony concerns preventing emotional displays and open conflict between the parties. Generally, suppression of emotion can prove valuable, allowing negotiators to focus on issues instead of being distracted by outbursts and shifts of emotion. However, if foreigners do not follow the courteous and respectful norm (keqi) expected of them, their behavior can become quite disruptive. Chinese negotiators tend to react negatively to overtly aggressive behavior and may not consider impoliteness as a mere oversight, but as an insult. The common Western approach of admitting the differences between the parties' positions so as to promote "honest confrontation" might easily backfire. Thus, a lack of understanding of the Chinese desire for harmony during talks can cause frictions that may prevent a mutually beneficial agreement.

A second pitfall caused by this desire for harmony lies in the modes of communication used by negotiators. Chinese or Korean individuals may use subtle gestures or oblique suggestions to convey meaning rather than openly stating information or feelings that might cause disruption. For instance, American negotiators may not recognize that silence or lack of eye contact in their opponents need not indicate disapproval. If they acted on their usual interpretation of these appearances, negotiations might founder needlessly. In a more subtle example, Premier Zhou Enlai quoted a poem written by Mao concerning the evanescence of life. This act has since been understood to express Zhou's recognition of his own failing health, a subject he would be uncomfortable to raise openly. Zhou died several years later of cancer. Chinese officials have
made other such subtle references that may have an impact on the progress of negotiation;\textsuperscript{180} if their American counterparts fail to recognize them, once again settlement may be jeopardized.

The desire for harmony within a negotiating group may also have a negative impact on bargaining outcomes. Inventing creative options proves extremely valuable to settling many disputes.\textsuperscript{181} However, the requirement of consensus within many working groups stifles individual initiative.\textsuperscript{182} This lack of consensus may well explain some of the difficulties and slowness experienced by negotiations involving Chinese and Korean negotiators, but its exact impact remains very difficult to calculate or even detect.

\textbf{B. Friendship and Affiliation}

Although the building of strong relationships has many positive side-effects, the stress placed upon such bonds by Chinese and Korean negotiators may cause misunderstanding and inhibit the reaching of agreements. In terms of positive effects, perhaps the best way to solve the problem of the lack of similar experience and values of the negotiators, even within one culture, is to build a strong working relationship between the parties.\textsuperscript{183} The Chinese emphasis on such relationships can also help to save a contract. Because of the long term bond created during negotiation, an American business partner might not feel that it needs to respond to its counterpart's failure to live up to a contract provision. The foreigner can trust her Chinese "friend" to make up for any minor shortcomings later, and the American has greater inclination to settle disputes so as not to risk the overall relationship.\textsuperscript{184} In fact, in 1987 over fifty billion dollars of trade occurred between the PRC and the United States without a single dispute rising to the level of a formal law suit.\textsuperscript{185} Despite these benefits, differing views of the nature of the relationship itself and of the necessity for written contracts can cause misunderstandings.

First, differing views of the negotiators' relationship may disrupt an otherwise stable agreement. Individuals who value the Confucian model of friendship perceive obligations on the parties that foreigners may not recognize. For example, the American paradigm of a stable relationship seeks strict compliance and predictability after signing a contract.\textsuperscript{186} A Chinese partner, however, might regard a relationship as setting up obligations on the part of the American, and

\textsuperscript{179} Id.
\textsuperscript{180} Id.
\textsuperscript{181} R. Fisher & W. Ury, supra note 168, at 59.
\textsuperscript{182} Korean Etiquette, supra note 21, at 94; see Shenkar & Ronen, supra note 21, at 267-70.
\textsuperscript{183} R. Fisher & W. Ury, supra note 168, at 37.
\textsuperscript{184} Robinson & Doumar, supra note 50, at 267.
\textsuperscript{185} Id.
\textsuperscript{186} See L. Pye, supra note 6, at 48. Even if this is a stereotype of actual business relationships, it seems to be an ideal in the United States' "legal-rational" legal system.
would not hesitate to ask small favors. Such requests, in turn, might arouse irritation in the American or even accusations of bad faith. On the other hand, the notion of friendship might create expectations in the Chinese official of deserving such special favors or attention. Ill feelings might arise if the American fails to fulfill these perceived obligations. Pye states that the concept of friendship can lead to "exaggerated expectations of dependency, that, if not satisfied, can cause angry reactions and feelings of having been mistreated."

Differing emphasis placed on the relationship and the written expression of it may also create difficulties. Chinese negotiators tend to trust a working relationship more than a contract or treaty that arises from it. This opposite view of the general Western perspective caused misunderstandings when Zhou Enlai entered negotiations with the United States over the 1954 Geneva treaty governing Indochina, a treaty which the U.S. would not sign. Zhou convinced the U.S. government to agree to unilaterally declare that it would not interfere with the treaty's provisions. Although the United States regarded this action as a mere declaration of policy, the PRC then persistently claimed that the U.S. was bound by the 1954 Geneva agreements. The negotiated settlement came to nothing when the United States changed its policy in 1960 and increased its military presence in Vietnam.

Differing views of the importance of contracts and relational bonds also creates difficulties in business negotiations. When bargaining over a contract, for example, Chinese negotiators do not like to consider the possibility of the break up of the relationship, and if they do agree to assigning responsibilities after a breach, they prefer general, uncertain terms. The standard arbitration clause recommended by the Chinese National Technology Import Corporation simply states that both parties must try to correct unsatisfactory results and jointly work out the consequences should the contract fail. Obviously, American businesses regard this kind of general statement as completely inadequate. In addition, each side may waste much time trying to educate the other as to the level of specificity and the ultimate form of the contract. American negotiators in particular find this need for explanation frustrating. Thus, different

187. Id.
188. Id. at 89-90.
189. Id. at 20.
190. For an example of the dangers of relying on such trust, see J. Ward, supra note 5, at 66.
191. Id. at 102.
192. Id.
193. Id.
194. Id.
195. Comparative Approaches, supra note 116, at 115-16 (comments of S. Lubman). They may even find such considerations "insulting." Id.
196. Lubman, supra note 35, at 60-61.
197. Id.
198. Id. at 65.
199. Id.
conceptions of the role of contracts, as well as differing ideas on levels of specificity in contracts, can cause barriers to successfully concluding negotiations.

C. Hierarchy and Face

Individuals who hold a concept of hierarchy tend to prefer not to associate with others who have lower status levels, and this preference can prevent the formation of the trusting relationship necessary for successful negotiations. Because lawyers traditionally held a very low status and were persecuted during the Cultural Revolution along with all intellectuals, perceptions of the status levels of many foreign representatives may hinder negotiation. Although changes since Mao's death made the use of lawyers more legitimate and the recognition that other cultures may assign status to members in different ways has become more widespread, status consciousness may still limit the ease with which negotiation relationships form.

Ideas of status and face may also affect the ways in which negotiators go about building friendships. Just as important as not injuring another's reputation is the idea of giving face: small gestures or comments of respect may fulfill a Chinese negotiator's desire for status recognition. Americans in particular have trouble giving face; although flattery exists between Americans, they often regard it as mere pretense or feel guilty about pumping another's ego. However, failing to show the customary signs of respect will cause offense or inhibit the formation of positive relationships.

D. Ideology

An inherent difficulty in evaluating barriers to negotiation arises due to difficulties in defining the roles and purposes of negotiation under communist ideologies. One can hardly explicate the barriers to settling disputes through negotiation if one side does not view the resolution of conflict as a goal of the process. For example, North Korea may have entered the Panmunjom armistice talks without any intention of reaching a peace settlement, but merely sought to regain military initiative. Consequently, the war and its loss of life dragged on for many years.

200. CHINESE ETIQUETTE, supra note 21, at 62; see CONFUCIUS, supra note 45, at 60 & 99 ("The master said, '[d]o not accept as friend anyone who is not as good as you.'").

201. CHINESE ETIQUETTE, supra note 21, at 94-95. During the Cultural Revolution, lawyers were labeled "the worst of the stinking ninth category of intellectuals." Id.

202. Id. at 95.

203. L. PYE, supra note 6, at 88.

204. Id.; R. FISHER & W. URY, supra note 168, at 29.

205. See W. VATCHER, supra note 16, at 205 (to communists, "negotiation does not mean sincerely and frankly discussing the issues with a view to reaching an equitable and quick end" to the war).

206. See supra note 133 and accompanying text.
However, assuming that Chinese and Korean representatives in fact want to settle disputes, communist ideology can prevent the success of such negotiations because of disruptive tactics and failures to communicate. First, ideology justified the use of tactics designed to create tensions and intimidate, and these pressures may inhibit resolution of differences.207 Not only do these actions prevent the creation of a sense of trust and commitment between the parties, but the tensions they create may militate against reaching an agreement. Psychological studies show that negotiators faced with pressure become less capable of evaluating information and making the fine discriminations necessary to achieving agreement.208 They may resist compromise, and are more likely to overreact to provocations, leading to the break down of bargaining.209 Clearly, although negotiators using these tactics may believe they gain an advantage by intimidating opponents, perhaps a propaganda advantage, such actions do not promote the settlement of substantive problems.

In addition to creating tensions, ideological differences can create difficulties in communication. For example, although Chinese officials understand that American companies need to make a profit, they cannot empathize with this need because their own drives and goals differ to such a great extent.210 They may perceive the American company as merely being greedy.211 Because each side cannot clearly understand the other’s interests, they find it more difficult to create a mutually beneficial settlement.212 Attempts to posture for propaganda purposes also inhibit open and successful communication.213 If negotiators speak for the benefit of third parties instead of addressing each other, understanding of issues becomes less likely, and negotiations tend to break down.214 Thus, although ideological goals may justify the use of negotiations to spread ideas and influence world opinion, they hinder the resolution of conflicts, the ostensible subject of such meetings.

Finally, ideology may create special needs that other parties may have difficulty perceiving and therefore fulfilling. For example, before 1979, PRC negotiators saw firms with operations in Taiwan as dealing with the enemy.215

207. Joy claims, for example, that his communist opponents "lied . . . blustered . . . became vindictive . . . welshed . . . twisted, distorted, and denied truth . . . delayed . . . and threatened." C. Joy, supra note 16, at 146.
208. D. Druckman, supra note 6, at 57.
209. Id. at 57-58; see R. Fisher & W. Ury, supra note 168, at 137-45.
210. Downing, supra note 114.
211. L. Pye, supra note 6, at 60.
212. Downing cites another example of such a misunderstanding. An American chemical company needed a proposed facility to be located outside of the Shanghai city limits because of the risk of harmful emissions and their potential for liability. Downing, supra note 114. The Chinese officials, on the other hand, were responsible only for industrial development within the municipality of Shanghai, and so would not consider any other location. Id. However, the parties recognized this divergence of interests only after extensive talks and much misunderstanding. Id.
214. Id.
215. L. Pye, supra note 6, at 71.
After the PRC formulated the "Two Chinas" concept in 1979, in which it began to treat Taiwan less hostiley, firms which stopped dealing with Taiwan were chastised. If American negotiators fail to recognize and cater to the ideological needs of their counterparts, they may not reach agreement.

IV. SOME SUGGESTIONS FOR IMPROVEMENT

Many of the problems in communication and the disruptions to smooth negotiation sessions would decrease in importance if the two parties had a better understanding of the culture and needs of their counterparts. For example, an American negotiator should not try to single out one counterpart in the negotiation for a one-on-one talk or special treatment. The rest of the negotiating team would lose face due to this favoritism, and the chance of an amicable settlement would decline. An American negotiator cognizant of the cultural traditions of face and consensual decision making would not make the same error. Many studies support this notion that increased understanding of one's opponents facilitates dispute settlement, including one citing it as a "necessary condition" for success. Clearly, an increased understanding of one's opponents increases the chances of successfully resolving a negotiation.

Effort put into building a trusting and committed relationship will also improve results in these inter-cultural contexts. Not only do traditional Confucian values favor this path, but a strong bond helps to smooth over frictions caused by cultural misunderstandings and allows the parties to communicate their real interests. Presenting issues, for example, in a broad, principled framework may suggest to Chinese and Korean opponents that an American desires a long term relationship and demonstrates a seriousness of purpose. Tung's empirical research confirms this assessment: the willingness to put time into building a strong relationship was the most important factor in predicting the success of cross-cultural business negotiations between Chinese and Americans.

To a certain extent many of the problems discussed in this comment will diminish as more negotiations between individuals with these differing cultural and ideological backgrounds occur. Greater sensitivity to the other's culture will

216. Id.
217. This difficulty achieves a further level of subtlety if American and Chinese negotiators do try to act in ways that they believe their counterparts favor. They may feel that the other does not appreciate the "unnatural" lengths to which they have gone, creating frictions. L. PYE, supra note 6, at 20 & 23.
218. Shenkar & Ronen, supra note 21, at 269.
219. D. DRUCKMAN, supra note 6, at 27-28 & 36; see also id. at 35, 61-62; KOREAN ETIQUETTE, supra note 21, at 84-85; Solomon, supra note 21, at 16. But see D. DRUCKMAN, supra note 6, at 53 & 60.
221. Solomon, supra note 21, at 15.
222. R. TUNG, supra note 29, at 66 & 71.
223. See Lubman, supra note 35, at 66.
develop over time, and solutions of such practical problems as the form of contracts will be found and standardized. Yet cultural influences inherently resist change. The problems of cross-cultural negotiation will persist, and members of both cultures will continue to grapple with them in search of answers.

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