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Commentary on “A Modest Proposal for a Basic Agreement on Peaceful Cross-Strait Development” by Chang Ya-chung

Christopher R. Hughes

Abstract: This critique assesses Prof. Chang Ya-chung’s draft basic agreement for cross-Strait relations by arguing that it overstates changes in Beijing’s Taiwan policy, which is based on a strategy that has not seen substantial change since it was devised in the early 1990s to prevent the island’s democratization leading to the exercise of self-determination. By over-estimating Taiwan’s political, diplomatic, military, and economic vulnerability the proposal unnecessarily narrows down Taipei’s options to the point where it has to accept Beijing’s one-China principle. This merely closes off other options that Taiwan can just as readily pursue, such as continuing to develop cross-Strait relations through ad hoc solutions to practical problems or seeking more imaginative ways to create a durable *modus vivendi* with international support. Even more problematic is that a political framework for stability based on the principles of Chinese nationalism is unlikely to be acceptable for Taiwan’s liberal-democratic politics and could thus amount to an unnecessary risk that would lead to a less durable cross-Strait status quo than that which has been maintained over the last two decades.

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The Peace Agreement in Beijing's Strategy

Professor Chang Ya-chung points out at the start of his proposal for a “Basic Agreement on Peaceful Cross-Strait Development” that much attention has been stimulated by the idea of a new framework for cross-strait relations since the idea was included in Hu Jintao’s report to the Seventeenth National Congress of the CCP in October 2007 (Hu 2007). In assessing Chang’s response to Hu’s call, however, it is important to recognise that the suggestion for such a framework is not new, but was made by Beijing at least as long ago as the attempt to present a new policy framework for cross-strait relations in the form of Jiang Zemin’s “Eight Point” speech of January 1995 (Jiang 1995). Hu Jintao’s recent appeal thus amounts to the restatement of a policy that was originally put in place during the early stage of Taiwan’s democratisation with an eye to using a “peace agreement” (*heping xieyi*) to secure Taipei’s acceptance of the “one China principle”, thereby pre-empting any later expression of self-determination by the citizens of the island.

Since 1995, the only variation on this formula to have appeared in a major document from Beijing appeared in 2002, the second year of the Chen Shui-bian (Chen Shuibian) administration, when Jiang Zemin’s report to the Sixteenth National Congress of the CCP was limited to calling for the termination of the state of hostilities and did not mention the idea of achieving a peace agreement (Jiang 2002). Later, the idea reappeared in the April 2005 joint statement issued by Hu Jintao and then KMT chairman, Lien Chan (Lian Zhan), albeit with the different Chinese wording of *heping xieding* (Hu and Lien 2005).

These statements show how Beijing’s peace agreement initiative is an integral part of a long-standing strategy aimed at building support for those in Taiwan who are prepared to accept some kind of statement that fixes the island as a part of China, while isolating those who it sees as secessionist forces. The contrast between the ways in which Beijing uses the peace agreement proposal to deal with Taiwan’s two main political parties is thus quite striking. The call for a peace agreement made in the 2005 Hu-Lien statement, for example, was issued just after Beijing attempted to intimidate the second Chen Shui-bian administration by issuing its Anti-Secession Law, best known or its codification of the conditions under which force can be used against Taiwan (NPC 2005). As with Jiang Zemin’s 2002 speech, the law also drops the possibility of a “peace accord” as an item for cross-strait negotiation in favour of the more restricted possibility of a termination of hostilities. In contrast,

reiteration of the call for a peace agreement in Hu Jintao's October 2007 speech was made in good time to help pave the way for the Kuomintang's (Guomindang) victories in Taiwan's elections the following spring.

Taipei's Bargaining Position

From this perspective, one problem with Chang's draft agreement is that it does not explain why the Ma administration should now feel the need to meet Beijing's demands and sign an agreement that resolves the fundamental issues of Taiwan's status and identity. This is especially the case if an agreement is to openly settle the issue of Taiwan's status by declaring that "both sides of the Taiwan Strait belong to the Whole China" which has been in "a state of separated governance since 1949".

Despite Chang's claim that President Ma Ying-jeou (Ma Yingjiu) has responded positively to Beijing's call, it would be more accurate to say that he effectively kicked the idea into the long grass during his election campaign. This was made public when Ma responded to accusations from the Democratic Progressive Party (DPP) and concerns over the March 2008 uprising in Tibet by declaring that Taiwan would not become another Hong Kong or Tibet and that the People's Liberation Army (PLA) would have to remove its missile threat to Taiwan before peace negotiations could start (Chen 2008: 1). Since then, the new administration in Taipei has rebuffed Beijing by declaring that political issues will not be discussed during Ma's first term (GMD 2009). By dealing with practical issues first and leaving the problem of political resolutions to a future day, a degree of consistency has been maintained with the strategy for dealing with Beijing that was developed by previous administrations.

Rather than explain why the Ma administration should change this strategy, Chang's draft tends to assume a certain inevitability that is not clearly justified. From the economic point of view, for example, his suggestion that such an agreement can be promoted as a way to promote "peaceful development" may make sense as a good way to appeal to Hu Jintao's broader ideological line. Yet, given that cross-Strait transactions have already expanded and deepened to a massive degree without the need for a political framework, the economic dynamics themselves provide little reason for such a fundamental change in Taipei's stance. In fact, forging a link in this way between Taiwan's economic prosperity and a general settlement could actually undermine Taipei's existing prin-

principle of separating practical issues from political fundamentals. President Ma has thus been careful not to make this mistake even when considering the possibility of negotiating an Economic Cooperation Framework Agreement (ECFA), which is supposed to be formulated according to WTO principles. No doubt aware that the “one country, two systems” formula is stated in Beijing’s Closer Economic Partnership Arrangement (CEPA) with Hong Kong, he has ruled out the possibility of including a statement concerning “one China” in such a free trade agreement.

Militarily, Chang feels it necessary to suggest the *quid pro quo* under which Taiwan gives up any moves towards independence in return for a guarantee by Beijing not to use force to achieve unification. This puts him in the company of a number of distinguished international observers who have argued for a similar renunciation of the right of the Taiwanese to self-determination over the years, a list of whom can be found in a recent article on the topic by Saunders and Kastner (Saunders and Kastner 2009: 87). Such capitulation to overbearing military threats certainly occurs in international politics when one state has been defeated by another. Yet Taiwan has remained secure from PRC attack since 1949 due to a combination of developing its own capabilities and reliance on the United States of America. In future, its bargaining position is likely to be much stronger if it proceeds from a position of confidence in this respect, which is why the Ma administration has adopted a policy of hardening the island’s defences while liberalising cross-Strait relations.

Diplomatically, such a *quid pro quo* also comes dangerously close to legitimating the use of force by Beijing and shifting the burden of responsibility onto Taiwan. This is especially evident in Chang’s fourth article, where he explains that

[...] if Taiwan withdraws from its pledge in the Basic Agreement not to separate from China, this commitment not to use arms or the threat of force would naturally lose its effectiveness.

Although history may be replete with communities that have seen their sovereignty sacrificed by the great powers for the sake of international stability, it seems to be self-defeating for Taipei to propose that the use of force against itself would be legitimate if Beijing decided that it was moving too far towards “independence”.

Managing the One China Principle

Another way in which Chang's proposal would represent a major change in the Ma administration's negotiating strategy is in the way that the declaration that Taiwan is a part of "Whole China" severely restricts the possibilities for a further exploration of any room for flexibility that may exist on this key issue. It needs to be stated quite clearly that such a statement is very different from the ambiguity of the "92 Consensus". It is only when both sides accepted this formula that sufficient space was created in Taiwan's politics to take the unification-independence issue out of the 2008 elections and allow Ma to become President. In fact, the 2005 Hu-Lien joint statement that made this possible does not insist on accepting the "one China principle" as a precondition for a peace agreement.

One of the major tests for the Ma administration is thus to maintain the ambiguity of the "92 Consensus" and see how far it can create space for new thinking. It remains far from clear just how far Beijing can go in this respect. That acceptance of the "one China principle" as a precondition for a peace agreement was in fact put back on the agenda by Hu Jintao's 2007 speech, the relevant section of which reads:

We are ready to conduct exchanges, dialogue, consultations and negotiations with any political party in Taiwan on any issue as long as it recognizes that both sides of the Straits belong to one and the same China. Here we would like to make a solemn appeal: On the basis of the one-China principle, let us discuss a formal end to the state of hostility between the two sides, reach a peace agreement, construct a framework for peaceful development of cross-Straits relations, and thus usher in a new phase of peaceful development (Hu 2007).

This can be taken as symptomatic of a growing determination to shape the future agenda of a Ma administration that would come to power with the ambiguous cross-strait policy of "No independence, no unification, no use of force". Yet there is no reason for Taipei to interpret this as an irresistible demand for a written assertion of the "one China principle" in a formal peace agreement. Such a development would in fact amount to a major breach of the "92 Consensus".

A similar ambiguity can be seen in Hu's "Six Points" speech of December 2008, where he does not even mention the "92 Consensus". On the one hand this can be taken as indicative of Beijing's attempt to pressurise Ma to move beyond the status quo that had secured his electoral

victory (Hsiao 2008). Yet there also appears to be a degree of hedging, insofar as Hu also states that negotiations on issues such as military communication and confidence building measures can be discussed while China “is not yet unified” (*wei tongyi*) (Hu 2008).

Given such statements, it may be wiser for Taipei to push for the much more limited option of a ceasefire that would not require addressing political fundamentals. Rather than consider such possibilities, though, Chang seems to close off the possibility of any options that fall short of a formal acceptance of what is, in effect, the “one China principle”. This can be seen especially when his draft agreement states that “the future direction must be aimed at returning to a concept of ‘One China’ (namely, the ‘Whole China’)” and maintains that any alternative is impossible not only because “Mainland China” would not accept it as a permanent settlement, but also because “[n]either should Taiwan pursue such a policy”. It becomes even harder to understand how Chang can describe his draft as only a temporary “modus Vivendi” when he goes on to propose building institutions to “assist in the development of cross-strait relations toward integration rather than secession”. The political opposition inside Taiwan to such a negotiating strategy is unlikely to be diminished by the kind of appeals Chang makes to the imperatives of ethnic Chinese nationalism, according to which “both parties are still a part of the Chinese people” who should be bound together politically within Whole China.

From a tactical point of view, Chang’s legal argument that any ambiguity over Taiwan’s status as part of China has been settled by the ROC Constitution also seems to give away an important element of Taipei’s search for a solution that falls short of a formal acceptance of the “one China principle”. This is because the same argument has been used by several administrations in Taipei, including the present one, to actually defuse the conflict over identity and status by pointing out that the ROC is already an independent state. Chang, however, departs from the ambiguity inherent in such a position in such a way that his draft not only fixes Taiwan’s status as a part of China but does so in a way that is deliberately calculated to supersede the right of its citizens to self-determination through the democratic process. He even goes so far as to assert that a change to the Constitution by referendum would be annulled by “a written commitment from Taipei affirming that its constitution does not belong to a different country but only constitutes a specific political order within the Whole China”. It is hard to see how such a

denial of hard won democratic rights can be accommodated within the reality of Taiwan's present political landscape.

Chang's draft thus runs the dual risk of not only closing off alternative strategies for Taibei, but also antagonising public opinion and overriding the right to self-determination for a democratic state. While this may be objectionable in principle, it could also squander the political leverage that Taiwan's democracy gives the island when dealing with Beijing. Chang is certainly aware that such a resource exists, as when he proposes that Beijing would be wise to sign an agreement using the name "Beijing China" (mirroring the "Taibei China" formula it imposes on Taiwan) because continuing to call itself just "China" would allow the impression that:

[...] one side is China, one side is Taiwan to become gradually entrenched in the hearts and minds of the Taiwanese. Such a position would be identical to the vast majority of supporters of Taiwan's Democratic Progressive Party.

If the threat of driving voters into the arms of the DPP is strong enough to force this concession on Beijing, though, it is surely also sufficient to argue for a peace agreement that does not attempt to impose a settlement on Taiwan of the issue of its identity and status.

Continuing the Search for Flexibility

Despite the above criticisms, it is important for Taibei to be seen to be responding to recent pressure from Beijing for a peace agreement and the discussion of fundamental political issues. Since democratization began, Taiwan's thinkers have in fact taken a very active part in the generation of imaginative concepts and institutions to get around the domestic legal and political constraints faced by the governments on both sides. In this respect, Chang is right to advocate avoiding the use of terms such as "sovereignty", "diplomatic independence", "diplomacy" and "independence". Moreover, the relatively pragmatic proposals in his draft show an admirable attempt to loosen up the state centric vocabulary of international politics. Yet, engaging in diplomatic word play is very difficult when the outcome also has to be intelligible and workable for not only two societies with very different conceptions of national identity but also an international audience that has to be able to understand and accommodate any new dispensation.

It is not clear whether Chang has optimised the chances for success in such an endeavour, because the priority he gives to the claims of Chinese nationalism seems to lead to a rather interesting reversal of the logic of international law. This can be seen, for example, when the draft is supposed to “avoid the formulation that cross-strait relations are a foreign relationship by international law” by using the term “highest power” to refer to the governments on the two sides of the Strait. Similarly, he tries to avoid the legal implications that are generated when governments interact by suggesting that the two sides of the Strait can treat each other as equal entities in “domestic politics” only. He further explains that

If we use the terminology of international law, Taiwan and Mainland China are only complete international legal entities within their own respective domains. From the perspective of the domain or the affairs of the Whole China, Taiwan and Mainland China both are incomplete legal entities.

He complicates the legal position even more by resorting again to the emotional language of ethnic Chinese nationalism to explain that

the equal relationship across the Taiwan Strait cannot be explained as an equal relationship between two foreign countries on the basis of international law, just as the relations between two siblings cannot be explained as the relationship between two strangers.

Such a complex attempt to satisfy everybody runs the risk of satisfying nobody. From the perspective of international society, although Taiwan has not achieved widespread diplomatic recognition, it has succeeded in struggling to develop other aspects of its international legal status in ways that are the envy of contested territories like North Cyprus. Rather than focusing on the emotive matter of diplomatic recognition, this has involved consolidating other criteria demanded by international society for statehood. What these are can be found in the Montevideo Convention, which establishes that a state should possess a permanent population, a defined territory, a government and the capacity to enter into relations with the other states and that “the political existence of a state is independent of recognition by the other states” (Montevideo Convention 1933).

From the point of view of international practice, this has resulted in a situation in which the conduct of the great bulk of the international community can be interpreted as implicitly recognizing Taiwan’s statehood and all of the legal rights associated with it. This position is suc-

cinctly summed up by the international law expert, Brad R. Roth, when he states:

Often referred to as an “entity *sui generis*”, Taiwan appears to have all the necessary characteristics of an independent state, notwithstanding contrary indications from the ROC’s official pronouncements. Moreover, the conduct of the great bulk of the international community can be interpreted as implicitly recognizing Taiwan’s statehood and all of the legal rights associated with it, irrespective of non-recognition at the diplomatic level (Roth 1999: 263).

For the Ma administration to follow Chang’s advice and openly announce to international society that Taipei’s inter-governmental relations with Beijing do not imply statehood would seem to move against this evolution of the island’s *sui generis* independent legal status, with no clear benefit. From Beijing’s perspective, on the other hand, it is not clear how some elements of Chang’s proposal would be different from accepting Taiwan’s independence. This is particularly clear when he states that

both sides agree to respect that its counterpart is the highest power in its own area, and that neither side may represent the other in international relations, or act in the name of the other. Both sides respect the authority of the other party in internal constitutional order and external affairs.

This seems to come much closer to meeting the demands of the Montevideo Convention than the “one China principle”.

The International Status of the Agreement

The dilemmas and complications involved when it comes to addressing multiple audiences can be seen even more clearly when Chang addresses the ways in which his proposal can open up more international space for Taiwan. His plan for allowing Taiwan representation in international organisations under a “three seats across the Strait” formula, with the third seat upholding “the overall interests of the Chinese people” is certainly ingenious insofar as it is supposed to allay Beijing’s fears by telling the world that the two sides “will work together in international organizations, and that their mutual participation does not signify the separation of either party from the Whole China”. Yet it may be hard to put such a system into practice.

Concerning names, for example, even if Beijing is willing to sign an agreement stating that “Taipei China” is the “highest authority” for conducting Taiwan’s international affairs, it seems unlikely that Hu Jintao would allow the PRC to be re-branded as “Beijing China” in the United Nations. It is also difficult to imagine a way in which the third seat could be appointed and staffed to ensure that it takes an impartial position between the two sides. If the Taipei and Beijing representatives were involved in a conflict over an important issue linked to trade or a sensitive political issue to do with human rights, would the third seat outrank the other two seats or be expected to adjudicate?

Problems can also be foreseen in Chang’s formula for allowing diplomatic representation for the two sides in each other’s jurisdictions through the mutual establishment of “permanent representative offices”. He explains that these will not really be “embassies” because their presence and operation will not be based on the Vienna Convention on Diplomatic Relations. Instead there will be an agreement between the parties that will “define the privileges and immunities to be enjoyed by these representative offices in the future”. This is supposed to have the advantage of signifying that both parties “do not have a general state-to-state relationship, but rather an internal relationship within the Whole China”.

The risks of such a departure from international practice again need to be carefully weighed. While it is true that the exchange of ambassadors amounts to “diplomatic recognition”, the Vienna Convention is also a practical treaty designed to afford the protection necessary for diplomats to conduct their work effectively and in safety. Breaching the Convention would thus have a severe impact on the international credibility of any state. A kind of shadow agreement between Taipei and Beijing, however, would be based purely on trust between the two sides. As such, the repercussions for Beijing if it breached the agreement would be largely limited to reactions from inside Taiwan. Whether this would prove sufficient to allow diplomats to work unmolested in the medium to long-term needs to be explored further.

Finally, if Chang’s draft is to be complete, it also needs to more carefully assess the impact of a peace agreement on regional geopolitics in the Asia Pacific because it is effectively proposing the creation of a kind of Chinese bloc between Taiwan and the PRC. In his work on the concept of a cross-Strait common market, vice-president Vincent Hsiao goes so far as to envision the emergence of a “Greater Chinese Market” (*da zhonghua shichang*) as a way of balancing American and Japanese influ-

ence in the region (Hsiao 2005: 127-146). There has already been popular discussion in South Korea and Japan of the possible threat posed by the emergence of what has been christened “Chaiwan” (Xie 2009; Rhee and Li 2009). Chang’s suggestion that Taiwan should be involved in defending the integrity of the borders of the “Whole China” might certainly add to such fears if it implies that the island could be dragged into any conflict that might arise due to Beijing’s assertion of its maritime territorial claims against Japan and the Southeast Asian littoral states or its border dispute with India. Given the pivotal position of Taiwan and the fragility of the regional security architecture, such considerations and suspicions need to be treated seriously.

Conclusion

In its present form, Prof. Chang’s draft agreement is a useful starting point for assessing the possibility of a cross-Strait peace agreement which does more to draw attention to the difficulties of such a project than put in place a workable project. In particular, any discussion of a peace agreement has to be justified by a broader exploration of the political dynamics of cross-Strait relations. Not only does this have to look at the relative power and the motivations of the two governments most immediately concerned, it also has to take into account their domestic political dynamics, the historical trajectory that has brought them to their current relationship and the regional implications of a closer alignment.

In this respect, it has not yet been established that the tried and tested method of muddling through by finding ad hoc solutions to practical problems needs to be changed. Nor is it clear that the pressure on Taiwan is so severe that there needs to be a public renunciation of the principle of democratic self-determination by its citizens. In the absence of hard evidence, it may be wise to avoid assertions to the effect that “independence” is less and less likely, that “sharing the right to the name ‘China’ is the only way of increasing its [Taiwan’s] own influence and power”, and that “Chinese Taipei” is a “non-political term” that “brings with it benefits in terms of economic gains and identity”. Starting negotiations from such a position may only cut off alternative possibilities for Taiwan in the longer term.

Despite these concerns, it should also be acknowledged that Taiwan may find itself in the difficult situation of being cast as the recalcitrant “trouble maker” once again if it refuses to respond positively to Hu Jin-

tao's appeal for a peace settlement. It is, therefore, important for the Ma administration to be seeking the kind of creative initiatives that can help to develop the *sui generis* formula for stability that has already emerged in cross-Strait relations, despite the constraints imposed by the political vocabulary of sovereign states. In this respect, the interesting suggestions that Chang makes concerning the mechanics of an agreement are worthy of further discussion.

Ultimately, however, all of Chang's proposals will be hotly contested in Taiwanese politics because they are justified by the imperatives of ethnic Chinese nationalism rather than the values of the liberal democracy that has taken hold in Taiwan. Moreover, resorting to Chinese nationalism to justify the location of Taiwan as a part of "Whole China" will inevitably constrain the potential for the kind of radical thinking that may be needed to develop the creativity on all sides that has allowed cross-Strait relations to develop over the last two decades.

Looking to the future, Taipei has little to lose by making more radical suggestions for a breakthrough than Chang suggests. Unfortunately, the record of peace agreements and peace processes from the Middle East to Northern Ireland is a mixed picture, peppered more by failure than success. Yet it is hard to find any attempt at a settlement that has not involved major concessions by all sides. In particular, it is usually the case that some kind of third party arbitration is resorted to in order to compensate for the lack of trust between belligerents. The great achievement of the Northern Ireland peace process, for example, would not have been possible without the verification and cajoling provided by the United States of America. Neither could it have come to fruition if all sides had not allowed their nationalistic emotions to give way to offering the population most immediately concerned the right to self-determination by referendum (Northern Ireland Office 1998). Rather than giving away Taiwan's status at the start of negotiations, exploring such possibilities might give Taipei a much needed degree of *cudos* in the eyes of the international community. Going down such a road would also mark a true departure for Beijing from a policy that was put in place almost fifteen years ago. Now that would be worthy of a Nobel Peace Prize.

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