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Discussion Paper

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**Can the coming cross-strait negotiations be successfully
managed? — Reflections and questions on compromise, timing
and flexibility**

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Introduction

I think no one is likely to disagree if I start off by saying that this year's dialogue takes place at an exceedingly important and exciting juncture in the sixty-plus year old history of cross-strait relations. China's leaders have for some time been signalling their desire and willingness to make a sincere effort to deepen economic ties and significantly improve relations together with, in effect, whoever came to succeed Chen Shui-bian. And now the right man has come along in the person of the Kuomintang's Ma Ying-jeou, who built his highly successful election campaign, among other things, on the same aspirations.

In his inauguration address on the 20th of May, as everyone has certainly noted, Ma Ying-jeou underscored his intention to follow through on his promise to work quickly to achieve the goal of increased cross-strait economic integration and cooperation, emphasizing the further goal of achieving long term political reconciliation vis-à-vis mainland China, by directly quoting Hu Jintao. President Hu, Ma noted approvingly, had called for "building mutual trust, shelving controversies, finding commonalities despite differences, and creating together a win-win solution" across the Taiwan Strait. "[Hu's] views are very much in line with our own," Ma said, and went on "to call upon the two sides to pursue reconciliation and truce in both cross-strait and international arenas."

So far, very good indeed. If the top leaders on both sides of the Taiwan Strait hold identical views on such basic goals, what can prevent their being achieved? Well, the answer, unfortunately, is that many things can. The two sides' views will never be identical. There will be disagreement on details ("the devil is always in the details") and important disagreements on certain principles will inevitably remain, even if their effect may at times be circumvented or compromised. There are special interests to be taken into account, the matter of establishing precedents must be considered, and so on. Presumably, the most immediate, most useful and least problematic step of opening up the famous "three links" can and will be swiftly implemented. The same goes, perhaps, for banking and limited NTD/RMB convertibility arrangements. But then the going may well get sticky.

I foresee that a good deal of attention will be given in our discussions to the major cross-strait relations issues, both issues of principle and issues of substance. The point I will attempt to demonstrate in this short paper that it is useful to draw a distinction between issues of principle and issues of substance on the one hand, and what I shall refer to as *negotiation process issues* on the other. What I shall do is to put forth a number of quasi-theoretical observations on the importance and predictable effect of a number of choices or decisions that will be required of policy makers and negotiators on each side as things proceed — *tactical* choices, if you will — that will go far in determining whether or not the two sides can avoid getting bogged down so as to reach the comprehensive and mutually acceptable long term settlement the top leaders are seeking.

Negotiation process issues and tactical choices¹

I suggest that we think of there being about five areas in which negotiators will be called upon to make what I will call 'tactical choices', both prior to and during any process of negotiations. Besides having to decide how to respond to each others' proposals and demands, which is obvious,² there are tactical decisions to be made which, taken together, reveal how *flexible* each side is prepared to be, and to what cost.

The five areas (or categories, or dimensions, it doesn't matter much what you want to call them) have to do with one's own side's willingness or ability to *compromise*, with decisions as to *timing*, with one's willingness or ability to *deal with issues one by one or to seek package deals*, and with two kinds of formalities: *negotiation* formalities and *agreement* formalities. In active negotiations these are seldom if ever a matter of yes or no choices (unless one is determined to have all or nothing, which is precisely the non-productive attitude that has characterized most of the history of cross-strait relations). In serious negotiations such tactical choices amount to adopting positions across a spectrum, or along a continuum, of choice.

If all this seems excessively abstract, characterizations of the positions each side can adopt along each of the continua are provided in diagrams 1 – 5 in the appendix, and in the next section I will give one or two concrete examples of each in the form of a few problems I personally believe can be expected to arise in the course of the cross-strait negotiations which are soon to commence.

Exemplification and discussion

(Note to the reader: Please take a few moments to study the diagrams in the appendix before going on!)

Hopefully diagrams 1 – 5, complicated-looking though they may appear, will on closer inspection be seen to be self-explanatory. Rather than commenting on them one by one, I will simply refer to them as the occasion arises while discussing three of the negotiating process choices already made or not yet made and thus called for — each of them crucial, if in different degrees, to the eventual success of the coming series of negotiations.

1 I am aware that there exists a large body of theoretical political science and economic science theory dealing with the conduct of negotiations. The following remarks and observations are offered without my having consulted this literature: thus they should be regarded as impressionistic and experience-based rather than academically 'scientific'.

2 Theoretically the basic choices are always three in number: accept the terms on offer; reject the terms currently on offer and continue negotiating in hope of getting a more satisfactory deal; or break off the negotiations. So far in the history of cross-strait relations, with the exception of the decision to open the 'mini-three links' in 2001, one side or the other has invariably chosen the third alternative before much of anything substantial could be gained.

A. 'One China' - the prime example of a successfully managed issue — so far

The mutual and much-applauded decision to resume talks under the terms of the historic '1992 Consensus' provides an excellent example of how the analytical tools proposed in this paper can help in understanding what can be deemed settled and what not.

Normally we would refer to the 'One China, respective interpretations' formula as a compromise, but in my terms it is not a so much a compromise as a decision to defer the issue of definition until a later date. The parties have agreed to proceed by adopting the third position from the left in diagrams 1 *and* in diagram 2: neither side has given up the idea of a single China nor persuaded the other side to give up its version of it, but the issue has been disarmed and postponed, presumably for a considerable length of time but not indefinitely.

At some point, however, the issue must re-arise. Here there would seem to be two options and they are important for the success of the search for a comprehensive cross-strait agreement. To completely ignore the question of what is meant by one China would be tantamount to dropping it — a very unlikely compromise on the Chinese side. More likely, the two sides have in effect two choices: agree on a concrete, mutually acceptable formula,³ or else choose to refer to the matter as a question for future generations to hammer out — moving therewith to the far right position on the time dimension continuum. It will be extremely interesting to see which path they will end up choosing.

B. Taiwanese rejection of the '1993 Agreement' – an example of a slightly problematic negotiation-formality issue

Straits Exchange Federation Secretary-General (then Secretary-General-designate) Kao Koong-lian said in earlier in May that the “1993 Agreement” reached by then SEF chairman Koo Chen-fu and then ARATS Chairman Wang Daohan in Singapore in 1993 would *no longer apply* to the current cross-strait situation, suggesting that both sides need to sign a new agreement for the resumption of talks. Presumably the Chinese side will not find it too difficult to accede to Koo's demand, thus taking up position 3 in diagram 4, but one never knows.⁴

C. The 'sovereignty' issue and Taiwan's demand for 'international space' - an illustration of how negotiation-process decisions could make or break the prospects for success

Ma Ying-jeou's repeated, categorical assertion that the Republic of China on Taiwan is in fact a sovereign independent state (an assertion that would at one time have been considered a potential *casus belli* in Beijing but one that has been repeated in almost ritualistic

3 Such as that proposed by Linda Jacobson in the ICG report "Taiwan Strait IV: How an Ultimate Political Settlement Might Look", ICG Asia Report N°75, 26 February 2004" accessible at <http://www.crisisgroup.org/home/index.cfm?l=1&id=2524>.

4 I must admit to not having had the time since hearing of Mr. Kao's remark to discover which of the stipulations of the 1993 Agreement Mr. Kao objects to, so I am unable to judge how difficult it will be to arrive at a new agreement. One would hope and expect that this is a minor matter, but minor matters have been used in the past to exact other types of concessions or to delay negotiations.

manner by every Taiwanese leader for more than a decade) together with his demand that a future comprehensive cross-strait agreement include a provision saying that Taiwan would no longer be prevented from playing a normal constructive role in international affairs — illustrate clearly just how important negotiation-process choices can be.

Several questions arise when one considers the potential effect of Mr. Ma's making this assertion at this point in time. Hu Jintao proposes that the sovereignty issue be shelved for the time being: Ma Ying-jeou raises the issue, but not necessarily with specific reference to the coming negotiations with China. On the contrary, Ma raises the sovereignty issue *while calling* for practical negotiations in which the sovereignty issue will be avoided. So is this a rejection of Mr. Hu's proposal to shelve it? No, in my judgement it is not, but it can very well be read as a signal that the Taiwanese side has in no way relented on sovereignty.

In my terms, in other words, Ma Ying-jeou adheres to the far left ('no compromise') position on the diagram 1 willingness-to-compromise continuum, while adopting the far right ('willing to consider certain issues separately') position on the diagram 3 issue-separability continuum — *with respect to this issue*, that is. In my estimation the Chinese side can be certain, however, that the sovereignty issue will *not* be disconnected from the peace agreement issue nor from the international space issue, and these will very likely prove to emerge at a later date as the most serious challenge to, or test of, flexibility on the part of the PRC.

One could go milking the negotiating-process choice diagrams for possible insights by considering other examples and time alone will show to what extent the two sides will make tactical choices conducive to furthering the negotiating process stage by stage.

Finally, permit me to call attention to the one factor common to all of the types and categories of negotiation-policy choices listed in my modest model: the factor labelled "the importance of reaching an agreement". For if, as it now appears, the People's Republic of China under the leadership of President Hu Jintao and the Republic of China on Taiwan under the leadership of President Ma Ying-jeou accord the importance of actually reaching an agreement ending the hostility and confrontation that has marred cross-strait relations for nearly six decades the ranking it deserves, that will be the ultimate, deciding factor.

Appendix: Diagrams 1 – 5: Crucial negotiation-process choice continua

1. Willingness or ability to compromise (determinants: principles, interests, commitments, the importance of reaching an agreement)

Outright refusal or political inability to compromise	or	Inability to compromise but willingness or ability to defer issues for a specified length of time	No compromise as such but willingness to defer issues for an unspecified (very long?) length of time	Conditional preparedness to compromise (often un-revealed for tactical reasons)
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2. Time dimension (determinants: urgency, 'window-of opportunity' factor, tactical calculations, importance of reaching an agreement)

Deal with issues head-on and immediately	Put off issues until a later date in accordance with an explicit or implicit agreed time table	Defer issues for an extended period of time — <i>sine die</i> but not indefinitely	Fudge the issue, forget or defer it indefinitely
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3. Separability of issues (determinants: *de facto* separability, tactical calculations, the importance of reaching an agreement)

Refusal or practical inability to deal with certain issues separately	Willingness to deal with certain issues as part of a package deal, possibly with varying implementation schedules	Willingness and ability to deal with complicated issues separately
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4. Negotiation formalities (determinants: prestige, principles, tactical calculations, the importance of reaching an agreement)

Imposed preconditions; denial of opposite side's legitimacy; secret meetings only; demeaning treatment in public	Relaxed preconditions; 'white glove' proxy-type negotiating procedures; pre-determined limited agendas; low ranking negotiators; low publicity	Preconditions disposed of; announced agenda; delegates named; publicly announced sessions with progress reports	Formal, high level meetings; pre-prepared, highly publicized results; signing ceremonies, etc.
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5. Agreement formalities (determinants: principles, interests, commitments, the importance of reaching an agreement)

Tacit agreements, secret top-level "understandings" etc.	Unpublicized agreements, non-binding promises and commitments	Legally binding (or "solemn") conditional agreements with escape clauses and loopholes	Formal treaties
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