Track Two Dialogue on
EU-China-Relations and Cross Strait Relations
London, LSE, 29-31 May 2009

A workshop jointly organised by Stiftung Wissenschaft und Politik (SWP), Berlin, London School of Economics (LSE), London and Shanghai Institutes for International Studies (SIIS), Shanghai, with the friendly support of the Robert Bosch Stiftung GmbH, Stuttgart.

Discussion Paper
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Thoughts on the Prospects for Arriving At and Maintaining a Stable *modus vivendi* in Cross-Strait relations

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Introduction

My aim is in this short paper is to discuss whether and to what extent the process of cross-Strait negotiations that commenced in earnest following the Kuomintang's sweeping 2008 election victory on Taiwan is likely to succeed in producing a mutually satisfactory and comprehensive middle term solution to the present state of affairs in the China-Taiwan relationship. By comprehensive I mean a solution encompassing not only economic but also political and security concerns on both sides, and by middle term I mean a solution giving rise to a reasonably stable *modus vivendi* (defined by my dictionary as "an arrangement or agreement allowing conflicting parties to coexist peacefully, either indefinitely or until a final settlement is reached") that could be expected to stand a good chance of enduring over a period, if necessary, of perhaps several decades.

As we know, the idea that the time had arrived to seek to replace the increasingly dangerous and antagonistic state of affairs that had developed during the previous twenty-odd years with just such an arrangement was first broached by China's Hu Jintao in discussions with the KMT leader Lien Chan following the DPP's second Taiwanese election victory in 2004. The suggestion was authoritatively reiterated by Hu at the CPC XVIIth Party Congress in 2007 and received a positive response by Taiwan's Ma Ying-jeou in the latter's successful 2008 presidential campaign, which set the stage for the negotiation process now under way.

It is important to keep in mind that a modus vivendi, as defined above, is what the ongoing series of negotiations is ostensibly aiming for. Neither side is at this point seeking a full and final settlement to the 60-year old cross-Strait impasse, and the reason why, I submit, is that each side has come to understand that its preferred outcome is irreconcilable with that of the opposing side—and understands furthermore that this will most likely remain the case for the foreseeable future.

Even though (or perhaps precisely because) the long-term political and ideological goals of the two sides are tacitly regarded as irreconcilable, the immediate aims professed by China's and Taiwan's top leaders are decidedly pragmatic. According to the now famous 16-character guideline put forth by Hu Jintao and favourably cited by Ma Ying-jeou in his inaugural address last May,1 what they envisage and have pledged to work toward is a precisely a sustainable modus vivendi. But although a great deal has been accomplished in the past twelve months, the results to date cannot be so described. Welcome and highly significant though the several agreements already arrived at may be, what we see to date falls well short of what will be required. This is clearly understood by the Chinese side, which is why both Hu and Premier Wen Jiabao have urged that

negotiations quickly move on to encompass the issue of Taiwan's participation in the activities of international organizations, as well as political and military issues and the creation of conditions for ending the state of hostility and concluding a peace agreement between the two sides of the Taiwan Straits. What the progress made so far represents, however, amounts to a demonstration of what can be achieved by putting aside petty animosity and placing a premium on mutual accommodation and cooperation when and where such efforts are to both sides' obvious advantage. This is an example of what we used to call détente or purposeful relaxation—desirable in and of itself but something much less, and much more fragile, than a true, lasting modus vivendi.

Arriving at a workable, sustainable modus vivendi obviously requires that the two sides continue working to arrive at mutually acceptable compromise solutions to most of their outstanding issues. But it also requires that they are clear about, and clearly state, the extent to which they find it *politically possible* to accommodate the opposite side's wishes and demands without compromising their own most jealously held principles. This is where preconditions come in.

In order to assess the prospects for success in the potentially historic process of negotiation now under way, observers and analysts must clearly understand which principles and goals each side considers non-negotiable, *non-compromisable* (we could perhaps call them "ultimate" goals and principles) as opposed to those which *can* be compromised in order to attain the desired modus vivendi. This is the first matter I briefly consider here.

The second matter to assess is whether it will be possible to reach compromises on negotiable issues without compromising non-negotiable ones (or vice versa: how to prevent one or the other side's refusal to budge on what it considers non-negotiable issues from spoiling the chances of reaching a sustainable modus vivendi).

And the third matter to consider has to do with *sustainability*: even assuming present efforts are successful, how can the various compromise agreements arrived at be made to stick? When one of the parties to agreement made today is a democracy, what, besides threats, is to prevent future power-holders from simply disavowing them and returning to the policies of the status quo ante?

Characterizing and comparing the basic stands taken by each side

My approach is thus to begin by once again identifying and characterizing the chief demands and interests expressed by each side, distinguishing those that can be assumed or have been clearly stated to be non-negotiable from those which seemingly are negotiable.

Distinguishing non-negotiable ultimate demands from ostensibly negotiable demands is the first step. The next step is to reconsider, in general, the proposals

and issues already advanced or mentioned in the present cross-Strait negotiations. The point of the exercise is to compare the issues on which progress has been made with the issues on which progress has yet to be made, linking each set to the *hypothetical negotiability* of the demands involved. A successful negotiating process requires a mutual effort to meet and somehow accommodate *corresponding demands* (even clearly contradictory ones) and to simultaneously satisfy *corresponding mutual needs* (also potentially contradictory in some areas), and to do this either through compromise or by removing or circumventing predictable impediments to progress.

Ultimate demands and needs on each side: expressed, implied or assumed

Enough theorizing. Offered below are capsule descriptions of what one might think of as the two sides' respective wish lists, concentrating on their presumed "ultimate" (non-negotiable) goals and non-negotiable *sine qua non* positions to which the parties are wedded, but which, in theory, do not have to be reconciled in the present round of negotiations. To repeat the point from which this discussion departs, the whole idea of a modus vivendi is based on the realization that each side's ultimate goals *cannot* at present be achieved. Thus, an intermediate, compromise modus vivendi cannot logically appear to negate, refute or require that either side disavow its ultimate goals. So which goals and positions are these?

Beijing remains committed for reasons of prestige and because the issue is historically linked to the legitimacy of the CCP, to the symbolic goal of successfully restoring some form of nominal sovereignty over Taiwan. (When exactly this must take place is not currently specified. Statements like Jiang Zemin made in the 1990s, in which he suggested that there were unspecified non-action deadlines beyond which Beijing would be forced to react with force, have not been repeated for some years and are now seemingly inoperative.[2]) At present Beijing is ostensibly not demanding any specific undertaking in this respect on the part of Taiwan beyond that of reaffirming the 1992 "One China, differing interpretations" formula on the which current negotiations and improved relations are based. Logically this rules out anything resembling a "two-China" or "one China, one Taiwan" solution, even as an intermediate measure.

On a similar level of commitment, Beijing also adheres and will almost certainly insist on continuing to adhere to a non-negotiable *sine qua non* position: that foreign countries (third countries from the Taiwanese government's point of view) not involve themselves with Taiwan in any field of activity other than economics, and even then only with Beijing's approval. To the extent that foreign governments cave in to China's adamancy in this regard (and such behaviour is nearly universal), Taiwan's ability to play a normal role in international affairs and

in particular to be independently active in international organs is severely limited, not to say nonexistent.

There is in addition a further *sine qua non* in Beijing's eyes, which is a negative, that is to say, something that must not be permitted to happen. Note that failure to bring about de facto reunification and formal acceptance of Chinese sovereignty oven Taiwan *is not* for the time in this category; Beijing does not demand reunification as an immediate or short term goal; it can simply not accept any development that could be risks abrogating the one-China principle. Accordingly, Beijing's definition of what would constitute final rejection of reunification *on the part of Taiwan* has been successively defined down, arbitrarily and perhaps fortunately, to an eventual *de jure* declaration of sovereign independence, and even the latter can and has been loosely defined. But what one can safely assume to constitute an absolutely unacceptable development for Beijing, even in lieu such a declaration, would be a significant swing *of international actors* away from strict observance of the one-China policy by rendering, or even seeming to render de facto recognition to the ROC on Taiwan—unless such were to occur under very special conditions expressly approved by Beijing as part and package of a negotiated cross-Strait compromise. This problem will be a stickler to solve. Finding a way to circumvent this difficulty will, I predict, be extremely problematical—possibly even a spoiler issue.

Otherwise Beijing has signalled that it is prepared to postpone achieving its ultimate reunification goal, and has already shown that it is prepared to fudge important issues, at least to a degree. This willingness, to the degree it is sincere and remains so, was much fortified in 2007 by Hu Jintao's call for efforts to achieve a so-called win-win situation through compromise. What Hu's personal political needs might be is not quite evident to me, but, ironically, he and his successors have much to lose if the political needs of their counterparts on Taiwan are not met, since the result could very well be a KMT defeat at the polls and the return of the DPP to power in three years' time. Thus there is arguably a "need" or at least a powerful incentive to compromise on some of the issues that are least unpalatable in Beijing, whichever they may be.

Taiwan cannot, in my estimation, logically be said to have any ultimate position or demand regarding the issue of eventual reunification with China. Taiwan's sole "ultimate" demand is that the will of the Taiwanese people decide the country's future. Its present government has acquired a mandate to negotiate a modus vivendi with China based on an indefinite *middle term* premise of "no independence, no reunification, no use of force" but it has entered into those negotiations by agreeing to proceed on the basis of a (deliberately vague) one-China policy.

The essential "problem"—not only for Taiwan but for the negotiating process as such—is that since the KMT long ago relinquished its monopoly on power, an eventual future DDP government will be free refute Ma's "three noes", just as it refuted the KMT-CCP "1992 Consensus" when the DPP came to power in 2000. Unless, that is, Ma and Hu are able to reach a modus vivendi agreement *and cement it* in the form of a formal treaty or some other document of accepted transitional validity, i.e., one that is not between the CCP and the KMT but in some sense between the governments of China and Taiwan.

Where things stand at this stage in the game

The present situation with respect to the last mentioned issue is, first, that the six agreements reached in the two formal meetings that took place in 2008 were signed by on behalf of the two governments by their so-called white glove proxies, Taiwan's Strait Exchange Foundation (SEF) represented by its chairman, Chiang Pin-kung, and China's Association for Relations Across the Taiwan Straits (ARATS), represented by its president, Chen Yunlin. This model has sufficed so far, given the strictly bilateral, economic nature of these particular agreements.

A third SEF-ARATS meeting in May 2009 dealt with an economic cooperation framework agreement, as well as measures dealing with financial cooperation and with crime fighting. An ECFA, though bilateral in form, indirectly involves other regional nations and will therefore probably require a different formula. Here again, however, Beijing will presumably manage the issue of state-like signatories without prejudicing its standing position on Taiwan's status, by requiring the latter to sign this time, as it has in similar agreements, under its WTO avatar, "Chinese Taipei".

But three further issue areas remain to be addressed: (a) Taiwan's insistence on being accorded the right to "international space",[3] (b) the matter of military threat reduction, and finally (c) what is being referred to as "the removal of hostility" in cross-Strait relations. If a stable and reliable long-term modus vivendi is to be established, these matters will also need to be regulated in formal agreements. But what form can such agreements take? Who, i.e. what bodies or organs, can sign them, given that China is and will most likely continue to feel itself constrained to remain unwilling to recognize any form of government on Taiwan?[4]

It should be recalled that the informal agreements that paved the way to the opening of productive negotiations between the two sides have hitherto all been in the form of unofficial inter-party CCP-KMT documents rather than intergovernmental ones. The "1992 Consensus" is such an agreement, and so for instance is the mutual understanding reached in Beijing in April 2005 between KMT Chairman Lien Chan and CCP General Secretary Hu Jintao, the so-called "Common Aspiration and Prospects for Cross-Strait Peace and Development" in

which the offer of removing the hostility in cross-Strait relations through a "peace treaty" was first broached. Other historical Chinese pronouncements constantly referred on the Chinese side are simply one-way, high-status communications vaguely addressed to "our compatriots on Taiwan".[5] Clearly, neither form will do as a basis for long-term undertakings. So on what basis can the remaining issues be regulated?

A predictable answer to this question was that given by Hu Jintao in his end-of-the-year speech on the Taiwan issue in which he remarked that "[u]nder the prerequisite of causing no 'two China's' or 'one China, one Taiwan', fair and reasonable arrangements can be made through cross-Strait pragmatic negotiations for Taiwan's participation in activities of international organizations."[6] As mentioned in footnote 4, Beijing's formula for Taiwanese participation at the World Health Assembly meeting in May 2009 saw Taiwanese health service representatives attending as its invitees. To my mild surprise, Taipei deemed this formula acceptable and expressed the hope that this would represent a substantial improvement over Taiwan's heretofore minimal WHO participation.

At the end of his 44-page "Report on the Work of the Government" to China's National Peoples Congress on March 5 this year Premier Wen Jiabao devoted a few short but pithy passages to the same issue or issues, to wit:

> We will work on the basis of the one-China principle to enhance mutual political trust between the two sides. Based on this, we are ready to make fair and reasonable arrangement through consultation on the issue of Taiwan's participation in the activities of international organizations, to hold talks on cross-Strait political and military issues, and create conditions for ending the state of hostility and concluding a peace agreement between the two sides.

So once again we see a restrictive application of the one-China principle being put forth as the only admissible basis for Taiwanese participation in international organizations, which would seemingly rule out independent Taiwanese delegations anywhere. Can such an arrangement possibly satisfy Taiwan's broader demand for "international space", or will it be criticized as inadequate and demeaning? Will Ma Ying-jeou defend the acceptance of such conditions at home? What *is* Ma Ying-jeou's stand on this issue? Let's look at Taiwan's list of demands.

Taipei's wish list, openly expressed or implied

Taipei's wish list is basically a pragmatic one. While a very significant number of Taiwanese would no doubt be happy to see Taiwan gain full universally recognized sovereignty, the present electoral KMT majority, faced with the reality of China's opposition and calculated indifference of the part of almost all other

world governments, seems prepared to accept the best deal available. But here again, there are irreducible demands. The sine qua non for Taipei, besides continued Chinese non-interference in its domestic affairs, is peace and political respect—implying not only non-aggression but also requiring some sort of implicit acknowledgement on the part of Beijing of the legitimacy of the ROC government and acceptance of the fact of Taiwanese democracy as ultimate arbiter of what that government can in the end agree to. But this, as we have seen, is a demand Beijing seems unwilling, or unable, to honour.

What Taipei hopes cross-Strait negotiations will yield in the short to medium term is normal or preferential economic ties, the assured reduction of threats up to and including a formal treaty of non-aggression and peace, an end to hostile, antagonistic diplomatic behaviour on the part of the PRC in the international arena, a reasonable amount of 'international space' for Taiwan's citizens and officials (as mentioned), and as a by-product of all this, as also mentioned, some degree of Chinese recognition of the legitimacy of the Taiwanese government, i.e. the Republic of China on Taiwan. What the latter's leaders — President Ma Ying-jeou and the KMT — need in order to maintain credibility now and retain power in coming elections, is evidence that their willingness to enter into negotiations with China is not a mere surrender to China's terms but a move that will yield results on each and every one of the issues important to Taiwan in ways that illustrate a unmistakable will to compromise on the part of China.

So let us take another look at what has been agreed to, and which essential issues remain to be satisfactorily addressed.

Developments in the first year of cross-Strait negotiations and the next steps

Measures already agreed upon, all of which must reasonably be regarded as mutually beneficial concessions, include the opening of the so-called three links, agreements providing greatly simplified and expanded direct charter air services (minus air freight) and significantly improved tourism quotas and procedures, plus steps to assure food safety, to advance tourism and facilitate visits by previously restricted groups, well-publicized cooperative research ventures, meetings and seminars and so on.

Specifically on offer at the time of writing — although not yet under conditions fully acceptable to Taipei — are plans for an economic cooperation framework agreement (ECFA) and, as we have seen, successful moves on the part of Beijing to place strict limits on Taiwan's participation in the World Health Assembly meeting in May 2009.

The impression one might get by simply comparing expectations vs. results to date could be that Beijing seems prepared to conduct talks and proffer deals that

may be expected to yield mutual economic advantages, but much less, if anything, of vital political value. Until now the only solid results have indeed been in the nature of agreements to facilitate trade, deepen economic interdependence and by such means underscore the importance of the mainland to Taiwan's economy.

Such an impression would not be correct however. As mentioned, Wen Jiabao's NPC speech on March 5 went much farther and said this, first referring to "major breakthroughs" in cross-Strait relations:

> Cross-Straits relations have embarked on the track of peaceful development … We are also ready to hold talks on cross-Straits political and military issues and create conditions for ending the state of hostility and concluding a peace agreement between the two sides of the Taiwan Straits.[7]

Wen subsequently mentioned the as yet unscheduled fourth cross-Strait meeting, due to take place sometime next autumn, as a suitable time to begin discussing these all-important issues. And the Chinese press has chimed in with stories of cooperation at sea off Somalia, suggestions as to how Taiwanese Navy and PLAN forces might join in patrolling the area around the Diaoyutai/Senkaku Islands and so forth. The real issues are of course quite complex and will require perhaps years of negotiations. In line with the theme of this paper, however, the question that needs answering is not whether the details of the necessary agreements can be hammered out to mutual satisfaction — of course they can, with time and sufficient will to succeed. The question I have been asking is whether the *necessary formal, documented agreements* can be produced without compromising the principle on which Beijing in particular refuses to compromise: the one-China principle which so far has prevented Beijing as treating Taiwan as if it were a state. In other words, can a state (China) undertake to resolve a threatening military confrontation without according its opponent equal or state-like status? Can a state sign a proper peace treaty with an armed adversary that claims to be a state and functions as a state without implicitly recognizing it as a state? Such issues might seem frivolous to outsiders, but it is precisely these problems that have dogged cross-Strait relations for decades.

To venture an opinion bordering on a prediction, I would guess that these particular problems will not prove insurmountable. In fact, a couple of possible solutions spring immediately to mind. When it comes to reducing the military threat to Taiwan represented in particular by the massive deployment of short and medium range missiles opposite the island, the most common remedies are unilateral or parallel redeployments [8] coupled, sometimes, with declared retargeting. Such measures may, but do not necessarily require formal treaties; what is required are military-to-military ("mil-mil") talks and exchanges, "transparency", scheduled inspections, and other so-called Confidence-Building Measures, CBMs. All these are things are commonly arranged between the

respective military establishments with the permission, but not necessarily the formal participation of their governments.

Finding an acceptable format for a more solemn and durable peace treaty will be more complicated, but not overly problematic. Peace agreements are for instance commonly negotiated and signed between governments and rebel forces, but such a format would never be acceptable to Taiwan (even though rebel forces are precisely what Beijing, disingenuously, claims it faces over the Taiwan Strait). The problem is not so much the status of the respective parties, but the practice or perceived necessity of "anchoring" the resulting document with third parties which serve as witnesses, as it were. The normal practice of depositing a treaty of this sort with the United Nations would probably not appeal to Beijing, but nothing prevents the two parties from voluntarily publishing parallel declarations with their respective friends and allies and/or with neighbouring countries, which would help constrain either side from abrogating the treaty at a future date.

A PRELIMINARY CONCLUSION AFTER ONE YEAR OF NEGOTIATIONS

What this paper boils down to is that there seems to be only one major constraint that could very well stand in the way of the Taiwanese and Chinese authorities' actually arriving at a mutually satisfactory, comprehensive middle-term solution ten years into the second half-century of the abnormal cross-Strait relationship. And that is Taiwan's quite reasonable insistence—from its own point of view—on its right to IGO participation and "international space" commensurate with its accomplishments and global importance—coupled with China's unwillingness to depart from its One China principle, which prevents it from granting Taiwan any such right, or allowing anyone else to do so.

Finally, looking at the matter from a strictly logical point of view and disregarding my own feelings, it's hard for me to avoid questioning what I have begun to regard as a problematic inconsistency underlying Taiwan's supposed acceptance of the 1992 "One China, Differing Interpretations" formula. For all its merits in making it possible for negotiations to take place, I find it hard to reconcile it with President Ma Ying-jeou's "three noes": "no independence, no reunification, no use of force". It seems to me that if one accepts any definition of one China except the vaguest imaginable one in which One China is nothing more than an idea, a concept, then the first two noes must be interpreted as standing for "no reunification yet, no independence ever…" Which I imagine is what Ma's DPP opponents and others such as Lee Teng-hui suspect he means, and the PRC's Tang Shubei says he hopes he means—but which one cannot help but suspect Ma may very well not truly mean.

[1] Hu's proposal was that the two sides work to “build mutual trust, lay aside differences, seek consensus while shelving differences, and create a win-win situation.”

[2] Jiang Zemin's warning that Taiwan's reunification with the motherland could not be delayed *sine die* could be interpreted to mean that reunification could not be delayed forever, but would not necessarily have to take place while Jiang was in office. Compare veteran negotiator Tang Shubei's suggestion in early 2008 that Ma Ying-jeou's "no reunification" could be taken to mean "no reunification yet", which Tang characterized as "acceptable", reminding his audience (a symposium in Guangdong) that Deng Xiaoping himself had once said that the PRC "could wait 100 years" for Taiwan's return. (*Ta Kung Pao* website, Hong Kong, in Chinese 9 Jan 08, translated in the *BBC Survey of World Broadcasts,* 10 Jan 08.)

[3] This issue was also put to its first test since negotiations began in connection with this month's World Health Assembly meeting in Geneva, and was 'solved' by recourse to a weaker version of the "Chinese Taipei" concept ("Chinese Taipei" is not a member, as in the WTO, but an invited observer). This formula is in my estimation not likely to be deemed satisfactory as a general solution to Taiwan's demand for "international space".

[4] One can't help wondering, since the People's Republic of China admittedly exercises no de facto control or authority over Taiwan, why it hasn't considered discontinuing use of the term "so-called government of Taiwan" etc., in favour of the no less accurate but far less demeaning "acting ROC government on Taiwan". That is, after all, the title Beijing insists (by refusing to countenance any change in the ROC constitution) that the latter use in reference to itself.

[5] E.g., Deng Xiaoping's much touted 1979 "Message to Compatriots in Taiwan" commemorated by Hu Jintao at a forum on solving the Taiwan issue 31 Dec 08, *BBC Monitoring*, 1 Jan 09.

[6] "Join Hands To Promote Peaceful Development of Cross-Strait Relations; Strive With Unity of Purpose for the Great Rejuvenation of the Chinese Nation - Speech at the Forum Marking the 30th Anniversary of the Issuance of 'Message to Compatriots in Taiwan'", Xinhua News Agency 31 Dec 08 (BBC *Survey of World Broadcasts*, 1 Jan 09.)

[7] Xinhua news agency, Beijing, in English 0143 gmt 5 Mar 09, *BBC Monitor*, same date.

[8] A tit-for-tat response on the Taiwanese side would most likely consist of further voluntary self-restraint in military acquisitions from the United States, a development that I suspect would be welcomed by many in Washington.