

## **Bless the Strait: Draft an Agreement Establishing a Charter for All Chinese**

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**Abstract** Compared to the ever rising tensions on the Korean Peninsular, between Japan and China and in the South China Sea, Taiwan Strait is relatively quiet since May 2008. The economic integration and even political contacts between Taiwan and the PRC never ceased to deepen and widen to the extent that Beijing began pressing Taiwan to negotiate political issues and some American scholars advocated either Finlandization or even abandonment of Taiwan. Under such circumstance, Taiwan seems to be a well-behaved player in the Strait without any strategy except in passive response to Beijing's demands and Washington's diplomacy. However, according to the author, this passiveness is dangerous and should be replaced by a pro-active diplomacy that advocates negotiating with Beijing a charter for all Chinese. Different from the Beijing-initiated political agreement, this Charter shall switch its focus from the cross-Strait peace to the future of the whole China and peace in the region and insist upon China's democratization in exchange of Taiwan's further integration with the Mainland. Such a strategy will not only strengthen Taiwan's position in the coming political negotiations with the PRC but would find certain echo among the Chinese elite on the Mainland and scale down worries of neighboring countries vis-à-vis the cross-Strait integration. It is also feasible because Taiwan will regard this Charter as an international treaty while Beijing could interpret it as a domestic document, the deliberate ambiguity dispensable to any political agreement between two sides. It should therefore be encouraged and supported by the US and international community.

**Keywords** Taiwan - China's diplomacy - Asian regionalism - Charter

## I. Introduction

Though there has not been a general war in the past sixty years, the Taiwan Strait was once considered one of the most explosive regions of East Asia since the end of the Cold War.<sup>1</sup> The People's Republic of China (PRC) in mainland insists upon the one-China principle and regards Taiwan as a rebellious province, with which it needs to unify. The Republic of China (ROC) in Taiwan is trying its best to obtain membership of international organizations and reestablish official relationship with any third countries. In the past decades, large-scale wars were avoided principally owing to active intervention of the US in the Strait, which aims to keep "China out, America in and Taiwan down."<sup>2</sup> To keep America in, the US under Obama's leadership has adopted the 'rebalancing strategy', which switched American global focus from anti-terrorism war in the Middle East to the containment of rising PRC in Asia-Pacific. To keep China out, US continues to exclude the PRC from its military maneuvering, political alliance and economic engagement in East Asia. To keep Taiwan down, U.S. opposes to any unilateral provocative action from Taiwan, and even forced Taiwan to make concessions in case of any maritime territorial disputes with American allies in the region, such as Japan and the Philippines.

The cross Strait relationship entered into détente when Ma Ying-Jeou inaugurated as ROC president in May 2008; however, neither side is fully satisfied with the status quo. Accordingly, in parallel with accelerating economic integration, Beijing has been increasing its demand to start political negotiations on political issues with Taipei. In his political report to the 18<sup>th</sup> National Congress of Chinese Communist Party (CCP), the then secretary general of the CCP, Hu Jintao, made solemnly the following statements.

"The two sides of Taiwan Strait should work together to discuss their political relationship before the nation is finally unified. Such a discussion shall include the subjects of establishing mutual military confidence building and drafting a peace agreement."<sup>3</sup>

Until now, Taiwan continues to decline such proposals while neglecting the increasing pressure from Beijing. However, all political leaders and elite in Taiwan are aware that it is unavoidable to start direct negotiations with Beijing on political issues in the future. This paper is therefore presented as a Taiwanese tentative response to Beijing's most recent demands on this issue and concludes that the Charter approach will not only benefit the Taiwanese and be acceptable to Beijing, but will also in the interests of Asian neighboring countries and the US. I will firstly present a balance sheet of Ma's mainland policy since his inauguration in May 2008, followed by an analysis of mainstream opinions of the CCP, Kuomintang (KMT) and Democratic Progressive Party (DPP) vis-à-vis the coming political dialogues between Beijing and Taipei. Then I will explain the theoretical debate, based upon which this Charter approach has developed, and the feasibility of Charter approach in Taiwan Strait. In the end, I will draw into some conclusions inspired from the arguments and findings throughout the debate.

<sup>1</sup> For detailed analysis of this potential danger, please see Richard Bush, *Unchartered Strait: The Future of China-Taiwan Relationship*, Washington D.C.: Brookings Institution, 2013.

<sup>2</sup> Reformulated jargon borrowed from and used by Professor Hanrieder in his famous book entitled *Deutschland, Europa und Amerika: Die Aussenpolitik der Bundesrepublik Deutschland 1949-1994* (Paderborn: Schöningh, 1995).

<sup>3</sup> Press release of Chinese Communist Party, [http://www.china.org.cn/china/18th\\_cpc\\_congress/node\\_7167318.htm](http://www.china.org.cn/china/18th_cpc_congress/node_7167318.htm), accessed on June 1, 2013.

## II. Détente in Taiwan Strait since 2008: achievements and limits

### i. Success and achievement of Ma's Mainland Policy

Though now suffering low popularity,<sup>4</sup> Ma's Mainland policy is deemed a success and is supported by a majority of Taiwanese.<sup>5</sup>

Since May 2008, tensions in the Strait never ceased to scale down. According to Ma, DPP confrontation policy between 2002 and 2008 put Taiwan in a very dangerous situation. In diplomacy, the US and the EU both opposed to Taiwan's provocative stance. In economy, Taiwan's dependency on the mainland was rising but its industrial upgrading made progress slowly. In domestic politics, the society was divided and bipolarized. For him, Taiwan's priority was to upgrade its industry and further develop its economy, to which détente in the Strait would be indispensable. However, to constitute such détente, Taiwan firstly needed firm support from the US. Only after being assured by the US, Ma launched détente with the PRC in all fronts.<sup>6</sup> Since then, Taiwan and PRC have normalized nearly their commercial relationship particularly after the Economic Cooperation Framework Agreement (ECFA) entered into effect in October 2010. Eighteen agreements and three memoranda were signed between two sides during Ma's presidency<sup>7</sup> and the number of visits from mainland to Taiwan rose from less than 100,000 per year in 2008 to 2.8 million per year in 2012.<sup>8</sup> Liaison offices would soon be established in Taipei and Beijing before the end of 2014, for which the first formal minister-level meeting between PRC and Taiwan was held in Nanjing in February 2014.<sup>9</sup>

In diplomacy, a de facto diplomatic truce was silently established between Taipei and Beijing in their bilateral relationship with the third countries. Since May 2008, no country has ever switched its recognition between Taipei and Beijing though Gambia decided unilaterally to sever its diplomatic relationship with ROC in November 2013. Concerning Taiwan's quest for membership of international organizations, Ma decided to stop directly knocking the door of UN General Assembly, changed his focus to those specialized institutions of UN and demanded 'effective participation' in them.<sup>10</sup> The WHO (World Health Organization), ICAO (International Civil Aviation Organization) and UNFCCC (United Nations Framework Convention on Climate Change) were selected by Taiwan as the top priority "because these three organizations are the most related to our future and accession to them are more workable".<sup>11</sup> Under his presidency, Taiwan participated in the WHA as an observer since 2009 and in the General Assembly of ICAO as a special guest since 2013, and signed FTA respectively with Singapore and New Zealand.

<sup>4</sup> According to TVBS regular survey, Ma's popularity rate was 14% on May 16, 2013 while 70% of interviewees were unsatisfied with his performance. [http://www1.tvbs.com.tw/FILE\\_DB/PCH/201305/14u8lutjzl.pdf](http://www1.tvbs.com.tw/FILE_DB/PCH/201305/14u8lutjzl.pdf), accessed on June 10, 2013.

<sup>5</sup> According to regular surveys conducted by the Ministry of Mainland Affairs, since Ma's inauguration in May 2008, 38% - 48% of interviewees were generally satisfied with Ma's mainland policy while 30% - 37% criticized it as pro-Chinese and 13% - 20% wished that the cross-Strait rapprochement be faster. <http://www.mac.gov.tw/public/Attachment/332516213744.gif>, accessed on June 13, 2013.

<sup>6</sup> Ma Yingjoeu, Interview by *American Voice* on June 26, 2008.

<sup>7</sup> Mainland Affairs Council of ROC, Cross Strait Agreements, <http://www.mac.gov.tw/ct.asp?xItem=67145&CtNode=5710&mp=1>, accessed on March 14, 2014.

<sup>8</sup> Tourism Bureau of Ministry of Transport and Communication of ROC, Visitor Arrival by Residence 2012, Taipei: Ministry of Transport and Communication, 2013. In 2012, 3.5 million nationals of PRC visited Taiwan, of which one million came from Hong Kong and Macau. <http://admin.taiwan.net.tw/statistics/year.aspx?no=134> (accessed on March 14, 2014)

<sup>9</sup> 「陸委會主委王郁琦率團啟程訪大陸」聯合報，民103年2月11日。

<sup>10</sup> 歐鴻鍊，立法院公報，第98卷15期，委員會紀錄，民98年4月，頁4143(389-445)。

<sup>11</sup> 史亞平，立法院公報，第101卷62期，委員會紀錄，民101年11月，頁3(1-76)；沈呂巡，立法院公報，第99卷23期，委員會紀錄，民99年4月，頁214(195-240)。

In particular, Ma successfully manipulated the détente in Taiwan Strait and launched its ‘visa-waiver’ diplomacy which had targeted to get visa-waiver treatment from one hundred countries or regions on the date of the 100<sup>th</sup> anniversary of ROC in October 2012. “One hundredth anniversary, One hundred visa waivers” was a slogan to highlight success of Ma’s foreign and mainland policy during his first term of presidential office. Until 31 October 2013, 134 countries and regions have granted nationals of ROC visa-waiver or visa upon arrival, of which more than eighty, including the UK, Shengen Zone and the US, granted this treatment under Ma’s presidency between 2008 and 2013. Interestingly, PRC government and its media kept silent on this issue. The PRC Diplomats even had to justify their silence by saying that they were pleased to learn “that our Taiwanese compatriots are now better treated in the world, which is not threatening to one China policy.”<sup>12</sup> This compliment might be interpreted as an excuse for the PRC in its abortive attempt to prevent third countries from granting this treatment to Taiwanese. However, nearly all diplomats and scholars agree that such a visa-waiver treatment could not have been granted to Taiwan if tensions in the Strait continued to be rising. The episode of visa-waiver might have proved a probable positive correlation between détente in the Strait and Taiwan’s external relationship, reconfirming value of Ma’s strategy. According to it, rising détente in the Strait shall lead to strengthening linkages between Taiwan and international community. In brief, Ma’s strategy aimed to break the vicious circle between cross Strait relationship and Taiwan’s external relations. Détente with mainland shall enlarge Taiwan’s maneuvering in its external relations, which itself would strengthen Taiwan’s position vis-à-vis the PRC in return.<sup>13</sup>

#### i. Limits and challenges

However, if Ma’s first term in office ended victoriously with entry into effect of ECFA and granting of visa-waiver by the EU and US, his grand strategy is facing serious challenge during his second term. In economic term, Taiwan failed to restore its fast economic growth and attract massive investment from abroad, both of which had been expected on the eve of signature of ECFA and particularly promoted by those who strongly supported Ma’s détente with Mainland China. In 2012, Taiwan’s trade volumes with US, Japan and EU were all decreasing, respectively suffering -5.5%, -11% and -7.4% compared to the precedent year. Though this reduction might have resulted from a global recession, they were all above the average reduction rate -3.4% and the reduction rate with Mainland, -4.2%.<sup>14</sup> At the same time, only the FTA with New Zealand and Singapore were concluded. The US still refuses to bridge the talks with Taiwan on TIFA (Trade and Investment Framework Agreement) to the future participation of Taiwan into TPP (Trans Pacific Partnership). Washington even declines to ‘institutionalize’ the bilateral talks on TIFA while having forced Taiwan to import its beef and, in coming years, more pork. As regards the EU, it continues to exclude Taiwan from the priority list of negotiations on FTA in Asia explicitly due to political reasons. An EU office made it extremely clear that EU will not get closer to Taiwan at the price of its commercial relationship with the PRC.<sup>15</sup> “Just one day after Taipei and Singapore had announced to restart negotiations on FTA in August 2010,” said the former deputy Director General of former DG Relex, “the PRC ambassador came to my office and informed me that negotiations on FTA between Taipei and Singapore should not

<sup>12</sup> Interviewed with a former PRC ambassador in Beijing on January 11, 2013.

<sup>13</sup> T. Y. Wang, W. C. Lee and C. H. Yu, “Taiwan’s Expansion of International Space: opportunities and challenges”, *Journal of Contemporary China*, 20(69), March 2011: 254-255 (249-267).

<sup>14</sup> Bureau of Foreign Trade of Ministry of Economic Affairs, *Foreign Trade of ROC in 2012*, (Taipei: MOEA, 2013), p. 9.

<sup>15</sup> Joao Aguiar Machado, Deputy Director General of DG Trade of European Commission, Speech at the Friendship Group with Taiwan in the European Parliament on June 30, 2011.

be ‘generalized’ as a principle.” Asked by his European counterpart if this meant that Beijing opposed to FTA negotiations between Brussels and Taipei, the PRC ambassador replied that “he would not deny it”.<sup>16</sup> The day after the European Parliament adopted its resolution to push the EU to start negotiations on FTA with Taiwan in October 2013, the PRC government formally condemned it as an intervention of China’s domestic affairs.<sup>17</sup>

In its quest for membership of international organizations, Taiwan’s participation in WHO and ICAO was all based upon annual invitation of their directors general, which failed to constitute a formula facilitating Taiwan’s quest for membership of or participation in any other international organizations. Even on Taiwan’s participation in activities organized by non-governmental organizations, Mainland China’s or its officers’ attitude was not so softened as expected, as shown at the Film Festival in Tokyo in October 2010<sup>18</sup> or vis-à-vis Taiwanese Ambassador’s presence at Japan’s Assembly in mourning those victims of tsunami on 31 March 2011.<sup>19</sup> Taiwanese students were forbidden to use the term Taiwan in their delegation title when they were awarded in the World Model UN in New York in 2013. Taiwan’s participation in APEC (Asia Pacific Economic Cooperation), WTO and ADB (Asian Development Bank) was not really upgraded for ROC foreign minister was still rejected outdoors. To make matters worse, the détente and so-called diplomatic truce seem to weaken Taiwan’s discourse on its quest for membership of international organizations. More and more often, Taiwanese diplomats were asked by their counterparts in Europe and Asia to ‘negotiate directly with Beijing’ for they would accept with pleasure any arrangement on this issue reached between Beijing and Taipei.

Another challenge might come from Beijing’s increasing frustration vis-à-vis the détente in Taiwan Strait. On the one hand, increasing exchange in all fields has proved unable to strengthen Taiwanese support to Beijing-initiated unification project under the ‘one country, two systems’ formula. According to the regular and authentic survey of NCCU (National Cheng Chin University), people supporting future unification with the PRC has been stagnating in Taiwan since 2008. Even worse, the number of people adhering to the Chinese identity has continued to decrease in the same period. Since 2008, the percentage points of people adhering to the purely Taiwanese identity has increased from 48% to 54% while those adopting double identity has slightly shrunk from 43% to 38%. People regarding themselves as only Chinese represented no more than 4% in Taiwan.<sup>20</sup> Very confusingly, the survey conducted by Taiwan Competitiveness Forum (TCF) showed a totally different picture in February 2013. According to TCF, while only asked if you accept Chinese identity without forcing them to choose between Taiwanese identity and Chinese identity, 61% agreed that they were Chinese.<sup>21</sup> Even so, pro-independence identity is particularly stronger among people under the age of thirty. More than 60% of people aged from 20 to 30 identify themselves as only Taiwanese, not Chinese. Accelerating economic and societal integration across the Strait since 2008 has evidently failed to attract a majority of Taiwanese to support Beijing’s policy in the Strait and to reconstruct their once lost Chinese identity. The most popular textbooks of History in Taiwanese high schools continue to focus on Taiwan’s History since the sixteenth century rather than the Chinese History since nearly five thousand years ago. The Japanese colonization was renamed as ‘Japanese governing period’ instead of ‘Japanese occupation period’ in the Chinese historical context.

<sup>16</sup> Interview of Karel Kovanda, then Deputy Director General of DG Relex of European Commission in January 2010.

<sup>17</sup> Xinhua News Agency, [http://news.xinhuanet.com/world/2013-10/12/c\\_117690378.htm](http://news.xinhuanet.com/world/2013-10/12/c_117690378.htm) (accessed on 18 December 2013)

<sup>18</sup> *United Daily News*, October 26, 2010.

<sup>19</sup> *Central News Agency*, March 31, 2012.

<sup>20</sup> Election Studies Centre at NCCU, Changes in the Taiwanese/Chinese Identity in Taiwan, <http://esc.nccu.edu.tw/modules/tiny2/content/TaiwanChineseID.htm>, accessed on June 11, 2013.

<sup>21</sup> *China Times*, February 28, 2013.

Beijing's frustration could have also resulted from its ambivalence vis-à-vis increasing unpopularity of Ma and his government in Taiwan. Though it is still arguable if the KMT's victory in parliamentary presidential elections in 2008 and 2012 did result from the general dissatisfaction with rising tensions in the Strait during the precedent DPP presidency, détente in Taiwan Strait is in general regarded as one of the most praiseworthy achievements of Ma and his government. The 'early harvest list' in ECFA was often cited by Beijing as its unilateral favor (讓利) given to Taiwanese and a deliberate action to support Ma's policy in the Strait. Détente in Strait is surely welcomed by a majority of Taiwanese, which unfortunately, could not be transformed into popularity of the party and its leader that Beijing favored.

Moreover, Ma and his KMT leaders continue to refuse any proposals from Beijing to start negotiations on 'political issues' across the Strait, including the peace agreement or *modus vivendi*, the confidence-building measures and political arrangement concerning Taiwan's participation in the international community. Though some former KMT leaders echoed Beijing's proposals and reiterated publicly the importance of starting political dialogues across Taiwan Strait, Ma and his government denied any attempt to start such a talk. Ma even made it clear in public that he will never send special envoys to meet with PRC leaders clandestinely or start any talks on so called track two. On his return from Beijing where he had met Xi Jinping in February 2013, Lien Chan, former vice president of ROC and former KMT president, suggested that Taiwan should rethink of starting direct dialogues on political issues with Beijing. The day after, Ma's office immediately issued press release stating that Lien's visit was an individual action without any mandate from the president.<sup>22</sup> Even in its conflicts over territorial disputes with Japan and the Philippines, Taiwan under Ma's leadership deliberately refused to cooperate with Mainland China and declined any proposed joint action from Beijing. Abandoning bilateral cooperation with Mainland China in these disputed areas, Ma proposed the "East China Sea Peace Initiative", in which Mainland China was treated as one of the neighboring countries of Taiwan. The reshuffling of Ma's government in February 2013 was also interpreted as an attempt to slow down Taiwan's integration with the mainland China as the newly nominated head of FCSE (Foundation of Cross Strait Exchange) and minister of Mainland Affairs are not heavily important political figures. It is therefore out of imagination to grant them any mandate to start political talks. Disappointed and unsatisfied with Ma's attitude, some scholars on Mainland China suggested that Beijing should contact with DPP lest KMT abuse its privileged role in the Taiwan Strait. Nonetheless, as long as DPP refuses to abandon its pro-independence doctrine, Beijing can now receive some DPP political figures only as individuals, refusing any party-to-party contact. Beijing's worries are rising since DPP might win local elections in 2014 and return to power in 2016 as Ma's popularity never ceases to decrease.

Ma's détente policy in the Strait has successfully scaled down tensions and increased exchange between Mainland China and Taiwan, but its limits are evident. The need of a new approach is more than evident.

### III. Current debate over the future of Taiwan Strait

#### i. Beijing

Since Ma's inauguration as president of the ROC in May 2008, Beijing has adopted new tactics in the Taiwan Strait though its insistence upon one China principle and the formula of "one country, two systems" remained unchanged. Before all, Beijing accepted the formula of "consensus 1992" initiated by Taiwan as the base of new détente in the Strait. This formula was

<sup>22</sup> Presidential Office of ROC, Press release on February 26, 2013.

carefully formulated and later drafted by Su Chi in 2000 and 2001 after the DPP's Chen Shui-Bien had been elected as ROC president in May 2000. According to this consensus, Beijing and Taipei both adhere to one China, which is however interpreted differently. While this one China indicates the PRC for Beijing, it means ROC for Taipei.<sup>23</sup> This formula was firstly adopted as consensus between the CCP and KMT at the historical meeting of their presidents, Hu Jingtao and Lien Chan, in April 2005. In the joint communique released in the aftermath of the meeting, Hu and Lien agreed to adopt 'Consensus 1992' as a common understanding, based upon which Mainland China and Taiwan should start negotiations upon equal footing as soon as possible.<sup>24</sup> Though Beijing prefers to use the formula of "One China and Consensus 1992" and Taiwan likes to use only the "Consensus 1992", it is widely recognized that this agreement to disagree has constituted the very foundation of détente in Taiwan Strait since 2008. In order to consolidate this foundation, Beijing has deliberately reduced its repeat of 'One China Principle' in all talks involving Taiwan Strait and adopted the 'One China Framework' as official discourse in June 2013. Beijing has refrained from mentioning the "Anti-Secession Law" in any engagements with Taiwan since May 2008. Decreasing use of 'One China principle' and nearly disappearance of 'Anti-Secession Law' in any discourse on Strait relationship has well indicated Beijing's new tactic towards Taiwan.

Since the entry into effect of ECFA in October 2010, Taiwan and Mainland China have been reestablishing their trade and economic relationship in all fields. With the creation of the Economic Cooperation Committee in January 2011, the signature of Agreement on Investment Protection in August 2012 and the beginning of talks on future installation of representative offices to each other in January 2013, the ECFA will have achieved its goals. Under such circumstances, Beijing has started to prepare for future political negotiations. Though political negotiations had been presented as an integral part of its strategy towards Taiwan, Beijing seems to have deliberately left it aside between 2008 and 2012, giving its priority to negotiations and then implementation of ECFA. However, since the second half of year 2012, more and more think tanks and scholars in the PRC began advocating bilateral talks on political issues with Taiwan as soon as possible. At the 18<sup>th</sup> National Congress of CCP in November 2012, Beijing finally proposed tripartite political negotiations with Taipei.

According to Beijing, both sides of Taiwan Strait should immediately negotiate on establishment of mutual confidence-building measures (CBM) in order to avoid any miscalculation and military conflicts. The creation and implementation of CBM could then lead to negotiations and signature of modus vivendi or peace agreement in Taiwan Strait, formally putting an end to civil war between the CCP and KMT. At the final stage, both sides should start negotiations to identify this bilateral relationship and invent some creative arrangements before China is unified, surely including solutions to Taiwan's participation in international community. Since then, more and more scholars on Mainland China proposed solutions to cross Strait relationship. "Why not consider the ex-Soviet model in the UN," said Yan Xuetong in Taipei in April 2013, "to find a solution to Taiwan's participation in the UN? It is a model based upon 'one country and three seats'."<sup>25</sup>

#### i. DPP and pan-Green

Defeated successively in nationwide elections in 2008 and 2012, frustrated by fast rise of PRC as well as increasing integration between Taiwan and Mainland China, and plagued by scandals

<sup>23</sup> 蘇起，一個中國各自表述共識的史實，台北：漢蘆圖書，2003年。

<sup>24</sup> 連戰，胡錦濤，「兩岸和平發展共同願景」，自由時報，民94年4月29日。

<sup>25</sup> "Can Taiwan and Mainland China Consider the Soviet 'One Country and Three Seats' in the UN to Find a Solution?", *United Daily News*, 4 April 2013. Yan is the dean of College of International Studies at Tsinghua University in Beijing.

related to the former president Chen, DPP and its elite had failed to think of any new approach to build a relationship with the PRC until one of its leaders, Hsieh Changting (謝長廷), paid a private but high profile visit to Mainland China in October 2012. During his visit, Hsieh reiterated his thesis of ‘Consensus based upon constitutions of each side’, which he had once presented throughout presidential campaign in 2011, to replace the current ‘Consensus 1992’.<sup>26</sup> According to this consensus, Hsieh accepted the one China defined by Taiwan’s current constitution. As former chairman of DPP, former prime minister and leader of one fraction of DPP, Hsieh’s thesis provoked immediately a big debate over DPP’s China policy in the future. In November 2012, DPP established its Committee on China Affairs composed of nine leading figures of the party, of which the party president, Su Jenchang (蘇貞昌), assumes the presidency. The newest round of debate over future cross-strait relationship and DPP’s China policy was formally started. “The Resolution on Future of Taiwan adopted in 1999 has resolved relationship between Taiwan and ROC,” concluded by a DPP legislator, “but it did not touch, let alone resolve, the relationship between Taiwan and the PRC.”<sup>27</sup>

In October 2012, Gu Kuenming (辜寬敏) and his think tank, Taiwan Brain Trust (新台灣國智庫) proposed to structure the cross-strait relationship as two states based upon brotherhood (兄弟之邦). “Taiwan can promise not to ally with any other powers threatening China and never vote against China-proposed resolutions in international organizations in exchange of China’s recognition of Taiwan and Taiwan’s accession to the UN.” Gu even suggested that Taiwan should return to China all the treasure in Taipei Palace Museum that Chiang Kai-Shek had transported from Mainland in 1949.<sup>28</sup> Gu’s approach is very similar to the so-called ‘Finlandization’ of Taiwan. In April 2013, ‘Defend Taiwan’s Democracy’ (守護台灣民主平台), DTD), another pro-DPP think tank, released its proposal regulating the future cross-strait relationship, entitled ‘A Freeman’s Declaration: Reconstruct Relationship between Taiwan and China on the Basis of Charter on Human Rights’(自由人宣言). In its proposal, DTD insists upon the protection of human rights and adherence to constitutionalism as the starting point of negotiating future cross Strait relationship. According to it, neither of current constitutional orders on both sides of Taiwan Strait is fully legitimate for, even in Taiwan, ‘the ghost of ROC coming from the Mainland China has severely constraint construction of Taiwan as a full and real democracy’. According to DTD, in the coming political negotiations, Taiwan should force PRC to ratify the Covenant on Political and Civil Rights and allow Taiwan to fully participate in the UN networking of protection of human rights. At its inauguration day on 9 May 2013, the DPP Committee on China Affairs adopted the ‘Taiwan’s China Agenda’ (台灣的中國議程), drafted by Chen Mingtung (陳明通), a professor at National Taiwan University and former deputy minister of Mainland Affairs. At the National Congress on May 24, 2013, more than forty political figures aged between forty and fifty submitted their “Resolution on Human Rights in the Strait” (台海人權決議文), which proposed to start dialogue on human rights between two sides of Taiwan Strait and replace the “Consensus 1992” by “Consensus on Human Rights”. It even proposed to establish direct contact and dialogue with those dissidents in the PRC fighting for protection of human rights. A general review of debate inside DPP and those pro-DPP think tanks has made it clear that DPP is inclined to highlight the normative dimension in the cross-strait relationship while adhering to its pro-independence thesis and refusing the ‘Consensus 1992’.

<sup>26</sup> *Liberty Times*, November 15, 2011.

<sup>27</sup> *Liberty Times*, May 23, 2013.

<sup>28</sup> 新台灣國智庫 (Taiwan Brain Think Tank, TBT) · <http://www.braintrust.tw/article/1/3>, accessed on June 13, 2013.



### i. KMT and pan-Blue

Compared to the rising debate over the future cross-Strait relationship in the DPP and pan-Green camp, the discussion inside the KMT is far less zealous. Ma and its team adhere to the thesis based upon three no's: "No use of force, no unification and no independence". Ma seems to have once intended to take a further step in developing this three no's thesis before and after presidential elections in January 2012. In October 2011, Ma announced at a press conference that, if elected, he would consider negotiating a peace agreement with Mainland China. This episodic talk was interpreted as the biggest mistake that Ma had committed during his presidential campaign throughout 2011.<sup>29</sup> Two months after he was reelected, he tried again to present a doctrine of mutual acceptance of governing power. "We do not recognize the sovereignty of the other side," said Ma, "but we can from now on refrain from denying the governing power of the other side. This could constitute the very beginning of future negotiations." Based upon this idea, Ma presented the formula of 'One Country, Two Regions' in March 2012. At his meeting with Hu Jintao on March 22, 2012, the honorable president of KMT, Wu Bohsiung, declared solemnly: "According to *our* constitution and laws, the cross Strait relationship is defined as region-to-region relationship under one China. It is a special relationship, of which our Ministry on Mainland Affairs instead of Foreign Ministry is in charge."<sup>30</sup> Wu's declaration was believed to have been endorsed by Ma, who even concluded that this "region-to-region relationship under one China has continued to exist since 1949". At the press conference, the then minister of mainland affairs added: "For us, the one China means the Republic of China, not the PRC."

Ma's new formulation around 'One China, Two Regions' was severely criticized by opposition. DPP equated Ma's formula of 'One Country, two Regions' with Beijing's 'One Country, Two Systems' and condemned it as a total surrender to the PRC. "Ma's proposal for a peace agreement with Beijing," declared Tsai Yingwen, DPP candidate for presidential elections in 2012, "will lead to the same tragedy that Tibet experienced in the 1950s after it had signed the agreement with Beijing on peaceful liberation of Tibet". Even James Song, President of People First Party and an ally of KMT, criticized Ma's proposal as irresponsible for he had not consulted any political leaders before presenting it. Even those pro-KMT media put into doubt the formulation of this new doctrine for it failed to explain well to the public its fundamental distinction from Beijing's 'One Country, Two Systems' as well as its strategic importance for the future cross Strait relationship. For its part, Washington expressed its dissatisfaction with Ma's formula of 'One Country, Two Regions'. "We did not fully understand," said the president of AIT (American Institute in Taiwan) in the D.C., "why the KMT presented such a doctrine at this moment and what it truly meant."<sup>31</sup> Facing increasing criticism in Taiwan and even from inside the KMT, Ma and his government reformulated this thesis as 'region-to-region relationship under one ROC', according to which Mainland China and Taiwan are two political polities. At the same time, Ma repeatedly insisted upon the priority given to economic issues and those feasible exchange and cooperation. Asked if Taiwan will start negotiations on political issue with Mainland China, Ma replied that the majority of people in Taiwan are still reluctant to do so. The formula of 'One Country, Two Regions' was de facto abandoned in mid 2012.

It was until June 2013 that Ma presented his newest doctrine on Cross-strait relationship. On 13 June 2013, at his meeting with Xi Jing Ping in Beijing, head of KMT delegation modified Ma's earlier formula of 'One Country, Two Regions' and established a new tripartite formula of Ma's doctrine which is composed of 'one China framework, consensus of 1992

<sup>29</sup> *United Daily News*, October 17, 2011.

<sup>30</sup> *United Daily News*, March 23, 2012.

<sup>31</sup> *Central Daily News*, April 18, 2012.

and opposition to Taiwan independence'.<sup>32</sup> As Wu read the text integrally and Ma announced publicly that Wu had obtained his personal mandate, this tripartite formula was regarded as an alternative to the earlier three no's policy, which might develop into Ma's new doctrine in cross Strait relationship during the coming years.

i. A tentative review

However, none of the current three approaches to future cross-Strait relationship could be fruitful in the long run.

Firstly, Beijing's approach will never lead to peaceful unification that it has been expecting since 1979. According to all surveys, the ever closer economic integration and rising social exchange in the Strait have failed to increase support for unification among Taiwanese. To make matters worse, those who refuse their Chinese identity continue to increase in Taiwan, and Beijing's strategy to use economic integration as a leverage to enhance political unification has encountered unexpected difficulties. Economic integration did benefit some Taiwanese, whose influences were however decreasing as they were regarded as pro-Beijing interest groups and a lot of them resided more and more regularly on the Mainland. Those Taiwanese who reside on the Mainland for business interest could return to Taiwan with a very anti-Beijing attitude after they experience daily corruption and political dictatorship on the Mainland. Economic integration might help deter Taiwanese from pursuing *de jure* independence but it will never lead to political unification as Beijing has expected.

On the other extreme of the spectrum, DPP's pro-independence approach is in an impasse. Its feasibility is questionable as it never mentioned how to persuade Beijing, those mainland elite and even the Chinese dissidents to accept its doctrine. Adopting such an approach, Taiwan will not only risk of provoking overwhelming anti-Taiwan nationalism on the Mainland China but will also be immediately isolated in the international community. The US, Japan, the EU and ASEAN states all made it clear that they would not support Taiwan's independence. Even worse, this pro-independence movement could not be successful until it overthrows the current political, legal and social orders in Taiwan based upon the ROC constitution. That will lead to a revolution. In other words, once adopting this pro-independence approach, Taiwan will be in chaos and even civil war while entering into direct conflict with the Mainland China.

Ma's doctrine of three no's or his new tripartite formula might locate in between, which has successfully scaled down the rising tensions in the strait and established détente between Taipei and Beijing. Accordingly, Ma's policy was now praised by the West, accepted by Beijing and agreed upon by KMT electorate and even some pan Green supporters in Taiwan. However, this pro-status quo approach is now under fire on all fronts. Since Ma's reelection in 2012, Beijing authority has repeatedly advocated to start bilateral negotiations on political issues. Inside Taiwan, DPP and pan Green continues to condemn Ma's policy and has started the newest round of debate over the cross-Strait relationship with aim of finding an alternative to Ma's approach. In international community, though 134 countries and regions have granted nationals of ROC visa-waiver or visa on arrival, Taiwan failed to start negotiations on FTA with the US and the EU, the two largest economies. Except participation in the WHA and ICAO based upon an annual invitation of its secretary general, Taiwan under Ma's leadership has not obtained new membership of any international organizations. Compared to Taiwan's accession to APEC in 1991 during Lee's presidency and its accession to WTO in 2002 under Chen's presidency, Ma's detente policy in the Strait has not proportionately enlarged Taiwan's room in the international community as KMT had proclaimed.

<sup>32</sup> *China Times*, June 17, 2013.

At the same time, Ma's pro-status approach has demoralized the KMT, its supporters and even ROC diplomats. While Beijing opened a new front on political dialogue and DPP restarted debate over its approach to the PRC, KMT has kept silent. Political leaders, elite and supporters of KMT have increasingly criticized Ma and his government in all fields, but none of them ever initiated any debate over future cross-Strait relationship. Compared to the unification-minded Beijing and insistence of independence of DPP, KMT's adherence to status-quo seems to have lost direction leading to the future. In its diplomatic actions, Taiwanese diplomats find it more and more difficult to persuade the third countries to promote their relationships with Taiwan and to strengthen their support in Taiwan's bid for membership of international organizations. Taiwanese diplomats are more and more frequently asked to consult Beijing in advance. "Our permanent delegation to this organization approached our Chinese counterpart for Taiwan's quest for membership [of international organizations]," said a Western diplomat, "and he immediately stopped him, replying that Taiwan should directly contact Beijing on this issue without any intervention from a third country."<sup>33</sup>

Even worse, détente in the Strait has given rise to some misunderstandings in the West and particularly neighboring countries in Asia. Some began regarding this continuing détente in the Strait as a prelude to future unification of Taiwan with Mainland China while others feared that a threatening pan-Chinese front was emerging. Accordingly, several American scholars in think tanks began advocating a new strategy towards the Strait, in which some proposed to abandon Taiwan as a price to be paid for deeper rapprochement between US and the PRC<sup>34</sup> and others initiated Finlandization of Taiwan.<sup>35</sup> Some Japanese elite and political leaders were once deeply worried that the détente in the Strait would oblige Taipei and Beijing to organize a united front in their territorial disputes with Japan in the East China Sea. During the frictions between Taiwan and Philippines over Taiwanese fisher's assassination by Filipino Coast Guard in May 2013, some media in Manila criticized its president's carelessness in having unified Taipei's and Beijing's positions in their conflicts with Philippines, which would have been totally out of imagination just several years ago. Beijing's media also tried to promote the image of unified front across the Strait by reporting that 74% Taiwanese agreed to work together with the mainland in case of conflict with Philippines.<sup>36</sup>

Evidently, the need of a new approach to the Strait is clearer now, which shall not only stabilize the Strait but also consolidate Taiwan's democracy, facilitate democratization on the Mainland and contribute effectively to peace-building in the region. In brief, it shall achieve the following objectives.

- It shall make those universal values, such as democracy and protection of fundamental rights, as common normative foundation of cross Strait relationship. This foundation shall lead to consolidation of democracy in Taiwan and facilitate democratization on Mainland China. In other words, cross-Strait integration shall be proportionate to democratization in China as a whole.
- It shall resolve the conflicting relationship between Mainland China and Taiwan bilaterally and shall not exclude any form of integration between two sides of Taiwan Strait, including a union, a confederation, a federation and unification, depending upon the collective wills expressed freely by people in Taiwan and on the Mainland China.
- It shall also find a general solution to Taiwan's participation in the international community. As both sides cannot represent each other in any international organizations and in any third

<sup>33</sup> Interview with a European ambassador in Taipei on 16 January 2013.

<sup>34</sup> John J. Mearsheimer, "Say Goodbye to Taiwan", *National Interest*, March-April 2014.

<sup>35</sup> Bruce Gilley, "Not so Dire Straits. How the Finlandization of Taiwan Benefits US Security", *Foreign Affairs*, Jan.-Feb 2010, 89 (1), pp. 44-59.

<sup>36</sup> CNTV survey on May 16, 2013, <http://news.cntv.cn/2013/05/16/ARTI1368662895610959.shtml>, accessed on June 13, 2013. However, this survey result was put into doubt by the majority of scholars in Taiwan.

countries, co-existence of Beijing and Taipei in international community to a certain degree is unavoidable.

- This integration across Taiwan Strait shall not provoke worry or even hostility of any neighboring countries in Asia. On the contrary, such integration shall constitute a paradigm of reconciliation between Asian peoples instead of stimulating nationalism in the neighborhood.

It was against this background that I proposed to begin discussing the drafting of a common Charter for all Chinese in Taiwan and on the Mainland. It shall be in the interest of Taiwanese, all Chinese and even China's neighboring countries.

#### IV. Rise of Constitutional Sovereignty and Charter Approach

##### i. Constitutional Sovereignty and the Charter

For DPP and pan Green, Taiwan's sovereignty belongs to all Taiwanese only. For Beijing, China's sovereignty must be in hand of all Chinese including those now residing in Taiwan. As regards KMT, it has adopted a more flexible as well as ambiguous position on this subject. On the one hand, it adheres to the ROC whose sovereignty shall nominally cover all Chinese on the Mainland and in Taiwan. On the other hand, since 1992, KMT has accepted the *fait accompli* that the ROC's governing power is now limited to Taiwan and its neighboring islets, implicitly recognizing the governance of PRC on the Mainland. "Sovereignty is inseparable," said Ma, "but it's not the case for governing powers."

But all these concepts on sovereignty are qualified as 'popular sovereignty' or 'national sovereignty'. According to the former, sovereignty belongs to the people of a fixed polity, who therefore enjoy supreme power to impose rules and to make any decisions. Based upon the latter, sovereignty belongs to a nation based upon a common cultural, social, political and even racial identity.

However, as the world has evolved into a post post-Cold War era, both popular sovereignty and national sovereignty are already out of date, leaving place to the constitutional sovereignty, domestically and internationally speaking. As alternative to national or popular sovereignty, constitutional sovereignty is based upon John Locke's political theory, according to which sovereignty was more of a tool than a final goal in protection of natural rights of individuals. In consequence, these 'fundamental rights' and 'constitutional norms' shall prevail over the sovereignty itself. The sovereignty should contribute to the strengthening of these norms and protection of those rights, which shall never be sacrificed in the name of national sovereignty or popular sovereignty. Therefore, constitution has become the protector of sovereignty and all the sovereign rights to the extent that sovereignty cannot exist alone without a constitution. Though people are holders of the sovereignty, their sovereign rights are protected and regulated by the constitution.<sup>37</sup>

Constitutional sovereignty was firstly implemented in adoption of Bill of Rights by the British Parliament in 1689, which forbade any excessive bail and cruel punishment and guaranteed freedom of speech and petition. One century later, constitutional sovereignty was implemented in the drafting of American Constitution, which divided sovereign rights vertically between the federal government, states and citizens. Overshadowed by rising nationalism during the century in the aftermath of French revolution and Napoleon Wars, constitutional sovereignty reappeared in the interwar period when American President Wilson advocated the doctrine of 'peace through law' and League of Nations was created to maintain

<sup>37</sup> Hideaki Shinoda, *Re-examing Sovereignty : from Classical Theory to the Global Age*, London : Macmillan Press Ltd., 2000, pp. 24-35.

global order. But it was not until the end of Cold War that constitutional sovereignty rose to the center domestically and internationally. Domestically, constitutions of all countries share more and more common values and articles that guarantee the fundamental rights of their citizens and regulate basic structure of governments. Internationally, the rise of global governance with UN and WTO at the center and penetration of international law into domestic legal order was more than evident.<sup>38</sup> Sovereignty is legitimized and regulated by this international constitutional structure. In 1979, German political philosopher, Jürgen Habermas, presented the constitutional patriotism. According to him, a non-nation polity can be united by nothing else but its constitution. Its patriotic feelings were born only when its constitution is respected.<sup>39</sup> The rise of community law regulating inter-state relationship is the most evident in Europe with the European Union Law on the top. The EU Law is directly binding to all governments and their people of member states in the EU without transposition acts adopted by their parliaments. The EU Law in principle prevails over any acts adopted domestically in the member states in the EU. Even lacking common legislation in some fields, EU may apply principle of mutual recognition to achieve legal implementation between its member states, which are obliged to accept and recognize industrial norms, sanitary examination and even diplomas of any other member states in the EU. This community law has constituted a *sui generis* category in law, outside of international and domestic laws.

More important, EU Law is not a unique case. The Council of Europe has also established a reputed community law in protection of human rights in Europe and Central Asia. In 2004, League of Arab States adopted Arab Charter on Human Rights. In 2008, ten member states of ASEAN adopted its Charter, which entered into effect one year later. In 2012, the Eurasian Economic Community composed of Russia and some of its neighboring countries adopted a Charter. African Union adopted its Convention on Preventing and Combating Corruption in 2003 and African Charter on Democracy, Elections and Governance in 2007. Rise of Community law and more frequent use of charter approach are more evident in international politics.

#### i. Feasibility of Charter approach in the Strait

This Charter Approach will not only be feasible but shall contribute to institutionalizing the Strait, consolidating democracy and current constitutional order in Taiwan, indicating a smooth itinerary to democracy on the Mainland and scaling down worries of neighboring countries vis-à-vis the cross Strait integration and even unification.

Before all, it is in Taiwan's interest. To initiate drafting a charter for all Chinese will immediately switch the focus from cross-Strait bilateral relationship to the future of China as a whole. As the Mainland is fast rising, Taiwan will end as a miserable beggar or an angry clown in its future bilateral negotiations with Beijing if it still focuses upon the cross-Strait relationship without thinking of the future of China as a whole. Taiwan will soon become a beggar if it continues the current KMT approach with an aim of consolidating the status quo through bilateral détente for Beijing has now owned more diplomatic and economic leverages to play with Taipei. For example, on the subject of Taiwan's quest for membership of international organizations, Beijing could give a green light to one arrangement for the seat of an international organization at its negotiations with Taiwan each time.

Taiwan would become an angry clown if it adheres to the DPP doctrine. DPP has been heavily lobbying the world in vain for supporting its pro-independence policy, which will further divide Taiwan's society, antagonize the cross-Strait relationship and worsen Taiwanese collective frustration.

<sup>38</sup> See special issue on 'Legalization and World Politics', *International Organization*, 54(3), Summer 2000.

<sup>39</sup> Jan-Werner Müller, *Constitutional Patriotism*, Princeton (New Jersey) : Princeton University Press, 2007: 16.

Focusing on the future of China as a whole instead of the cross-Strait relationship in the bilateral negotiations between Beijing and Taipei, Taiwan can even obtain some understanding and supporting forces inside the Mainland to ally with. People dissatisfied with the systemic corruption, elite dreaming for democracy, and even intellectuals and journalists working to protect the civilian rights (維權人士) will then be Taiwan's potential allies.

At the same time, it is in the interest of Mainland China including its leaders and elite. The PRC government admitted that the export-driven high speed growth is over. With an average growth rate of 7% per year, the PRC will not accumulate its fortune as fast as in the past decade. In the aftermath of rise of wages, appreciation of its currency and more and more trade disputes with US and EU, the PRC can no more export massively those cheap industrial products to the world. According to the most popular economist on the Mainland, Harry H. P. Lang, Chinese economy is already on the brink of collapse as it has been suffering over-inflation, fast increasing deficit and debt, environmental disaster and weak domestic consumption. "If this happens one by one," concluded Lang, "it's still probable that we can resolve them all. If they all break out at the same time, our economy will collapse." The slowdown of economy was accompanied by fast rising unrest on the mainland, where the suicide bombing in Beijing in 2013 and terrorist attack in Kunming one year later deepened such worries. The only way to avoid collapse and upgrade Chinese economy is to establish "real rule of law", "make governmental decision-making transparent" and "bring citizens to participate in the governance".<sup>40</sup> As economist, Lang avoided wording this solution 'democracy'. Accepting a Charter in the Strait, the PRC can institutionalize the détente and integration across the Strait, constitute the first step toward its dreamed unification in a long run and start domestic democratization. Furthermore, in classical Chinese, Charter(憲章) means domestic norms and principles. The Magna Carter is translated as Great Charter (大憲章) in Chinese, which governed the England as a supreme domestic law.

For Taiwan, drafting a Charter regulating the Strait could be interpreted as to further strengthen Taiwan's identity in the international community. The KMT could present it as a counter-project to Beijing's proposal on political negotiations. DPP and pan Green can even regard this Charter as a quasi-international act, similar to Charters of ASEAN, Arab Charter and even UN Charter. Under such circumstances, each of the parties across the Strait can justify its position in accepting this Charter.

Last but not least, drafting a Charter for the Strait can liberate neighboring countries around China from their fears of a threatening pan-Chinese nationalism in the region. This Charter will not only organize the ongoing integration between Mainland and Taiwan but will also regulate the relationship between the ever integrated whole China and its Asian neighbors. For example, it shall stipulate in the Charter that both sides cannot constitute any military alliance that aims for territorial expansion or threatens their neighbors.

## V. Conclusion

Taiwan should seriously consider initiating negotiating a Charter for all Chinese as a response to Beijing's proposal for negotiations on political issues. It will immediately redirect the focus from the cross-Strait relationship to the future of the whole China, permitting Taiwan to obtain more leverage in its future negotiations with Beijing. In order to obtain support of a majority of Taiwanese, Ma should announce simultaneously that the future Charter shall be voted in a referendum. In this Charter, it shall be reiterated that the future China must be a democracy based upon those universal values with implementation of UN covenants on human rights. It shall also establish principles to regulate cross-Strait relationship and find

<sup>40</sup> 郎咸平，中國經濟到了最危險的邊緣，台北：高寶，2012年10月。

a solution to Taiwan's diplomatic relationship in the international community. Then, it could lead to creation of a union or confederation between two sides in a long run. This roadmap toward drafting a common charter will not only be feasible but will be also in the interests of Taiwanese, all Chinese and even their neighboring countries. It should therefore be supported by the US and the EU.

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