

# The Anti-Secession Law and Distributive Negotiation across the Taiwan Strait

**Kwei-bo Huang**

*Assistant Professor & Executive Secretary  
Lab of International Communication and Negotiation  
Department of Diplomacy  
National Chengchi University, Taiwan (ROC)*

## Abstract

This paper uses a distributive negotiation perspective to examine the role of the *Anti-Secession Law* in the sovereign struggle between Taipei and Beijing. The influence and function of the Law may not meet the needs of Beijing leaders largely because Taipei does not feel (or does not want to know) the increasing costs of refusing to engage in cross-strait negotiation after the enactment of the Law. That is, the Law in the context of Taipei-Beijing distributive negotiation does not play a very crucial role. The fundamental framework of cross-strait relations will remain unaffected after the enactment of the Law.

**Keywords:** *Anti-Secession Law*, Cross-Strait Relations, Distributive Negotiation (Bargaining), Taiwan, China



Cross-Strait talks have faltered approximately after the second term of Lee Teng-hui's presidency. Both Taipei and Beijing on the wild rollercoaster ride tend to win relative gains against the other. Furthermore, probably most problematic, Taipei's rapidly changing domestic politics and Beijing's rigid "central-local" mentality prevent both sides of the Taiwan Strait from making concrete concessions to reach a win-win situation.

In the first half of 2005, cross-strait relations turn out fickle notably because of a number of critical events, such as cross-strait chartered flights specifically for the Chinese New Year, the visit of Sun Yafu and Li Yafei to bring condolence to Koo Cheng-fu in early February,<sup>1</sup> the promotion of Chen Shui-bian on the "Cross-strait Peace and Development Committee" during the Chinese New Year holidays, Beijing's enactment of the *Anti-Secession Law* on March 14, the demonstration in Taipei that drew hundreds of thousands of protestors (including Chen and his family), the case of alleged espionage discovered in the the Republic of China (ROC) Ministry of National Defense Department of Electronic Information in early May, as well as Lien Chan's and James Soong's visits to mainland in late April and May, respectively, that produced favorable interactions between the Chinese Communist Party (CCP) and the major opposition parties of Taiwan. What has puzzled most observers is: on the politics side, the basic framework of cross-strait exchanges seem unaffected after these complicated events, but on the non-politics side the "China

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1. Sun is Vice Chairman of the Association for Relations Across the Taiwan Strait (ARATS); Li is Secretary-General of ARATS; Koo was Chairman of the Strait Exchange Foundation (SEF), who held two meetings with Wang Daohan, Chairman of ARATS, in the 1990s. These meetings were viewed as the improvement of cross-strait relations then. Koo passed away in January 2005, so Wang sent Sun and Li to Taipei to express his personal condolence.

fever” in Taiwan may have “reached the boiling point.”<sup>2</sup>

In other words, it appears that the *Anti-Secession Law* that was supposed to result in a severely negative impact on cross-strait relations — as estimated by John J. Tkacik, Jr.<sup>3</sup> — did not impede the non-governmental interactions between the two sides of the Taiwan Strait. Without a doubt, the *Anti-Secession Law* was not of help to make a tangible contribution to such a phenomenon. Then, what on earth is the role of the *Anti-Secession Law* in the sovereign struggle between Taipei and Beijing? Why does it seem less significant soon after its enactment? How should one interpret the passage of the *Anti-Secession Law* and predict ensuing cross-strait relations?

This paper uses a negotiation analytical approach to probe the afore-mentioned questions. The following section will briefly examine contemporary Taipei-Beijing negotiation (or bargaining) as a distributive one that looks like a positional bargaining with no obvious solutions.<sup>4</sup> From an international negotiation perspective, the section that follows will analyze the role the *Anti-Secession Law* plays in Beijing’s and Taipei’s individual games of negotiation and try to answer why the political effect of the *Anti-Secession Law* is hardly seen for now. The concluding section will express the author’s own

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2. “Chen Mulls Dangerous Concessions,” *Taipei Times*, May 8, 2005, p. 8.

3. John J. Tkacik, Jr., “China’s New ‘Anti-Secession Law’ Escalates Tensions in the Taiwan Strait,” *The Heritage Foundation Webmemo* #629, December 21, 2004, The Heritage Foundation, <<http://new.heritage.org/Research/AsiaandthePacific/wm629.cfm>>.

4. A positional bargaining refers to the situation when negotiators bargain over positions and tend to lock themselves into these positions without being able to be heedful of the need to meet underlying concerns of the other party. See Roger Fisher, William Ury and Bruce Patton, *Getting to Yes: Negotiating Agreement without Giving in*, 2<sup>nd</sup> Edition (New York: Penguin Books, 1983), pp. 4-5.

view about where cross-strait relations can go from here.

### **Distributive Negotiation between Taipei and Beijing**

Distributive negotiation is also called competitive negotiation, where the objectives of one party are usually in disharmony with those of the other party. Each party in distributive negotiation seeks to maximize its gain or share of the fixed resources. Although negotiation strategists argues that in all distributive bargaining situations it is of great importance to (1) discover the other party's resistance point and (2) affect the other party's resistance point,<sup>5</sup> the zone of potential agreement — that is, the area the actual negotiation occurs — is still hard to perceive.

Tactically, the party in a distributive negotiation needs to pay attention to at least four crucial tasks:

- (1) considering the other party's outcome values and the costs of end negotiations,
- (2) managing the other party's impression of its own outcome values,
- (3) modifying the other party's perception of its own outcome values, and
- (4) controlling the actual costs of reaching, delaying or terminating negotiations.<sup>6</sup>

In addition, to reinforce a bargaining position, the expression of one's commitment and the follow-ups in action are necessary from time to time. A commitment — either to engage in peaceful means of conflict resolution or to make use of non-peaceful means — is an

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5. Roy J. Lewicki, David M. Saunders & John W. Minton, *Essentials of Negotiation* (New York: Irwin/McGraw-Hill, 1997), p. 37.

6. *Ibid.*, pp. 38-44.

explicit or implicit pledge about future options one may undertake on certain specific conditions. An appropriate commitment to a particular request may be able to lower the other party's resistance point, shift the zone of potential agreement, and rule out certain points inside the zone. A commitment is effective when credible deeds that are in line with the commitment do take place, or the commitment will fall into question and the negotiation context may become more hostile.<sup>7</sup>

Contemporary cross-strait negotiation between Taipei and Beijing is a distributive one that looks very much like a positional bargaining with no obvious solutions. On the one hand, Taipei denies Beijing's "One China" principle<sup>8</sup> and would like to negotiate with Beijing on an equal footing — to wit, sovereignty versus sovereignty. On the other hand, Beijing insists on "One China," contending that it is open on whom to negotiate with and what to negotiate so long as Taiwan recognizes its "One China" principle. Generally speaking, the more both parties clarify and defend their positions, the less likely for them to convince the other to change the existing position. Consequently, for Taipei and Beijing, the game of distributive negotiation brings about a strategic unambiguity — i.e., both parties' resistance points

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7. *Ibid.*, p. 50; David Lax & James Sebenius, "Interests: The Measure of Negotiation," in J. William Breslin & Jeffrey Z. Rubin, eds., *Negotiation Theory and Practice* (Cambridge, Massachusetts: Program on Negotiation Books, Harvard Law School, 1991); John S. Odell, "Creating Data on International Negotiation Strategies, Alternatives, and Outcomes," *International Negotiation*, Vol. 7, No. 1, 2002, pp. 39-52.

8. There are different versions of Beijing's "One China" principle. The most recent is the statement provided by Wang Zaixi, vice-minister of the Taiwan Affairs Office of the PRC State Council. This statement indicates that there is only one China and that both Taiwan and mainland belong to China despite the fact that they have not been unified yet. See "Speech by Wang Zaixi, Vice Minister of Taiwan Affairs Office of the State Council," China.org.cn, January 28, 2005, <<http://www.china.org.cn/e-news/news050128-1.htm>>.

are clear and affecting the other party's resistance point becomes a "mission impossible."

The rest of this section focuses on the four crucial tasks to deal with distributive negotiation. By realizing how leaders in Taipei and Beijing make use of these tactics can the nature and course of cross-strait negotiation be presented in the context of distributive negotiation. In terms of tactics used to assess the other party's outcome values and the costs of terminate negotiations, a variety of sources helpful to get valuable information has been existent. As for the measures to manage the other party's impression of one's own outcome values, what Taipei is currently doing is to take direct or indirect actions in a selective way to manage Beijing's impression of Taipei's own outcome values and vice versa, both because each side of the Taiwan Strait would like to prevent the other from collecting actual information about its own position and because Taipei and Beijing have known each other very well after over fifty years' competition. For Taipei, enacting the referendum law, revising the ROC Constitution by 2008, and nominating quite a few pro-Taiwan independence politicians or businessmen as senior advisors or national policy advisors to the President become a preferred way to show Beijing leaders implicitly that the ruling party in Taiwan has not ruled out the possibility of Taiwan independence. For Beijing, despite the vague definition of the so-called "red line," the enactment of the *Anti-Secession Law* and recent smiling offenses targeting Taiwanese leaders and organizations that do not embrace the idea of Taiwan independence are tactical decisions aiming at altering the impressions of various categories of Taiwanese people about Beijing's outcome values.<sup>9</sup>

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9. That is, according to George Tsai, "the soft hand becomes softer and the hard hand becomes harder." See Caroline Clark, "Anti-Secession Law Rattles Taiwan," *BBC News*, March 3, 2005, <<http://news.bbc.co.uk/2/hi/asia-pacific/4314993>.

In terms of impression modification, Taipei is attempting to influence Beijing's perceptions by interpreting the outcomes of Beijing's policy. The Chen administration has once and again asserted that the PRC's high profile attitude and isolation policy toward Taiwan will lead to an ultimate separation between Taiwan and mainland China. Similarly, Beijing is also trying to modify Taipei's perceptions by interpreting the outcomes of Taipei's pro-independence proposal, thereby passing the *Anti-Secession Law* and maintaining the option of solving the "Taiwan issue" in a non-peaceful way.

To manipulate the actual costs of reaching, delaying, or terminating negotiations, both Taipei and Beijing have tried to plan disruptive actions and seek support with outsiders. Taipei appears less willing to sit down and negotiate, so such disruptive actions as the announcement of "one country on each side" and the plan on the enactment of a new constitution via referendum are often seen to avoid closer political development with the latter. Besides, Taipei also allies with the United States and Japan to increase Beijing's cost of pushing it to the negotiation table. Beijing encourages talks with Taiwan while increases the cost to Taiwanese leaders for not settling and lowering the cost to Taiwanese leaders for settling by, for instance, passing the *Anti-Secession Law* which contains reciprocal goodwill and serious warning at the same time. Moreover, Beijing appears to seek every opportunity to work with Washington to prevent Taipei from being out of control.<sup>10</sup>

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stm>. Also see David Brown, "China-Taiwan Relations: A Little Sunshine through the Clouds," *Comparative Connections*, Vol. 7, No. 1, April 2005, p. 82, <<http://www.csis.org/pacfor/cc/0501Q.pdf>>.

10. "China seeks U.S. co-op over Taiwan issue," *China Daily News*, July 29, 2003, <[http://www.chinadaily.com.cn/en/doc/2003-07/29/content\\_249871.htm](http://www.chinadaily.com.cn/en/doc/2003-07/29/content_249871.htm)>; Ching-Yu Sun, "The 'Anti-Secession Law' is the 'Anti-Peace' Law" (「反分裂法」就是「反和平法」), *Taiwan Daily*, March 23, 2005, p. 3.

By and large, the game of distributive negotiation between the two sides of the Taiwan Strait will continue. It is the distributive nature and tactics adopted by Taipei and Beijing that make the *Anti-Secession Law* seemingly trivial.

### **The Anti-Secession Law in the Context of Distributive Negotiation**

Despite completely different responses to the enactment of the *Anti-Secession Law*, which will be discussed later, it is interesting to point out that both Taipei and Beijing do not seem to take the Law seriously. To put it another way, the Law “is essentially just an important reference point” for Beijing’s policy towards Taiwan in the future, but will not become the foundation for it, according to Kai-huang Yang.<sup>11</sup> It is even more likely that for leaders on both sides of the Taiwan Strait the Law has been viewed as one of the tactical means in cross-strait distributive negotiation. This may help explain why the political effect of the *Anti-Secession Law* can hardly be seen.

The following paragraphs will sketchily introduce Beijing’s comments on and Taipei’s responses to the *Anti-Secession Law*. Then, viewing the Law as a negotiation tactic employed by Beijing, the rest of this section will try to explore two important questions. First, how would the *Anti-Secession Law* become a political instrument for Taipei and Beijing leaders, respectively? Second, what kind of influence and function does this legislation have in Taipei-Beijing negotiation?

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11. Kai-huang Yang, “An Analysis of China’s Anti-Secession Law,” Peace Forum, June 9, 2005, <[http://www.peaceforum.org.tw/onweb.jsp?webno=3333333217&webitem\\_no=1328](http://www.peaceforum.org.tw/onweb.jsp?webno=3333333217&webitem_no=1328)>.



With regard to Beijing's comments on the *Anti-Secession Law*, it is necessary to look at the most recent guiding principles set up by the top leader of the CCP, Hu Jintao. Prior to its passage at the PRC National People's Congress on March 14, 2005, Hu issued a four-point statement regarding Taiwan: adhering to the "one China" principle and "1992 consensus,"<sup>12</sup> striving for peaceful reunification, further implementing the principle of "placing hopes on the Taiwan people," and making no compromise with Taiwan independence.<sup>13</sup> It goes without saying that the CCP leaders' attitudes towards the *Anti-Secession Law* are unified under Hu's four points. Then, Wen Jiabao described it as a domestic law promoting cross-strait exchanges and advancing peaceful reunification on the one hand, and called for direct flights across the strait and more imports of Taiwanese farm product with less restriction on the other.<sup>14</sup>

In Taipei, before the passing of the *Anti-Secession Law*, Frank Hsieh announced deliberately that he would support amending the

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12. In the author's point of view, the "1992 consensus" stands for "one China, different interpretations." For details, see <<http://www.npf.org.tw/monthly/0301/theme-120.htm>>; Xu Shiquan, "The 1992 Consensus: A Review and Assessment of Consultations between the Association of for Relations across the Taiwan Strait and the Straits Exchange Foundation," *American Foreign Policy Interest*, Vol. 23, June 2001, pp. 121-140.

13. Hu delivered a speech when visiting Chinese People's Political Consultative Conference (CPPCC) members from such parties and organizations as the Revolutionary Committee of the Chinese Kuomintang and the All-China Federation of Taiwan Compatriots. See "Quotes from Hu's Speech to CPPCC Members on Cross-Straits Relations," Xinhua News, March 4, 2005, <[http://news.xinhuanet.com/english/2005-03/04/content\\_2650241.htm](http://news.xinhuanet.com/english/2005-03/04/content_2650241.htm)>.

14. "Premier Wen Jiabao Meets the Press," PRC Ministry of Foreign Affairs, March 14, 2005, <<http://www.fmprc.gov.cn/eng/topics/TwoSessions/t187551.htm>>; "China Congress Passes Taiwan Bill," CNN.com, March 13, 2005, <<http://www.cnn.com/2005/WORLD/asiapcf/03/13/china.npc.law/>>.

ROC Constitution to counter the proposed legislation, while Annette Lu stepped even further by saying that the legislation with non-peaceful means could involve military actions and violate the United Nations Charter, which unilaterally changed the status-quo in the Taiwan Strait.<sup>15</sup> Chen's official reaction to the *Anti-Secession Law* was to issue a six-point statement on March 16, 2005:

- (1) The ROC is an independent, sovereign state; Taiwan's sovereignty belongs to the 23 million people of Taiwan; and only the 23 million people of Taiwan may decide to change the future of Taiwan.
- (2) The "anti-separation law" provides further proof of the many institutional differences between the two sides of the Taiwan Strait today.
- (3) A headstrong Beijing government passed this aggressive law without awareness, not to mention the overwhelming objection by the international community.
- (4) The people of Taiwan uphold democracy and peace; they are determined and duty-bound to join the international community in safeguarding democratic systems, peace in the Taiwan Strait, and regional stability.
- (5) The "anti-separation law" would unilaterally change the status quo in the Taiwan Strait and thus give rise to regional tension and international commotion.
- (6) The March 26 parade for "Safeguarding Taiwan with Democracy and Peace" represents the most peaceful, most rational, most humble vocalization, and most powerful people power by the society of Taiwan.<sup>16</sup>

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15. "Annette Lu Furious over Anti-Secession Bill," ETtoday.com, March 9, 2005, <<http://www.ettoday.com/2005/03/09/11195-1762660.htm>>.

In some other occasions, Chen also expressed his opposition to the *Anti-Secession Law*, suspended the talk about direct cargo flights, and referred to the Law as an aggressive, non-democratic, and non-peaceful action of Beijing to disintegrate and polarize Taiwan's interior.<sup>17</sup> However, Chen obviously noticed Washington's desire for de-escalating tensions across the strait and adopted a self-restrained approach to deal with this critical situation.

In general, the *Anti-Secession Law* "is neither as inflammatory as many had feared nor as bombastic as Beijing's previous statements on cross-straits issues."<sup>18</sup> It does not cause too many unnecessary collisions between Taipei and Beijing. As Alan D. Romberg argues, cross-strait relations "did not deteriorate as much as it was feared because, on one hand, Beijing made its position clear that conflict must be avoided while Taipei made the efforts not to engage in the vicious cycle on the other."<sup>19</sup> As a matter of fact, the political effect of the *Anti-Secession Law* has seemed to fade out in cross-strait relations in recent months, in part because of Lien's and Soong's

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16. "President Chen Issues a Solemn Six-point Statement Regarding China's 'Anti-separation Law'," Office of the ROC President, March 16, 2005.

17. "President Chen Attends the Hsieh Nien Fan Banquet of American Chamber of Commerce," Office of the ROC President, March 10, 2005; "President Chen receives members of the European Parliament's Taiwan Friendship Group," Office of the ROC President, May 18, 2005.

18. Bruce Klingner, "The Dragon Squeezes Taiwan," *Asia Time*, March 15, 2005, <<http://www.atimes.com/atimes/China/GC15Ad01.html>>. But Klinger differs with the author in the view about the impact of the Anti-Secession Law on Beijing-Washington relations and the region as a whole. Klinger continues to argue that the Law "will have significant - and not beneficial - ramifications for the region, as well as for China-United States relations."

19. "Anti Secession Legislation After One Month: Implications for Cross-Strait Relations," April 15, 2005, The Henry L. Stimson Center, <<http://www.stimson.org/china/? SN=CH20050526833>>.

visits to mainland China and in part because of a series of Beijing's appealing measures ranging from the opening of Taiwan's agricultural products to the planning on cross-strait military confidence building under the "One China" principle.

That the future of Taiwan and mainland China is or is not negotiable depends ultimately on the negotiator's subjective matter of perception and will. It is extremely difficult to discern the influence of the *Anti-Secession Law* on subjective matters of perception and will of Chen and Hu, but what one can do now is to consider whether or not such a legislation has been helpful to bring them political dividend and thus affect their own persistent points. In other words, because the *Anti-Secession Law* is political in nature, arguably the *Anti-Secession Law* has become a political instrument for Taipei and Beijing leaders, respectively, rather than a guiding legal document that influences the course of negotiation between Taipei and Beijing.

In this kind of positional bargaining, both sides of the Taiwan Strait are playing hard negotiating game whose tactics include, for example, demanding concessions as a condition of the relationship, being hard on the issue, distrusting others, making oral or substantial threats, applying pressure, and etc..<sup>20</sup> Do they really want a solution to change the negotiation game on the merits? Probably not. Such measures as principled negotiation, the separation of the negotiators from the problem, the exploration of mutual interests rather than positions, and the insistence on using objective criteria that are deemed effective to solve the stalemate have not been undertaken by Taipei and Beijing.<sup>21</sup>

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20. For details, see Fisher, Ury, and Patton, *Getting to Yes*, pp. 7-9.

21. *Ibid.*, pp. 10-14.

Through tactical considerations, Beijing decided to push its commitment on the resolution of Chinese reunification by passing the *Anti-Secession Law*. Although Beijing leaders know that such a commitment is like a two-edged sword that may temporarily help them gain advantages in negotiation or inextricably fix them to a “point of no return.” Hence, the enactment of the *Anti-Secession Law* comes with all possibilities in the future development of cross-strait relations and contains three important prerequisites for making effective commitments — that is, a high degree of finality, a high degree of specificity, and a clear statement of consequences.<sup>22</sup>

To communicate finality, the *Anti-Secession Law* calls for “the achievement of peaceful reunification through consultations and negotiations on an equal footing between the two sides of the Taiwan Straits” (Article 7). To present specificity, in addition to the “One China” principle long embraced by the PRC (Article 5), the Law indicates that the Beijing government will “never allow the ‘Taiwan independence’ secessionist forces to make Taiwan secede from China under any name or by any means” (Article 2) and that “[s]olving the Taiwan question and achieving national reunification is China’s internal affair, which subjects to no interference by any outside forces” (Article 3). To deliver a clear statement of consequences, not only the Law portrays a positive development of cross-strait relations by various suggestions such as encouraging personnel exchanges, facilitating economic exchanges and cooperation, realizing direct links of trade, mail and air and shipping services, and officially ending the state of hostility between the two sides (Article 6 & Article 7),

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22. Richard E. Walton and Robert B. McKersir, *A Behavioral Theory of Labor Negotiations: An Analysis of a Social Interaction System* (New York: McGraw-Hill, 1965), cited from Lewicki, Saunders, and Minton, *Essentials of Negotiation*, p. 51.

it also reaffirms the position that the Beijing government will “employ non-peaceful means and other necessary measures to protect China’s sovereignty and territorial integrity” in case of Taiwan independence, any form of Taiwan’s secession from China, as well as no hope for peaceful reunification (Article 8). The *Anti-Secession Law* to Beijing is thus a political instrument and official point of reference of “red lines to forestall Chen’s declared goal of passing a new constitution through referendum in 2006 and put it into force in 2008, which will pave the way for Taiwan’s de jure political independence.”<sup>23</sup>

It is evident that Taipei is not eagerly seeking the possibility of preventing Beijing from committing permanently and finding ways to persuade Beijing to abandon its committed position. Taipei treats the *Anti-Secession Law* as a way to show its veto to further cross-strait contacts. Therefore, in a relatively self-restrains manner, Taipei provided a counter-commitment (including the six-point statement of Chen on March 16, 2005) with a certain degree of finality, specificity, and consequences as well. Perhaps this is consistent with Chen’s “envelope pushing” strategy to garner domestic votes and win elections. In addition, by doing so can Taipei maintain a status quo favorable to the exercise of campaign tactics of the Democratic Progressive Party (DPP).

To communicate finality, the DPP government has been very firm on the position that only the 23 million people of Taiwan may decide to change the future of Taiwan. To present specificity, Chen urged the PRC to open dialogue with him and his government because he and his government were chosen by Taiwanese people. Furthermore, Chen argued that so long as the engagements were conducted based

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23. Jianwei Wang, “Beijing’s Legal Preemption,” On Line Opinion, January 12, 2005, <<http://www.onlineopinion.com.au/view.asp?article=2922>>.

on the principles of democracy, peace and equality, consultations and negotiations could begin at any time.<sup>24</sup> To express a clear statement of consequences, the Chen administration alleged that any agreements between the CCP and Taiwan's opposition parties were of no consequence because the Mainland Affairs Council was the only governmental agency formally authorized to deal with Beijing. That is to say, the DPP government insisted that cross-strait problems could "be resolved only through government-to-government dialogue and consultation."<sup>25</sup> It once and again emphasizes that the PRC deploys some 700 ballistic missiles to face Taiwan and that it will make every effort to pass the huge arms sale package with the United States — which implies a worse outcome, intensified arms race, brought forward by the *Anti-Secession Law*. Obviously, with the enactment of the *Anti-Secession Law*, Taipei has found its own niche in the international community as a victim, and it also has more justified reasons to counter Beijing's smiling offenses in cross-strait relations. As a result, the Law in Taipei leaders' mind is a political instrument, too.

These findings lead to another important question: what kind of influence and function does this legislation have in Taipei-Beijing negotiation? Maybe this question can be answered by figuring out whether or not the *Anti-Secession Law* is able to convince either side of the Taiwan Strait that only worse alternatives exist in the absence of a cooperative solution.

A political instrument, the Law suggests a positive consequence

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24. "Taiwan's President Calls for Talks with China," *Agence France Press*, May 1, 2005; "Chen Stresses All Avenues Open to PRC," *Taiwan News*, May 3, 2005, <<http://www.etaiwannews.com/Taiwan/Politics/2005/05/03/1115083156.htm>>.

25. "Washington Tells China to Talk to Chen," *Taipei Times*, May 1, 2005, p. 1.

by showing the possibilities of creative solutions such as personnel exchange, scientific and education exchange, and so on, while it puts forward a negative ending by keeping the possibility of military strikes. The former decreases Taipei's actual costs of engaging in cross-strait negotiation, and the latter increases Taipei's actual costs of doing so. In this regard, Beijing actually presents a full-scale spectrum for the resolution of the "Taiwan issue." Then, does the *Anti-Secession Law* succeed in influencing Taipei's decision to negotiate with Beijing? A tentative answer is "No."

Taipei knows clearly that as long as it does not move on to fulfill Taiwan independence and the protection umbrella provided by Washington remains, Beijing will be less likely to wage a war without thinking twice. For the DPP government a stalemate situation, as analyzed before, can be advantageous domestically. The *Anti-Secession Law* is one form of threatening action, and the CCP and observers in Beijing frequently lays emphasis on the positive side of the Law on purpose.<sup>26</sup> It is still unfortunate that the CCP government passed this legislation, but it is also unfortunate that the DPP government only focuses on Article 8 of the Law and fails to notice the goodwill from the other side of the strait — for the purpose of domestic consumption and international propaganda.

What may be worse is the possible paradox that "to the party which has not (yet) decided to negotiate, the decision of the other party is a *prima facie* reason for [the party] to continue to refuse

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26. For example, Huang Jiashu from the Renmin University notes that "even if you don't acknowledge the one-China principle in a short term, we will welcome any of your efforts to this end." See Zao Yue, "We are Family," China Pictorial, May 2005, <<http://www.rmhb.com.cn/chpic/htdocs/English/content/200505/3-1.htm>>.



because it makes it appear that the other party is yielding. If the first party can only hold out a little longer, the other might give in completely. The decision to negotiate is seen both as a claim to participate in the solution of the issue... and as a sign of weakness....”<sup>27</sup> It seems that Beijing is almost ready to negotiate with Taipei over many issues, but Taipei is reluctant to do so. Because Taipei does not feel (or does not want to know) the increasing costs of refusing to engage in cross-strait negotiation after the enactment of the *Anti-Secession Law*, it is then difficult to imagine that Taipei leaders will meet with Beijing leaders on the negotiation table in the short run. Furthermore, the *Anti-Secession Law* now becomes an excuse of Taipei for not resuming dialogue with Beijing.

Although it appears that Beijing would like to open up dialogue with Taipei via the *Anti-Secession Law* and some other attractive low profile measures in recent times,<sup>28</sup> the actual influence and function of the Law may not meet the needs of Beijing leaders.

### **Future Cross-Strait Relations in the Shadow of the Anti-Secession Law?**

Had there not been the *Anti-Secession Law*, would cross-strait relations now be any different? This is a counter-factual question about the impact of the *Anti-Secession Law* on Taipei-Beijing relations. The above-mentioned analysis implies that the Law in the context of Taipei-Beijing distributive negotiation does not play a very crucial

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27. I. William Zartman and Maureen R. Berman, *The Practical Negotiator* (New Haven, Connecticut: Yale University Press, 1982), p. 69.

28. Richard Baum, for instance, thinks that the *Anti-Secession Law* may be helpful for the resumption of cross-strait negotiation. See Angilee Shah, “Taiwan and China Cross-Strait Debate Comes to UCLA,” UCLA International Institute, May 3, 2005, <<http://www.isop.ucla.edu/article.asp?parentid=23873>>.

role. Tomoyuki Kojima holds that the Law has nothing new, and that its passing does not mean immediate military invasion of Taiwan.<sup>29</sup> As a matter of fact, regardless of the Law, the CCP has begun to promote people-to-people interactions across the strait in order to compete for the appreciation or even support of the Taiwan people. Moreover, the distributive negotiation involving Taipei and Beijing is basically a conflict situation, where both parties are in pursuit of their own interests through such tactics as managing and altering the other's understanding of one's own proposal, and establishing commitments that can bring the other to the negotiation table. Most of the tactics can easily escalate tensions. Therefore, it is possible that the absence of the Law would have made no salient difference in cross-strait relations. The Law is one of many tactics exercised by Beijing to draw Taipei to the negotiation table.

A more important issue at stake is the prospect of cross-strait interflows after the enactment of the *Anti-Secession Law*. The *Anti-Secession Law* has not resulted in dramatic impacts but minor setbacks on the development of cross-strait relations. Perhaps it is far to argue that for Beijing the Law lists once again all available policy options and appeases the hardliners in the CCP, and that for Taipei, the Law represents an opportunity of reemphasizing the so-called "Taiwan identity" and justifying the DPP's call for constitutional amendment and/or new constitution via referendum.

In addition, Beijing's two-tiered tactic of "hard being harder, soft being softer" in recent years works fairly well. With firm commitments in line with its "One China" principle, Beijing comes to

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29. 〈日強烈關切，籲兩岸和平對話〉(Japan Shows Strong Concern and Calls for Cross-Strait Peaceful Dialogue), *Liberty Times*, March 9, 2005, <<http://www.libertytimes.com.tw/2005/new/mar/9/today-fo5.htm>>.

realize its historical, political, and economic advantages over Taipei, and it is learning to negotiate with hard and soft styles of positional bargaining. The *Anti-Secession Law* contains both styles which allow Beijing to use the highball/lowball tactic compelling Taipei to reevaluate Beijing's offer and probably move closer to its resistance point.<sup>30</sup>

Taipei in this game of distributive negotiation seems to prefer hardball tactics to deal with Beijing's request for further contact and finally reunification. For the DPP government, the actual costs of delaying or terminating negotiations is now more and more difficult to estimate when mainland China is rising politically and economically. Nonetheless, Chen and Lu have repeated a number of times that "1992 consensus" does not exist and that the "One China" principle will alter or deny the sovereign status of the ROC. Thus, as some possible prerequisites of resuming cross-strait dialogue are ruled out by Taipei, it is an extremely tough task for them to make Beijing leaders reevaluate Taipei's offer and move closer to Beijing's resistance point.

Providing the fact that cross-strait positional bargaining and distributive negotiation remain, the fundamental framework of cross-strait relations will be unaffected after the enactment of the *Anti-Secession Law*. The Law brings status quo to cross-strait relations not because its article aimed at Taiwan independence but because its passing indicates the irrational component of Beijing's decision-

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30. This tactic refers to the situation where the first party starts with an unusually high (or low) opening offer that will cause the other party to reexamine its own opening offer and possibly move closer to the resistance point, unless the other party suspend the negotiation. See Lewicki, Saunders, and Minton, *Essentials of Negotiation*, p. 56.

making towards Taiwan and in a sense deters Taiwan independence. Of course, it is also possible that such an irrational component is the result of careful calculation of the CCP leaders. This is still unknown to most of the China watchers.

The *Anti-Secession Law* is simply a political tool rather than a “law” having little legal grey area. Its influence will rely largely on the volition of Beijing leaders to enforce the Law. More specifically, while its influence is observable as Beijing embraces the positive aspects of the Law (such as Article 6 & Article 7), its influence is even more observable and stronger as Beijing underscores its negative aspect (non-peaceful means to cope with the “Taiwan issue” as described in Article 8). Nowadays the Law seems like a comet barely scratching the sky. Nonetheless, no one knows whether and when this comet is going to return with a greater impact on the earth. In reality, the influence of the Law will be all up to Beijing’s tactical considerations. As a result, in spite of the Law’s seemingly weak effect, one can not entirely ignore the impact of the Law per se, for it will remain to influence the development of cross-strait relations in some way and to a certain extent. This will further complicate the course and development of contemporary cross-strait relations.

