



Anti-Secession Law: Closing (or Opening) the Door? by Ralph A. Cossa

“Unhelpful.” That’s how Washington described China’s new Anti-Secession Law (ASL), authorizing the use of “non-peaceful means and other necessary measures” in the event “that possibilities for a peaceful reunification [with Taiwan] should be completely exhausted.” I beg to differ. As it turns out, the Anti-Secession Law has proven to be very helpful . . . to everyone but Beijing, that is.

The ASL has turned a diplomatic embarrassment for President Bush into a potential diplomatic victory. Earlier this year, President Bush traveled to Europe on his “listening tour” aimed at improving strained relations between Washington and “old Europe.” One big stumbling block was the expressed European intention to lift the arms embargo against China that had been in place since the 1989 Tiananmen tragedy. Despite – or perhaps because of – strong vocal pressure from the White House and especially the Congress, the Europeans seemed intent on lifting the embargo. After all, no self-respecting European wanted to be seen as yielding to Washington’s demand. The Anti-Secession Law gave the Europeans the face-saving out that many on both sides of the Atlantic were looking for. Even strong proponents of lifting the ban, like European Union Foreign Minister Javier Solano, acknowledged that the ASL had “complicated atmospherics.”

Another proponent, British Foreign Secretary Jack Straw was among the first to initiate the turnabout, noting last week that the law “created quite a difficult political environment.” Other supporters have acknowledged that “the timeline has become more difficult.” As a result, the lifting of the embargo, which seemed a sure bet in December, in all likelihood will now appear to have been “postponed” until 2006. By passing the ASL, Beijing snatched defeat from the jaws of victory in its diplomatic contest with Washington, while boosting – or at least preventing a further deterioration of – Washington’s relations with Brussels.

Helpful as the new Chinese law may prove to be to trans-Atlantic relations, it was even more helpful to its intended target, Taiwan President Chen Shui-bian. During a visit to Beijing in January, I was advised by senior Chinese officials that the new law was necessary to check the “splittist” ambitions of Chen and his pan-green governing political coalition. But the ruling coalition experienced a major setback in December when it failed, despite Chen’s own brash predictions, to win a majority in the Legislative Yuan (LY). Chen’s “in-your-face” policies toward Beijing were seen as a major contributing factor in the defeat and his post-election tone had become far more conciliatory. He even agreed to unprecedented direct flights between Taiwan and the mainland, by both Taiwan and PRC carriers, over the Chinese

New Year period; a deal initially brokered by the opposition Nationalist Party (KMT).

Why then did Beijing feel compelled to proceed with the ASL? The real answer seems to be that the law was originally aimed at stopping the “creeping independence” that seemed to be speeding up in Taiwan as a result of Chen’s narrow reelection as president in March 2004 and his anticipated LY victory. By December, the political momentum (read: high-level leadership support) in Beijing for the ASL was too great to turn it off. In short, not unlike last year’s decision by President Chen to pursue his “defensive referendum” despite strong objections from Beijing (and Washington), domestic political imperatives, this time in Beijing, seemed to be driving leadership actions, despite their geopolitical drawbacks.

Beijing interlocutors argued, more convincingly, that the election setback had not caused Chen to change his objectives, only his tactics. The counter-argument – that the ASL would breathe new life into the pro-independence movement (not to mention China’s largely silenced critics in Washington) – fell on deaf ears in Beijing. But even the hard of hearing had to have heard the collective voices of half a million or more Taiwanese, who took to the streets last weekend to voice their displeasure over the ASL, in a demonstration smoothly orchestrated by the Chen government. As many had warned, Beijing’s heavyhanded action revitalized Chen’s coalition and put the opposition once again on the defensive – no one in Taiwan could support “non-peaceful” reunification or acknowledge China’s “legal right” to enforce this inflammatory law.

The big question is, “what happens next?” Does the ASL make further progress in cross-Strait relations unlikely (if not impossible), as its critics argue, or does it, as Beijing contends, open the door for further progress as long as Taiwan does not take irreversible steps toward independence? To answer this question, one needs to read beyond Article Eight – the “non-peaceful means” clause – and examine the ASL’s broader meaning. In reality, the refusal to rule out the use of force is nothing new; this has always been a major element of Beijing’s cross-Strait policy. Passing a law – in a country where the rule of law is applied selectively, often at the leadership’s whim – hardly makes an attack any more (or less) likely.

Of more relevance, and considerably more promising, are Article Six – which lays out a series of “measures to maintain peace and stability in the Taiwan Straits and promote cross-Strait relations” – and, more significantly, Article Seven, which affirms that “the state stands for the achievement of peaceful reunification through consultations and negotiations *on an equal footing* between the two sides of the Taiwan Straits.” [emphasis added] This wording had been used before

but not recently, and it is now promulgated into law. More intriguing is the acknowledgment, also in Article Seven, that “these consultations and negotiations may be conducted in steps and phases and with flexible and varied modalities.” While an earlier article notes that “upholding the principle of one China is the basis of peaceful reunification,” there is no specified requirement in the ASL for Taipei to accept the one-China principle as a precondition for starting the process of consultations and negotiations.

Does this mean that Beijing is prepared, finally, to be more flexible on this point? Who knows, but it would be irresponsible of Taipei to overlook this possibility in its haste to condemn this “unhelpful” act, since it could just hold the key to an eventual resumption of cross-Strait dialogue on the “equal footing” long sought by Taipei.

As I read the ASL, China is not demanding that Taipei accept the “one China” principle, only that it not take any action that “completely exhausted” or foreclosed the possibility. It remains unclear what “flexible and varied modalities” are acceptable to Beijing. In my January discussions, Chinese officials implied that an acknowledgment by Taipei that “an agreement to agree to disagree” over the interpretation of one China had previously existed – the so-called “1992 consensus” that allowed earlier direct cross-Strait dialogue to occur – might suffice. President Chen himself hinted that such an agreement might be possible when, in his National Day speech last October, he proposed that “both sides use the basis of the 1992 meeting in Hong Kong, to seek possible schemes that are not ‘necessarily perfect but acceptable,’ as preparation of a step forward in the resumption of dialogue and consultation.”

If the leadership in Taiwan is prepared to move beyond the emotion of the new law and creatively test its possibilities, and if the leadership in Beijing is serious when it asserts that the ASL opens rather than closes the door for meaningful dialogue, then the law might yet prove helpful to both Taipei and Beijing.

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