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# A Modest Proposal for a Basic Agreement on Peaceful Cross-Strait Development

Chang Ya-chung

**Abstract:** In order to promote peaceful development in cross-Strait relations, this article proposes that both sides of the Taiwan Strait sign a “Basic Agreement on Peaceful Cross-Strait Development” – a temporary agreement (*modus vivendi*) to determine political relations and future development across the Strait. Three major points should be included in this agreement: first, both sides of the Taiwan Strait belong to one “Whole China” and both sides have no intention to separate from this “Whole China”; furthermore, both sides pledge not to split the “Whole China”, but to work in unison to maintain the territorial integrity and sovereignty of the “Whole China”; second, both sides of the Taiwan Strait share constitutionally guaranteed equal relations, and normal relations across the Strait will develop on the basis of this constitutional equality; and third, both sides decide to establish communities in areas of common agreement in order to promote mutually cooperative relations.

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**Keywords:** China, Taiwan, cross-Strait relations, cross-Strait integration, China-Taiwan relations

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## Introduction

The election of a new KMT president into power in March 2008 with the support of a two-thirds majority in Taiwan's parliament, the Legislative Yuan, has re-opened channels for semi-official cross-strait negotiations and broadened the perspectives for an ultimate resolution of the conflict in the Taiwan Strait. Four rounds of bilateral talks up until the end of 2009 have produced a number of cooperation agreements focusing on technical issues and, most importantly, the establishment of direct transport, trade and communication links between both sides for the first time in 60 years. During the next round of talks to be held in the first half of 2010 between representatives of Taiwan's Straits Exchange Foundation (SEF) and its Chinese counterpart, the Association for Relations Across the Taiwan Strait (ARATS), a quasi-free trade agreement, named the Economic Cooperation Framework Agreement (ECFA) in Taiwan, is on the agenda.

As Taiwan's President Ma Ying-jeou (Ma Yingjiu) has said at various occasions in the recent past, a peace agreement between Taiwan and China should be pursued during his presidency to terminate the current state of uncertainty in the Taiwan Strait. If such an agreement can be signed, it would pave the way for further steps to political integration between the two sides and, possibly, to eventual unification. This intention is well received in the People's Republic of China (PRC). As General Secretary Hu Jintao said during his address to the Seventeenth National Congress of the Communist Party of China held in October 2007,

[h]ere we would like to make a solemn appeal: On the basis of the one-China principle, let us discuss a formal end to the state of hostility between the two sides, reach a peace agreement, construct a framework for peaceful development of cross-strait relations, and thus usher in a new phase of peaceful development (*Xinhua* 2007).

It is therefore timely that scholars concerned with cross-strait developments make proposals for such an agreement, in order to stimulate a debate across the Taiwan Strait on how such an agreement should be spelled out and stipulated. A number of efforts have been made by scholars over the years (e.g., Tsang 2000; White 2000; Cabestan 2001; Lieberthal 2005), though with little effect, due to adverse political circumstances. Very often their suggestions were directed at securing a diplomatic truce that might give cross-strait relations time to develop and deepen. However, these scholars did not make constructive and

precise proposals for cross-Strait rapprochement, or suggestions for the kind of normative thinking upon which this rapprochement might be based. For these reasons, I have attempted to compose a draft for a new framework for cross-Strait relations in order to stimulate greater debate among Chinese, Taiwan and foreign scholars and experts: a Basic Agreement on Peaceful Cross-Strait Development. In the following sections, I first present the draft text. This is followed by a brief explanation of the political character of the agreement and an interpretation of its different provisions.

## Draft of the Basic Agreement on Peaceful Cross-Strait Development

### Preamble

Both parties involved,

Recognizing the fact that China as a whole (hereafter: “Whole China”) has been in a state of separated governance since 1949,

But that as such both parties are still a part of the Chinese people,

In view of the common mutual responsibility of both sides to promote national peace and development,

Acknowledging that both sides of the Taiwan Strait belong to the Whole China, that mutual equality is a basic condition for peace and understanding, and that both sides intend to apply a method of integration via the establishment of communities as the basic path to peace and mutual development,

Based on the interests of the people on both sides of the Taiwan Strait, and the desire to create the conditions for cross-Strait cooperation,

Have reached the following agreement:

***Article 1:***

Both sides of the Taiwan Strait belong to the Whole China, and both have no intention to separate from the Whole China, and furthermore promise not to split the Whole China, but to work in unison to maintain the territorial integrity and sovereignty of the Whole China.

***Article 2:***

Normal relations will develop on the basis of cross-Strait equality.

***Article 3:***

Both sides agree to respect its counterpart as the highest power in its own area, and that neither side may represent the other in international relations, or act in the name of the other. Both sides respect the authority of the other party within the boundaries of their respective constitutional orders and in all external affairs.

***Article 4:***

Both sides agree to not use arms or the threat of force, and to resolve their mutual disagreements using exclusively peaceful means.

***Article 5:***

Both sides decide to establish communities in areas of common agreement, in order to promote mutually cooperative relations.

***Article 6:***

Both sides agree to mutually cooperate in international organizations. The common appearance of the two sides does not imply the fracture of the Whole China, but rather that both parties have the responsibility to maintain the common interests of the Chinese people.

***Article 7:***

Both sides agree to mutually establish permanent representative offices. Issues regarding the establishment of representative offices will be determined separately.

This agreement must obtain ratification, and will go into effect on the day following the exchange of official notices by both sides.

Signatories:

Beijing China

Taipei China

## How to Understand the Basic Agreement

### A Temporary Agreement, Not an Ultimate Solution

The character of the Basic Agreement is essentially a temporary agreement (*modus vivendi*), and does not have the ultimate status of a permanent agreement. If it were a permanent agreement, this would be akin to saying that cross-Strait relations ought to remain permanently in the present status quo. This is something that mainland China is unlikely to accept. Neither should Taiwan pursue such a policy.

### A Basis for Future Cooperation

Opening up peaceful cross-Strait development is inevitably a comprehensive process, as one agreement cannot possibly state completely all the facets of peaceful development. Therefore, in order for any cross-Strait agreement for peaceful development to be signed, it must be a “basic” agreement that might serve as a keystone and pathway for future peaceful cooperation. Hence, a future agreement should be named: the Basic Agreement on Peaceful Cross-Strait Development.

### Key Content

A basis which provides for the peaceful development of cross-Strait relations, simply speaking, requires three key elements: cross-Strait positioning, methods of cooperative development, and future direction. We must, firstly, find a reasonable and mutually acceptable formula for the cross-Strait relationship. Secondly, the methods of cooperative development must assist in the development of cross-Strait relations that tend toward integration rather than secession. Finally, the future direction

must be aimed at returning to the concept of “One China” (namely, the “Whole China”).

## An Explanation of the Basic Agreement’s Provisions

### Confirming That Both Sides Belong to the “Whole China”

The introduction to the Basic Agreement is a statement of both fact and aspiration. The statement: “Recognizing the fact that the “Whole China” has been in a state of separated governance since 1949, but that as such both parties are still a part of the Chinese people” indicates that both sides see the reality of separate political rule, but also agree that they are both a part of and represent the Chinese people. This is to say that their separation is only one of governance, and that, from a nationalistic perspective, they are both part of the same “family”.

Since the same ethnic group can be split into different countries, “acknowledging that both sides of the Taiwan Strait belong to the Whole China” is a prerequisite condition for signing the Basic Agreement. Moreover, the first article’s statement, “[b]oth sides of the Taiwan Strait belong to the Whole China”, expresses a mutual promise between the two sides.

Why is it necessary to emphasize the principle of the “Whole China” in the Basic Agreement? At present, the constitutions of the governments on both sides of the Taiwan Strait are One-China constitutions; therefore, it follows logically that, as long as neither side alters the one-China concept upheld within its constitution, then both conform to the principle that “both sides are part of the Whole China”. In 2005, however, Taiwan altered its constitution to introduce a procedure for ratifying future amendments by way of referendum (Article 4 of the Additional Articles of the Constitution of the Republic of China). This means that future constitutional amendments will be decided by the 23 million people of Taiwan and not by all Chinese people. Thus, the current Republic of China (ROC) constitution will not only be amended by any further revision, but indeed will be “Taiwanized”. Therefore, the signing of this Basic Agreement avoids the possibility of any future legal dispute resulting from any change to their constitution by the Taiwanese party. From the perspective of mainland China, the signing of the Basic Agreement is in essence a written commitment from Taipei affirming

that its constitution does not belong to a different country, but only constitutes a specific political order within the “Whole China”.

Regarding the mutual promise that “both sides are part of the Whole China”, these written words confirm that the cross-Strait relationship is different from normal foreign relations, and is an internal (*inter-se*) relationship within the “Whole China”. It should be noted that the meaning of the “Whole China” is in fact the “one China”; however, the adoption of the term “Whole China” instead of “one China” is intended to eliminate any ambiguity or confusion of terms arising from the historical usage and interpretation of “one China” and also to prevent further disputation between the two sides over the question of which side is “the One”. Since 1949, dispute has raged over the right to represent the “one China”. In reality, “China” should refer to the whole of both the PRC and the ROC, since China’s sovereignty belongs to all the people on both sides of the Taiwan Strait. Both sides should put aside any exclusivist discourse that “the one China is the Republic of China” or that “the one China is the People’s Republic of China”, and instead accept the view that the mainland and Taiwan are both a part of China as a whole. Therefore, for the sake of the text’s inclusiveness and objectivity, replacing “one China” with “Whole China” not only retains the original meaning of one China, but also more completely expresses the fuller meaning of the concept. “Whole China” also indicates that Taiwan and mainland China, in their interaction, must consider “China as a whole” as a principle, when thinking about their relationship.

Confirming that “Mainland China and Taiwan both belong to the Whole China” as a main principle is also a response to China’s president, Mr. Hu Jintao, and the Chinese Communist Party’s long-term demand that any framework for the peaceful development of cross-Strait relations must be established on the basis of the one-China principle.

## Jointly Rejecting a Split of the “Whole China”

The Basic Agreement’s first article states that “both sides of the Taiwan Strait belong to the Whole China”, and both have no intention to separate from the “Whole China”, and furthermore promise not to split the “Whole China”, but to work in unison to maintain the territorial integrity and sovereignty of the “Whole China”. This explains the basic position of both parties and constitutes the foundation for an agreement on peaceful cross-Strait development. On the one hand, it states that neither side has the intention to secede. On the other, via the signing of the

agreement, both sides promise “not to split the Whole China” – that is, they will not engage in activity that would separate any part of the “Whole China”. Furthermore, both parties make a common commitment to “work in unison to maintain the territorial integrity and sovereignty of the Whole China”. This indicates that for such cases as the Diaoyutai (Senkaku) Islands dispute, the Spratly Islands dispute, and other international territorial disputes, both sides have a responsibility to work together in order to maintain the territory and sovereignty of the “Whole China”.

The implication of the statement “[b]oth sides of the Taiwan Strait belong to the Whole China” is that the “Whole China”’s sovereignty belongs to the people on both sides of the Taiwan Strait. Therefore, if Beijing or Taipei signs an agreement in the future with a third party regarding territory or sovereign affairs, the agreement must first have the support of both Beijing and Taipei. To give an example, if Beijing and another country sign a treaty regarding a border issue, Taipei also has the right to be a treaty party, and vice-versa. The reason is simple: the border of both parties is the Chinese border on both sides of the Taiwan Strait, and is not something that can be unilaterally dealt with by one party.

## Asserting the Equal Status of Both Sides

The second article stipulation that “normal relations will develop on the basis of cross-Strait equality” determines that, although Taiwan and mainland China do not have reciprocal relations in terms of political or international realities, their relations are equal in legal terms. In other words, on the international stage, the two sides can have differences in power, one being larger than the other, without the necessity for equality. However, when they mutually interact across the Taiwan Strait, each has an equal relationship with the other; they do not have a superior-subordinate relationship in which one party is the center and the other is only a region. It is just as in a family in which there may be differences between two siblings in terms of power and influence, but both are equal in terms of law. Due to the premise that “[b]oth sides of the Taiwan Strait belong to the Whole China”, the equal relationship across the Taiwan Strait cannot be explained as an equal relationship between two foreign countries on the basis of international law, just as the relationship between two siblings cannot be explained as the relationship between two strangers. A reasonable definition should be an equal relationship between two political entities possessing constitutional orders within the

“Whole China” – a concept that is different from a state-to-state relationship in normal international affairs.

The second article complements the first article’s definition of the “Whole China”. The latter indicates that the cross-Strait relationship is not a normal relationship between two countries or foreign in nature. Instead, it is an internal relationship within the “Whole China”. The former clearly explains that cross-Strait relations are not the domestic relations of either party, just as the Taiwan Area is not a part of the PRC but a part of China – as is the PRC. The Anti-Secession Law passed in 2005 by the Chinese Communist Party is actually of the same spirit, as it opposes Taiwan’s splitting from “China” and not the PRC.

The third article states that “both sides agree to respect its counterpart as the highest power in its own area, and that neither side may represent the other in international relations, or act in the name of the other”. Both sides respect the authority of the other party in internal constitutional order and external affairs. The article does not employ the term “sovereignty”, instead using “the highest power” in order to avoid the formulation that cross-Strait relations are a foreign relationship by international law.

That each party must “respect its counterpart as the highest power in its own area” indicates that, since unification remains unaccomplished at present, neither party has the right to override the other because both the Beijing and Taipei governments only possess complete jurisdiction in their own areas. If we use the terminology of international law, Taiwan and mainland China are only complete international legal entities within their own respective domains. From the perspective of the domain or the affairs of the “Whole China”, Taiwan and mainland China are both incomplete legal entities.

Using the phrase “constitutional order” indicates respect for the domestic administrative, legislative, and judicial rights of each party. The lack of the term “state”, which is traditionally used in international law, is intended to avoid the misunderstanding that cross-Strait relations are foreign relations between one state and another. The use of the phrase “the authority of the other party [...] in external affairs” and not “diplomatic independence” is due to consideration of the uniqueness of this relationship, which makes the usage of traditional international legal terms like “diplomacy” and “independence” problematic. In addition to a mutual expression of goodwill, this phraseology further indirectly ex-

presses the promise that both Taiwan and China are part of the “Whole China”.

## Agreeing to Abstain from the Use of Force

The fourth article, stipulating that “both sides agree to not use arms or the threat of force, and to resolve their mutual disagreements using exclusively peaceful means” establishes the mutual effort of both parties to use peaceful methods to carry out the Basic Agreement. Both sides accept that they belong to the “Whole China” and pledge not to separate from this “Whole China”, and that Taiwan’s independence is opposed by both sides’ governments. Therefore, since military confrontation is no longer necessary, mainland China can abandon its threat of force against Taiwan. However, if Taiwan withdraws from its pledge in the Basic Agreement not to separate from China, this commitment not to use arms or the threat of force would naturally lose its effectiveness.

## Establishing “Cross-Strait Communities”

In the preamble, “[both involved parties acknowledge] that both sides of the Taiwan Strait belong to the “Whole China”, that mutual equality is a basic condition for peace, and understanding, and that both sides intend to apply a method of integration via the establishment of communities as the basic path to peace and mutual development” and Article 5 stipulates that “both sides decide to establish communities in areas of common agreement, in order to promote mutually-cooperative relations”. “Communities” are thus identified as the key components for both parties’ peaceful cooperation as laid out in the Basic Agreement.

The concept of “Cross-Strait Communities” means that both sides of the Taiwan Strait establish specific issue-based cross-Strait institutions in order to regulate common policies. Cooperation within these issue-based communities is hence different from cooperation between states. In the latter, each state is a unit and cooperation is advanced through official contact and negotiation. Cooperation between communities, however, extends across supranational, as well as intergovernmental, organizations. Communities become permanent bodies in addition to the existence of individual states. The community pursues its functional mission and therefore continuously seeks to strengthen itself. As a result, the member states’ power naturally diminishes to the extent that they eventually take a unified stand within the community. In short, besides

ensuring cooperation, communities have the additional effect of establishing an overlapping identity. If both sides of the Strait can build functioning communities, then the work of these bodies will generate an overlapping identity within the “Whole China”. This is especially important in the case of the people of Taiwan who will, arguably, then accept that the people on both sides of the Taiwan Strait are Chinese.

From the standpoint of mainland China, if “one China” were to become the “Whole China”, the “one country, two systems” framework could be used to advance towards peaceful unification even though at present there are two political entities on either side of the Taiwan Strait. The installation of communities on both sides of the Strait could become, from Beijing’s perspective, the ideal route to achieving this end. Indeed, the true problem for mainland China, at present, is that the people of Taiwan’s identification with mainland China is decreasing steadily because of greater economic exchange and because the number of people in Taiwan who are in favour of unification is dwindling. In part, this situation is due to the lack of a mechanism for helping the people on both sides of the Strait to establish a Chinese identity. The essence of communities’ legal character would be to affirm the autonomy of each party and its membership in a common autonomous body. Through the operation of these communities on both sides of the Strait, the people on Taiwan would gain a sense of security concerning politics and the economy, and would hence be able to experience the benefits of cross-Strait integration for themselves. It can, therefore, be expected that the Taiwanese people’s identification with mainland China would increase again through the establishment of these communities and their proper institutionalization.

From the standpoint of Taiwan, the establishment of issue-based communities can function within the National Unification Guidelines<sup>1</sup> as a medium- and long-term mechanism. While cross-Strait economic interaction based on free trade may benefit Taiwan in the short term, it could eventually “hollow out” the Taiwanese economy. Only with the establishment of cross-Strait communities can long-term benefits for Taiwan be guaranteed.

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1 The National Unification Guidelines were adopted in February 1991 by the National Unification Council, a non-official body established by former ROC president and KMT leader Lee Teng-hui (Li Denghui), as a conceptual blueprint for cross-Strait rapprochement.

Both parties' governments must discuss the issues for which it is necessary to establish communities. The parties could begin with matters that are urgent to both sides, such as a community in agriculture or a community for safety in the Taiwan Strait to address issues like smuggling and crime. They could also set up communities with authority that would not interfere in either side's domestic affairs, but which would still hold symbolic meaning, such as a South China Sea Safety Community. As to which issues should have priority, the view advocated by the present approach is that the answer to this question should be left to the creativity of both parties' governments.

The basis for establishing cross-Strait communities (or one single cross-Strait community in the future) is different from that of communities within the EU. The EU is composed of individual sovereign states, while cross-Strait communities are founded on the basis of the "Whole China" in which both parties promote integration under a single roof and yet have equal status with respect to each other.

## Working Together in International Organizations

In recent years, both Taiwan's political parties and the people of Taiwan have desired to participate in international organizations and to seek space in international activities. Article 6 states that "both sides agree to mutually cooperate in international organizations". The concurrent appearance of the two sides in international organizations by no means implies a division within the "Whole China", "but rather that both parties have the responsibility to maintain the common interests of the Chinese people".

On the one hand, mainland China understands the people of Taiwan's wish for participation in international organizations, yet on the other hand, it is also concerned that if Taiwan were to participate in international organizations formed by member states, such as the World Health Organization (WHO), this would be tantamount to giving international status to the Taipei government and allowing it to establish formal diplomatic relations with other states. Since this would create a situation whereby "two Chinas" were being represented in one international organization, mainland China impedes the Taipei government from becoming a formal member of these organizations.

From the perspective of the Beijing government, the optimal method is for Taiwan to join mainland China's delegations in international organizations. At present, there is no way that Taiwan can agree to

this policy. Thus the biggest concession that mainland China can make is to let the Taipei government obtain observer status under the name “Chinese Taipei”; however, there is currently a tendency in Taiwanese society to rashly interpret “Chinese Taipei” as the “People’s Republic of China Taipei”, “China Taipei”, or “Chinese peoples’ Taipei”. Furthermore, in Taiwan, the concession of observer status is not seen as an expression of Beijing’s goodwill, but as part of Beijing’s unification strategy. For this reason, on the issue of Taiwan’s treatment in international organizations, mainland China faces the difficult question of how to let the Taipei government hold formal member status and at the same time prevent an enduring split across the Taiwan Strait.

The signature of both parties under the Basic Agreement affirms that they both belong to the “Whole China”, and neither side will allow the issue of membership in international organizations to create a situation in which each side of the Taiwan Strait is viewed as an independent state.

One other option for securing both parties’ common participation in international organizations and avoiding cross-Strait separation would be a policy of “three seats across the Strait”. To use participation in the WHO as an example, Taiwan could participate alongside mainland China under the name “Taipei China”, as well as through a community representing both parties’ participation, for instance, a cross-Strait community or a Chinese community. The function of this third seat would be to uphold the overall interests of the Chinese people in an international organization’s discussions and decisions, thus demonstrating that such common goals exist. The effect would be to send the message to the world that both sides of the Strait want to work together in international organizations, and that their joint participation illustrates that both parties identify with the “Whole China”.

## Establishing Permanent Representative Offices

Article 7 stipulates that “both sides agree to mutually establish permanent representative offices”. Establishing representative offices, and not embassies, signifies that the parties do not have a general state-to-state relationship, but rather an internal relationship within the “Whole China”. The other part of this article, declaring that “issues regarding the establishment of representative offices will be determined separately”, suggests that the future relationship between cross-Strait representatives will not be based on the Vienna Convention on Diplomatic Relations,

but instead on an agreement between the parties concerned. This agreement, which will define the privileges and immunities to be enjoyed by these representative offices in the future, will be reached by the consensus of both parties.

## Ratification

The final article holds that “this agreement must obtain ratification, and will go into effect on the day following the exchange of official notices by both sides”, reflecting the standard procedure used in the majority of international treaties and agreements. Each party would follow its own constitutional process for ratification.

## Naming of the Signatories: Beijing China and Taipei China

Every agreement involves the naming of signatories. In the case of a formal document on a basic agreement for cross-Straits relations, it would seem unsuitable to have authorization come from the non-governmental representatives of the Straits Exchange Foundation and the Association for Relations Across the Taiwan Straits. Indeed, the signatories should be the governments on both sides of the Strait. Yet mainland China might disagree to having this agreement signed by the “People’s Republic of China” and the “Republic of China”. However, if the final signatories were the “People’s Republic of China” and “Chinese Taipei”, this would not meet the demand for the equality of the two sides, and thus Taiwan might be unable to accept such a formula.

Beijing should ask itself whether it would be willing to share the right to the name “China” with the people on Taiwan, or whether it would instead prefer to let more time pass and potentially allow the impression that “one side is China, the other side is Taiwan” to become increasingly entrenched in the hearts and minds of the Taiwanese people. Such a position would be identical to the vast majority of the supporters of Taiwan’s Democratic Progressive Party, who agree with the view that “one China means the People’s Republic of China”. These supporters further endorse such statements as “the Republic of China should be called Taiwan” and “the people on Taiwan should be called Taiwanese, not Chinese”. This perspective includes demands for the complete abandonment of the word “China”.

Taipei, for its part, should ask itself whether Taiwan independence is becoming less and less likely (and itself thus politically obsolete), and

whether sharing the right to the name “China” is the only way of increasing its own influence and power. Veritably, the designation “Chinese Taipei” has no arguable advantages: it has no deeper meaning and merely represents a non-political term which Taiwan must accept in order to participate in the Olympic Games. However, the act of Taiwan’s accepting itself as a part of the “Whole China” is not only in accordance with Taipei’s own constitution, but it also brings with it benefits in terms of economic gains and identity. Thus the “Whole China” should be viewed by Taiwan as an asset, not as a burden.

Both sides’ usage of the names “Beijing China” and “Taipei China” in the Basic Agreement expresses the equal status of both parties. More importantly, it completely fulfills the agreement’s assertion that both sides are part of the “Whole China”, and rationally allows for progress in peaceful cross-Strait development based on the “Whole China” principle.

## Concluding Remarks

As leaders and politicians on both sides of the Taiwan Strait deal with the notion of a cross-Strait peace agreement, perhaps they should consider whether they are nationalists or patriots. If they consider patriotism to be a higher concern, they would then most likely accord a higher status to the PRC or the ROC (Taiwan), respectively, than to the Chinese nation. In this line of thought, land and sovereignty cannot be shared with any other party. If they prioritize nationalism, however, they would see the problem from a cross-Strait standpoint that is inclusive of all the Chinese people, and would recognize that to benefit the Chinese people is more important than to benefit the state. From the latter perspective, there is no issue on which both parties cannot make concessions or cooperate.

From the viewpoint of the Chinese people on both sides, patriotism is important, yet nationalism is even more so. This Basic Agreement is therefore written from the angle of the people in order to benefit the Chinese nation as a whole. The concept of a “Whole China” needs consensus on both sides of the Taiwan Strait in order to provide a basis for mutual trust. Although there is the difference of large and small across the Strait, at present, each side is a political entity with a constitutional order. This is an objective reality that must be respected. Through the establishment of communities, however, both parties can proceed down

the ideal path of gradual integration into one China, that is, a unified China, should that ultimately be the wish of people on both sides.

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