

## J. Y. Interpretation No.328 (November 26, 1993) \*

**ISSUE:** What are the boundaries of the national territory of the R.O.C.?

**RELEVANT LAWS:**

Article 4 of the Constitution (憲法第四條) .

**KEYWORDS:**

political question (政治問題) , separation of powers (權力分立) .\*\*

**HOLDING:** Instead of enumerating the components, Article 4 of the Constitution provides that the national territory of the Republic of China is determined “according to its existing national boundaries.” Based on political and historical reasons, a special procedure is also required for any change of territory. The delimitation of national territory according to its history is a significant political question and thus it is beyond the reach of judicial review.

**解釋文：**中華民國領土，憲法第四條不採列舉方式，而為「依其固有之疆域」之概括規定，並設領土變更之程序，以為限制，有其政治上及歷史上之理由。其所稱固有疆域範圍之界定，為重大之政治問題，不應由行使司法權之釋憲機關予以解釋。

**REASONING:** How to delimit

**解釋理由書：**國家領土之範圍

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\* Translated by Professor J. P. Fa.

\*\* Contents within frame, not part of the original text, are added for reference purpose only.

the national territory is a purely political question. It may also be called by some scholars an act of state. This question is not subject to judicial review according to the constitutional principle of separation of powers. Article 4 of the Constitution provides: "The territory of the Republic of China according to its existing national boundaries shall not be altered except by resolution of the National Assembly." Instead of enumerating the components of the R.O.C., a general provision was adopted and concurrently provided a special procedure for any change of national territory. It is understandable that this legislative policy was based upon political and historical reasons. Since the meaning of "according to its existing national boundaries" is closely related to the delimitation of national territory, accordingly, it is a significant political question. Based on the above explanation, this application for interpretation is denied.

如何界定，純屬政治問題；其界定之行為，學理上稱之為統治行為，依權力分立之憲政原則，不受司法審查。我國憲法第四條規定，「中華民國領土，依其固有之疆域，非經國民大會之決議，不得變更之」，對於領土之範圍，不採列舉方式而為概括規定，並設領土變更之程序，以為限制，有其政治上及歷史上之理由。其所稱「固有之疆域」究何所指，若予解釋，必涉及領土範圍之界定，為重大之政治問題。本件聲請，揆諸上開說明，應不予解釋。