

J. Y. Interpretation No.329 (December 24, 1993) *

ISSUE: What is the meaning of “treaty” in the Constitution? Which kind of international agreement should be sent to the Legislation Yuan for deliberation?

RELEVANT LAWS:

Articles 4, 38, 58, Paragraph 2 and 63 of the Constitution (憲法第四條、第三十八條、第五十八條第二項、第六十三條) .

KEYWORDS:

treaty (條約) , agreement (協定) , ratification (批准) , Legislative Yuan (立法院) , Executive Yuan (行政院) . **

HOLDING: Within the Constitution, “treaty” means an international agreement concluded between the R.O.C. and other nations or international organizations whose title may apply to a treaty, convention or an agreement. Its content involves important issues of the Nation or rights and duties of the people and its legality is sustained. Such agreements, which employ the title of “treaty,” “con-

解釋文：憲法所稱之條約係指中華民國與其他國家或國際組織所締約之國際書面協定，包括用條約或公約之名稱，或用協定等名稱而其內容直接涉及國家重要事項或人民之權利義務且具有法律上效力者而言。其中名稱為條約或公約或用協定等名稱而附有批准條款者，當然應送立法院審議，其餘國際書面協定，除經法律授權或事先經立法院同意簽訂，或其內容與國內法律相同者

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vention” or “agreement” and have ratification clauses, should be sent to the Legislative Yuan for deliberation. Other international agreements, except those authorized by laws or pre-determined by the Legislative Yuan, should also be sent to the Legislative Yuan for deliberation.

REASONING: According to the Constitution, the president has the power to conclude treaties. The premier and ministers shall refer those treaties that should be sent to the Legislation Yuan for deliberation to the Committee of the Executive Yuan. The Legislative Yuan has the power to review those treaties. All of these procedures are explicitly enshrined in Article 38, Article 58, Paragraph 2, and Article 63 of the Constitution, respectively. Treaties concluded according to the above procedures hold the same status as laws. Therefore, the term “treaty” in the Constitution means an international agreement concluded between the R.O.C., including those institutions and groups authorized by governmental agencies, and other nations, including their authorized institutions and groups or international

外，亦應送立法院審議。

解釋理由書：總統依憲法之規定，行使締結條約之權；行政院院長、各部會首長，須將應行提出於立法院之條約案提出於行政院會議議決之；立法院有議決條約案之權，憲法第三十八條、第五十八條第二項、第六十三條分別定有明文。依上述規定所締結之條約，其位階同於法律。故憲法所稱之條約，係指我國（包括主管機關授權之機構或團體）與其他國家（包括其授權之機關或團體）或國際組織所締結之國際書面協定，名稱用條約或公約者，或用協定等其他名稱而其內容直接涉及國防、外交、財政、經濟等之國家重要事項或直接涉及人民之權利義務且具有法律上效力者而言。其中名稱為條約或公約或用協定等名稱而附有批准條款者，當然應送立法院審議，其餘國際書面協定，除經法律授權或事先經立法院同意簽訂，或其內容與國內法律相同（例如

organizations, that employ the title of “treaty,” “convention” or “agreement”; is involved directly in important national issues such as defense, diplomacy, finance, the economy or people’s rights and duties, and has legal effect. Agreements that employ the title of “treaty,” “convention” or “agreement,” and have ratification clauses should be sent to the Legislative Yuan for deliberation. Other international agreements, except those authorized by laws or pre-determined by the Legislation Yuan, should also be sent to the Legislative Yuan for deliberation. Those international agreements, which do not need to be sent to the Legislative Yuan for deliberation or cannot be regarded as treaties concluded by governmental agencies or their authorized institutions or groups, should be processed by responsible governmental agencies compliant with legislative or normal executive procedure. It is obvious that the “Procedural Regulation on Treaties and Agreements” enacted by the Ministry of Foreign Affairs should be amended in accordance with this interpretation.

協定內容係重複法律之規定，或已將協定內容訂定於法律）者外，亦應送立法院審議。其無須送立法院審議之國際書面協定，以及其他由主管機關或其授權之機構或團體簽訂而不屬於條約案之協定，應視其性質，由主管機關依訂定法規之程序，或一般行政程序處理。外交部所訂之「條約及協定處理準則」，應依本解釋意旨修正之，乃屬當然。

According to Article 4 of the Constitution, treaties that alter the territory of the R.O.C. within its existing national boundaries should also be resolved by the National Assembly. Agreements concluded between Taiwan and mainland China are not international agreements to which this interpretation relates. It should also be noted that whether or not these agreements should be sent to the Legislation Yuan for deliberation is not included in this interpretation.

Justice Teh-Sheng Chang filed dissenting opinion in part.

Justice Yu-Ling Yang filed dissenting opinion.

Justice Chih-Peng Lee filed dissenting opinion.

Justice Chung-Sheng Lee filed dissenting opinion.

至條約案內容涉及領土變更者，並應依憲法第四條之規定，由國民大會議決之。而臺灣地區與大陸地區間訂定之協議，因非本解釋所稱之國際書面協定，應否送請立法院審議，不在本件解釋之範圍，併此說明。

本號解釋張大法官特生提出一部不同意見書；楊大法官與齡、李大法官志鵬與李大法官鐘聲分別提出不同意見書。